

MIGRANTS
KNOW
YOUR
RIGHTS!

A GUIDE TO IMMIGRATION
ARREST, DETENTION AND
DEPORTATION

&

YOUR RIGHTS AT HOME,
ON THE STREETS
AND AT WORK

WHO IS AT RISK OF IMMIGRATION ARREST, DETENTION AND DEPORTATION?

You may be at risk of immigration arrest, detention and deportation if any of the following situations apply to you:

- Your visitor, worker, student or live-in caregiver visa has expired
- You haven't followed all of the terms and conditions on your visa
- You made a refugee claim that was denied and your Pre-Removal Risk Assessment (PRRA) was also denied
- You received a date for your deportation but didn't leave Canada
- You entered Canada without showing any papers to Canadian immigration officers
- You haven't followed the terms and conditions of a release order from detention or terms and conditions you signed with an immigration officer
- There is an **immigration warrant** for your arrest

There may also be other situations that put you at risk of immigration arrest. If you think you might be at risk, contact a lawyer or immigration consultant.

If you're already in detention see the last section of this guide, **GETTING LEGAL HELP WHILE IN DETENTION**, for more information.

ABOUT THIS GUIDE

This guide aims to provide basic legal information to people without immigration status so that they will be able to better protect themselves from the risks of immigration arrest and detention.

The Limits of this Guide

Legal rights only go so far. The Canadian government is making it harder for people to obtain permanent resident status in Canada. This means that many people live here with precarious immigration status or without any status at all, often working and living in exploitative conditions. Despite the rights set out in this guide, people without status are at risk of arrest, detention and deportation.

The Importance of Collective Action

While it's useful to be aware of your legal rights, laws are designed to remove people without immigration status from Canada. We have to continue to organize, mobilize and fight back against immigration detention and deportation that tears apart families and communities.

Political victories are possible. Communities working together have stopped deportations and have successfully campaigned governments to grant immigration status to large groups of undocumented people.

When does an immigration warrant get issued?

If you miss an appointment with Canada Border Services Agency (CBSA) a Canada-wide warrant will be issued for your arrest. Appointments include regular reporting; a special "call in notice" to receive a decision; or even an actual date at the airport for your deportation. People may not know that they've missed an appointment if CBSA has sent a letter to an old address. That's why it's important to make sure that CBSA and CIC have your current address.

CBSA can also issue warrants if they believe you should not be in Canada and are a danger to the public.

- *Submitting either an application for permanent residence on humanitarian and compassionate grounds (an "H&C application") or an application for spousal sponsorship will not necessarily prevent your deportation. If you have submitted one of these applications, make sure to discuss with your lawyer or immigration consultant how it affects your immigration status.*

TWO THINGS YOU CAN DO RIGHT NOW IF YOU DON'T HAVE IMMIGRATION STATUS



Develop a *strategy of what you will do if confronted by an immigration or police officer* at home, in the street or at work. The rest of this guide will help you plan a strategy that best fits your situation.



Make a *safety plan in case of arrest*. This plan may help you get out of detention faster and may reduce the stress of being arrested. You can use the following checklist to make sure your safety plan is as complete as possible.

Safety Plan Checklist:

- I have the number of a trusted lawyer or immigration consultant
- I have given a spare set of house keys to someone I trust and who can:
 - ➔ access my important papers
 - ➔ tell others living at my house what has happened
- I have found someone who can:
 - ➔ contact my lawyer
 - ➔ take care of my children or other family members
 - ➔ tell my work about my absence
 - ➔ be a **bondsperson** for me
- I have found support from religious or community organizations, neighbours, and other allies who can **rally together** to help me get out of detention
- I have given my immigration client ID to trusted friends and family so that they can give it to the lawyer to locate me if I'm detained
- I have read the rest of this guide and know what strategy I will use if confronted by immigration or police officers

Bondsperson

A bondsperson is a Canadian citizen or permanent resident who is 18 years or older and who can help guarantee my presence at an immigration hearing by putting down a deposit and/or promising that they have enough income to pay a certain amount of money if I don't show up

Community Action Plan

Communities continue to organize everyday to protect themselves and their members from immigration raids. This US resource may be a good resource to help prepare for a large-scale raid in Canada:

www.nilc.org/ce/nonnilc/raids_checklist_firm_2007-04.pdf

Where will they take me?

