

WHAT RIGHTS DOES AN UNDOCUMENTED INDIVIDUAL HAVE DURING AN ARREST / DETENTION

- The right to refuse to answer any questions regarding nationality or immigration status.
- The right to refuse to sign any documents without first speaking to an attorney and the right to retract any document signed in the absence of an attorney.
- The right to speak with an attorney before answering any questions by any government officer, including the police, federal agents, or immigration officials.
- The right to contact a lawyer or agency who will provide pro-bono representation if legal representation cannot otherwise be afforded. If detained, the DHS must provide detainees a list of free legal service providers. Please Note: Free legal services are not available in all areas.
- Detained persons have the right to receive, in writing, the charges against them within 24 hours of an arrest. The written form must include the amount of bail set, if any. An individual subject to immigration detention has the right to challenge a bail determination and request that reasonable bail be set.
- If detained, an individual has the right to call a lawyer, family member, or friend. Any person held in detention centers, including immigration detention, has the right to humane conditions, food, water, medical attention, bathrooms, showers, access to telephones and legal counsel.
- Detained non-citizens generally have the right to a hearing before an immigration judge; however, in some cases, if an individual is apprehended at a port of entry, such rights are limited those asylum seekers or others seeking certain protection.
- An individual in removal proceedings has the right to appeal a removal (deportation) order issued by an immigration judge.
- The right to apply for asylum, if not detained by the DHS, outside the immigration court. Detained individuals, including those released pending removal proceedings, may apply for asylum with an immigration court. Asylum applicants are required to file their application within one year of entering the U.S. In order to qualify for asylum, an applicant must demonstrate a fear of persecution if returned to their home country. The persecution must be connected to 5 protected classes – race, religion, nationality, political opinion or membership in a particular social group.