

181462

## Responding to Alien Crimes



presented by the  
International Association of Chiefs of Police  
and the  
U.S. Immigration and Naturalization Service

funded by the  
Bureau of Justice Administration, U.S. Department of Justice

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## **Seven State Model**

To improve criminal alien identification in state correctional systems, INS has dedicated investigative resources to focus on seven states with the highest concentration of criminal aliens. The IHP models developed through this initiative will eventually be expanded to all jurisdictions.

## **Cooperative Screening of Foreign-born Inmates**

Through formal individual agreements with the state governors, state attorneys general, EOIR, and INS, cooperative efforts have been established with state criminal justice agencies to screen foreign-born inmates for deportation at Arizona, California, Florida, Illinois, New Jersey, New York, Texas, Pennsylvania, and New Mexico state correctional facilities.

Through these initiatives, criminal alien identification is expedited when they enter the state and federal penal systems by minimizing the number of intake locations for inmates identified as foreign-born, hearing locations, and release sites. Procedural improvements and greater efficiencies in criminal alien processing will be developed and realized through this effort.

## **Certified Conviction Records Tied to Federal Grants**

Certified conviction records are a crucial element to prove deportability in removal proceedings. *Section 507 of the Immigration Act of 1990* requires state assurance, as part of federal grant fund applications, to provide INS, without fee, notice of aliens convicted of state criminal law violations, within 30 days of the date of conviction. States are also required to provide certified records of conviction to INS within 30 days of request.

The law encourages state cooperation and allows INS to succeed in deporting criminal aliens. INS must present certified records of conviction to secure an alien's deportation on criminal grounds. Absent corroborative evidence of convictions, aliens obtain low custody bonds, and eligibility to seek administrative relief.

## **Re-entry after Deportation Prosecution Program**

Working closely with assistant U.S. states attorneys, the INS identifies aggravated felons who have been previously deported and initiates federal prosecution for re-entry after deportation, which, upon conviction, can carry a sentence to confinement of up to 20 years.

# ✓ Countering Alien Smuggling

## Priorities

- ▶ Identify, assess and immobilize international alien smuggling organizations.
- ▶ Maximize deterrence through prosecution of major alien smuggling conspirators.
- ▶ Cooperate with U.S. and foreign law enforcement agencies to combat alien smuggling operations.

Alien smuggling represents an extraordinary enforcement challenge to INS investigations. International in scope and operation, these criminal operations profit from aliens lacking means to obtain lawful entry to the U.S. Every mode of transportation and means of deception figure in these clandestine schemes and often include document fraud, corruption, and linkage to narcotics and other contraband smuggling.

Smuggling entries are reduced and deterrence is promoted by targeting major alien smuggling organizations for investigation and prosecution. Organized smuggling is also countered through major conspiracy investigations conducted with federal, state, and local law enforcement agencies, as well as appropriate bureaus of foreign governments.

Investigations focus on identification, assessment and immobilization of international smuggling conspiracies, maximizing impact on organized traffic, and creating deterrence in the U.S. and abroad. INS coordinates efforts against international alien smuggling organizations, cooperatively utilizing the contributions of all INS divisions, including overseas offices, INS inspections at ports-of-entry, and Border Patrol units between ports-of-entry. Interior offices experiencing high smuggling rates receive priority support in dismantling smuggling operations.

INS anti-smuggling agents apply acquired knowledge of foreign languages and cultures, and utilize sophisticated investigative techniques, such as electronic evidence gathering, undercover operations and informant networks, to successfully infiltrate and neutralize high-level criminal organizations engaged in alien smuggling and serious crimes—extortion, murder, kidnapping, peonage, terrorism, document fraud and narcotics trafficking.

# ✓ Countering Immigration Fraud

## Priorities

- ▶ Discourage immigration fraud.
- ▶ Protect the integrity of Service benefit processes and all documents issued to entitled alien beneficiaries.
- ▶ Identify and prosecute criminal fraud organizations, using task forces, consensual monitoring and undercover technique.
- ▶ Enforce document fraud penalties under INA 274C.

The nation's right to determine who may enter its borders, and preserving the integrity of that process, is at the heart of fraud investigations. INS controls the admissibility of aliens to the United States—properly reflecting national policy but precluding large foreign population segments from qualifying. The pervasive fraud which results reflects the continuing desire of foreign nationals to emigrate to the U.S. by any means possible.

Immigration fraud takes many shapes, including the manufacture, distribution and use of counterfeit or altered immigration and identity documents to various misrepresentation schemes, including identity, relationships or other material facts. Yet whether marriage or document related, achieved through personation, counterfeiting or bribery, the intent of immigration fraud is always the same: gain or benefit in the absence of lawful entitlement.

Criminal alien and terrorists also manipulate the system to perpetrate larger crime schemes. Increasingly, fraudulent documents and fraudulently obtained immigration status are used by criminal aliens to facilitate other illegal activities such as drug trafficking, violent crime, evading employer sanctions, and perpetration of entitlement fraud.

Legislative changes affecting fraud enforcement occurred in IRCA, the *Immigration Marriage Fraud Amendments Act of 1986*, and the *Immigration Act of 1990*, all of which set the current program impetus. The laws, in combination, provide INS with added enforcement tools.