If you're arrested in Toronto and you don't have criminal charges or a criminal record, then you will most likely be taken to the **Immigration Holding Centre** at 385 Rexdale Blvd.

If you do have criminal charges or a criminal record, then you will most likely be taken to a provincial jail. Unfortunately, it's impossible to know for certain which one you will be taken to.

What will happen to my children when I'm in detention?

If you're in immigration detention but have children who are Canadian citizens, your children have a right to remain in Canada. However, their immigration status will NOT prevent your own deportation.

If you have no one to care for your children, they may be able to stay with you at the Immigration Holding Centre, but this is not possible if you're detained in a provincial jail. Once your children are in the detention centre with you, you can ask to have them released at any time if there's someone who will care for them. If your children also don't have status in Canada they will likely be detained with you.

What should I do if an officer comes to my home?

Strategy 1: Exercising your RIGHT TO PRIVACY at home

The RIGHT TO PRIVACY means that, in general, officers aren't allowed to enter your home. But they can legally enter your home if you invite them in, or if the officers have the TWO necessary warrants.

How you can exercise your RIGHT TO PRIVACY at home:

- ❑ When officers knock on your door and identify themselves you can ask them what they want through the door. If you open the door the officers may force their way in
- ❑ They are likely to say they have come to make an immigration arrest
- ❑ You can then exercise your RIGHT TO PRIVACY in this way:
 - ➔ Do NOT open the door
 - ➔ Ask (through the door) to see the TWO warrants they must have with them to make an arrest inside a home:
 - (1) the immigration arrest warrant and
 - (2) a special warrant that lets them enter a home to make an arrest (it's called a "special entry" warrant or "Feeney" warrant)
 - ➔ Ask them to slip the warrants through the mailbox or under the door
 - ➔ If the warrants don't fit, open the door a little in order to take them and then close the door again
 - ➔ Make sure that there are TWO separate warrants, and that they are dated and signed
 - ➔ Ensure that the person named on the warrants is in the house. If they only have one warrant, or there's a mistake on the warrants, you have the right to tell them they need a second warrant or that the information on one or both warrants is incorrect
 - ➔ Then ask them to leave (without opening the door)

Immigration enforcement is carried out by officers from the Canada Border Services Agency (CBSA) or by police officers. The following is not legal advice but information based on your rights under the law, but note that officers don't always obey the law!

What if the officers have the TWO necessary warrants and ALL the information is correct?

- ❑ If this is the case, the person named on the warrant may choose to leave the house and get arrested
- ❑ This may protect others inside the house who may also be at risk of immigration arrest
- ❑ Or, you may choose to continue to exercise your RIGHT TO PRIVACY and wait until the officers force their way inside your home

Advantages of continuing to exercise your RIGHT TO PRIVACY at home:

- ❑ It may take some time before the officers decide to force their way in. This may give you time to contact a lawyer and make any necessary arrangements

Disadvantages of continuing to exercise your RIGHT TO PRIVACY at home:

- ❑ Once the officers are in your house, they may arrest others who also don't have valid immigration status
- ❑ If they eventually do arrest you in your house, the officers could prepare a report that says that you didn't cooperate at the time of arrest. This may be relied on at a "detention review" hearing to say that you shouldn't be released

What happens if officers come to my shelter?

For a brief period of time there was a policy in Toronto that directed officers not to enter shelters that served survivors of domestic violence. In February 2011, that policy was removed.

So it's a good idea to ask staff at your shelter to find out how they deal with immigration and police officers. If you think your shelter might report you to CBSA if you ask these questions, then have a friend who has immigration status ask for you.

Strategy 2: Exercising your RIGHT TO SILENCE at home

The RIGHT TO SILENCE means that you do NOT have to speak to an officer in any situation, unless you've already been arrested or detained.

How you can exercise your RIGHT TO SILENCE at home:

- ❑ When officers knock on your door, you can simply stay silent
- ❑ If the officers don't have the TWO necessary warrants that they need to enter your home, they may go away
- ❑ If the officers do have the necessary TWO warrants, they can force their way into your home

Advantages of exercising your RIGHT TO SILENCE at home:

- ❑ If the officers don't have the TWO necessary warrants, or don't think you're there, they may leave
- ❑ This may give you time to contact a lawyer about your legal options and to make any necessary arrangements

Disadvantages of exercising your RIGHT TO SILENCE at home:

- ❑ If the officers have the TWO necessary warrants they can force their way in, and then arrest others in your house who also don't have valid immigration status
- ❑ If they eventually do arrest you in your house, the officers could prepare a report that says that you didn't cooperate at the time of arrest. This may be relied on at a "detention review" hearing to say that you shouldn't be released
- ❑ *Even if the officers do NOT have the necessary warrants, BE AWARE that physically preventing the officers from entering your home may lead to criminal charges. If you decide to inspect the warrants, you should be aware that anything you say may be used against you at a detention review hearing.*

**WE
KNOW
OUR
RIGHTS!**

What can I do if an officer stops me while I'm walking in the street, in a shopping mall, in the park, or in any other public place?

If you don't have immigration status, an officer can arrest you with or without a warrant.

Be aware that resisting arrest could make your immigration situation worse and could lead to criminal charges.

What can I do when an officer tries to arrest me WITH a warrant?

- ❑ If an officer claims to have a warrant for your arrest, you have the right to ask to see it
- ❑ Make sure that you're the person named on it, and that it is dated and signed
- ❑ If there is a mistake on the warrant or any information is missing, point that out to the officer
- ❑ If the officer still arrests you, make sure that you tell your lawyer about the incorrect warrant

What can I do when an officer tries to arrest me WITHOUT a warrant?

- ❑ If you get stopped by officers who don't have a warrant for your arrest, it may be because they have illegally targeted you due to your race, background, or because the language you're speaking is not English or French
- ❑ The officers will then start to ask you questions about your immigration status
- ❑ Even though you have a right to silence if you're not driving a car or riding a bike, you may choose to identify yourself with your name, address, and date of birth, as officers can arrest someone without immigration status if they don't believe that you've **identified yourself correctly**
- ❑ The officers may ask you lots of other questions—like how long you've been in Canada and how you got here. They want to find out whether you're here with valid immigration status or not. If they determine, based on your answers, that you're here without status, then they can arrest you without a warrant
- ❑ If you've already identified yourself to the officers, and they keep asking you questions, you do NOT need to answer them. You could ask the officers, "Am I being detained or am I free to go?"
- ❑ Eventually they will either arrest you or they'll let you go
- ❑ Walking or running away while they're questioning you may lead to criminal charges

Developing your own strategy

The current immigration laws make it easy for an officer to arrest a non-status person without a warrant. That's why it's a good idea to talk to family, friends, community organizations, and especially other people who don't have immigration status about the best ways to avoid arrest in public places.

Sample dialogue: What you may choose to do when an officer tries to arrest you without a warrant

Officer: You, there. Stop for a minute please, I'd like to ask you some questions.

You: I'm in a bit of a hurry. Do I have to stop and talk to you?

Officer: I'd like you to. Listen, where are you from?

You: I know that I have a right to silence, but I'm going to give you my name, address and date of birth to help you do your job.

Officer: Sure. But I'm actually wondering where you're from?

You: My name is John Doe. I live at 35 Riverdale Ave. My date of birth is June 29, 1982.

Officer: Thanks. When did you arrive here?

You (as politely as possible): I've identified myself to you. If you're not detaining me, I'd like to leave.

Officer: Just a minute. Where did you say you were from again?

You: Am I being detained?

Officer: Did you come here on a work visa or a visitor visa?

You: Am I being detained?

Officer: You're not being detained. You're free to go.

- ❑ *If there is already an outstanding warrant for you the officers will find it if they do a computer check as immigration warrants are also registered in a police database called the Canada Police Information Centre (CPIC) - in which case the officer will detain you at this time.*

There are a few different ways that an officer may not be "satisfied" with your identification:

1. If you refuse to answer any questions about your identity
2. If you're carrying false identification documents
3. If you're not carrying any identification documents
4. If the officer suspects that you aren't telling the truth about your identity

What can I do if an officer stops me while I'm in a car or on a bike?

- ❑ If you're driving a car (or you're on a bike) you must show your identification to the officer
- ❑ If you're a passenger and not the driver, you have the same rights as if you're stopped in a public place (see the previous page)
- ❑ If you don't have immigration status, driving puts you at high risk of being detained as a result of traffic stops by police
- ❑ For example, if the police pull you over for speeding or if the police are illegally profiling you based on your race, they may learn of an immigration warrant when they run a check on your driver's license or name and date of birth through their database
- ❑ Also, if they can't find any record of you on any database, they may hand you over to CBSA

What if an officer comes to my work?

- ❑ You may be at risk of immigration arrest if you're working somewhere without a valid work permit, or if the place you're working is not the same place named on your work permit. Both situations are illegal under Canadian immigration law (despite what your recruiter may tell you)
- ❑ Whether the officers enter your workplace or wait for you outside, they will be able to question you in the same way that they can in a public place, and this may lead to your arrest
- ❑ In general, don't rely on your recruiter for legal advice as they profit from immigrant workers. Recruiters often advise people to contact representatives from their countries (at consulates or embassies) if they run into immigration problems, but contacting representatives from your country may actually speed up your deportation
- ❑ If you have a trusted co-worker you may wish to give them contact information for family members or a lawyer in case you're arrested at work

What rights do I have at my job as a migrant worker?

Various laws in Ontario are meant to protect workers, such as how much you should be paid, how you can be fired, how much vacation pay you should get, and how you can get money if you've been injured on the job.

These laws apply to anyone working in Ontario, including all migrant workers—whether they're working with a valid work permit or not. But if you try to enforce your rights, and you're not working under a valid work permit, your boss may report to you to the CBSA for not having a valid work permit.

Legal help for migrant workers

If you're a migrant worker living in Toronto without immigration status who is owed money by your boss, you should contact the **Workers' Action Centre** (www.workersactioncentre.org or 416-531-0778). They are an amazing organization that fights to improve the working conditions of people in low-wage and unstable employment.

If you live in Ontario (but outside of Toronto), you may contact a local **Legal Aid Ontario** community legal clinic to see if they can assist you with your work-related legal problems (visit www.legalaid.on.ca/en/getting/type_civil-clinics.asp for a list of community legal clinics).

Please note that most community legal clinics do not practice workers' rights or immigration law. But they may still be able to provide you with referrals to lawyers who do practice in these areas.

GETTING LEGAL HELP WHILE IN DETENTION

Toronto Refugee Affairs Council (TRAC)

If you're being held in Toronto at the Immigration Holding Centre (which is usually referred to as "Rexdale") you can request the assistance of TRAC for legal information. TRAC operates an office at the Immigration Holding Centre Mondays to Thursdays. Their telephone number is 416-401-8537.

Refugee Law Office (RLO)

An RLO staff member goes to the Immigration Holding Centre (385 Rexdale Blvd) in Toronto on Tuesdays and Wednesdays as part of TRAC. You can call them at 1-800-668-8258 or 416-977-8111.

The RLO also provides people with legal advice and representation to persons detained at the Immigration Holding Centre, Toronto West Detention Centre, Vanier Centre for Women and Central East Correctional Centre (known as "Lindsay"). Staff members also give summary legal advice by telephone to immigration detainees calling from other detention centres in Ontario.

KEY LEGAL INFO FOR DETAINEES

- Do not sign any papers without first speaking to a lawyer because you may be giving up your rights to pursue an application to stay in Canada, such as a Pre-Removal Risk Assessment (PRRA)
- However you should note that CBSA has argued that refusing to sign papers (even if it's to speak to a lawyer first) shows that the person is uncooperative and therefore should not be released from detention
- As a result, it is useful to have a lawyer pre-arranged in case you're arrested and to speak to them quickly
- Do not rely on CBSA Officers to provide you with accurate legal advice
- Ask for an interpreter if you don't understand what's being said to you
- You have a right to contact your embassy or consulate, but you may not want to if you fear the government of your home country

☛ *For more information on immigration detention, refer to the fact sheet "Being arrested and detained for immigration reasons":*

<http://www.cleo.on.ca/english/pub/onpub/subject/refugee.htm>

Disclaimer

This guide is for informational purposes. It is NOT legal advice.

About the Authors

The **Immigration Legal Committee (ILC)** is a Toronto-based group of law students and legal workers. We support community organizations and grassroots campaigns that advocate for immigrant and refugee rights by providing legal education workshops and by creating community resources such as this guide. We don't provide legal advice or representation.

The **Immigration Legal Committee (ILC)** is a sub-committee of the **Law Union of Ontario** (lawunion.ca) and **No One is Illegal-Toronto** (toronto.nooneisillegal.org).

For more information about us or to book a workshop, contact: immigrationlegalcommittee@gmail.com.

For an online printable version of this document, visit: toronto.nooneisillegal.org.

The authors thank all individuals and organizations that assisted in the production of this document.



This project has been funded by:



The Law Foundation of Ontario
Building a better foundation for justice in Ontario