INS agents conduct undercover operations to gather evidence on document vendors, marriage arrangers, and other fraud facilitators. While usually approved by the local office, many undercover investigations cross regional boundaries or involve sensitive circumstances, invoking application of the Attorney General's undercover guidelines and requiring approval by Headquarters or the Undercover Operations Review Committee (UORC).

On November 7, 1983, the Attorney General authorized agency heads or designated headquarters staff consensual monitoring approval in all but seven situations considered sensitive by the department. All requests to use consensual monitoring in fraud investigations are reviewed for approval/denial by Headquarters Investigations.

## Section 274C INA

Section 274C of the INA, created by the *Immigration Act of 1990*, applies to persons or entities committing civil document fraud—providing imposition of cease and desist orders and civil money penalties on violators. This new enforcement tool allows INS to pursue both civil and criminal remedies to counter immigration fraud. Final regulations were published in and implemented in 1993.



# ✓ Prosecuting Responsible Parties for Immigration Related Offenses

## Priorities

- ▶ Investigate and prosecute members of criminal alien organizations: drug traffickers, terrorists and gang members.
- ▶ Cooperate with local, state and federal enforcement to combat crime involving aliens.

## Initiatives

- ▶ Alien Organized Crime
- ▶ AG's Violent Gang Task Force
- ▶ Organized Crime and Racketeering Strike Force
- ▶ Counter-Terrorism

Investigations sustains focused enforcement efforts against aliens engaged in drug-related, violent, or organized criminal activity. Criminal alien organizations are well-diversified, often involved in legitimate enterprises that mask activity such as alien and narcotic smuggling and trafficking. In these complex cases, an individual member's deportation or INS prosecution effectively disrupts the organization. INS investigations include Racketeer Influenced Corrupt Organizations (RICO) violations which provide a powerful enforcement tool to seize property and proceeds acquired through the criminal enterprise.

## Attorney General's Violent Gang Task Force (VGTF)

The Attorney General significantly expanded federal initiatives to combat violent gang street crime through creation of the *Violent Gang Task Force* in 1992. Investigations committed 150 special agents to VGTF activities, dedicating these resources to task forces in cities designated by the Attorney General.

## **Organized Crime And Racketeering Strike Force (OCRSF)**

Given the inherently complex nature of sophisticated criminal racketeering organizations, the original purpose of the OCRSF was to identify and prosecute traditional organized crime figures, particularly those involved in political corruption and labor racketeering by converging the resources and expertise of numerous law enforcement agencies. As with legitimate business, racketeering enterprises have also become international in scope and affiliation. In response, the OCRSF has shifted its focus to include investigations involving Asian, Eastern European and West African organized crime groups. Thirteen senior special agents are assigned to represent INS on the OCRSF. In concert with other agency strike force representatives, INS agents conduct complex investigations of organized criminal groups engaged in felony crimes.

## **Counter-Terrorism**

INS is also working to maintain and ensure close cooperation with other agencies in investigations of foreign nationals suspected of terrorist activity. INS special agents are frequently called upon to further multi-agency efforts to investigate, apprehend, and remove these aliens; often immigration laws provide the sole means available to U.S. enforcement.

# ✓ Supporting National Drug Interdiction and Reduction Efforts

## Priorities

- ▶ Identification, investigation and successful prosecution of high-level narcotics organization members
- ▶ Cooperation with federal, state and local enforcement agencies in OCDETF investigations

## Organized Crime Drug Enforcement Task Force (OCDETF)

Established by President Reagan in 1982 to improve interagency coordination and cooperation in the investigation and prosecution of major drug cases, OCDETF brings to bear the full force of member agencies' combined authorities. INS formal participation in OCDETF began in 1986 at the invitation of the Attorney General.

INS membership in this elite federal enforcement cooperative resulted from Department of Justice's recognition of the unique contributions made by INS special agents in international narcotics cases. INS agents have specialized knowledge of the foreign languages, cultures and mores; extensive contact with and access to alien communities; and wield the broad range of general authority conveyed by the *Immigration and Nationality Act*.

At the outset of participation, INS OCDETF coordinators were established in the 13 OCDETF core cities. INS membership resulted in the dedication of investigations resources to national anti-drug efforts, including additional positions established according to the *Anti-Drug Abuse Act of 1988 (ADAA)*.

The OCDETF mission is narrowly focused: identification, investigation, and prosecution of members of high-level drug trafficking enterprises, accomplished through coordinated effort among federal, state and local enforcement agencies. OCDETF agents and prosecutors investigate major drug trafficking organizations warranting cooperative law enforcement effort.

The task forces coordinate the investigative and prosecutorial efforts of agents and attorneys handling OCDETF drug cases while remaining under the command of their respective agencies. The core-city U.S. Attorney is accountable for the overall performance of the task force, in accordance with the goals, policies, and standards of the OCDETF program.

# ✓ Enforcing Employer Sanctions

## Priorities

- ▶ Promote employer compliance with employment regulations.  
Dual enforcement strategy:
  1. lead driven investigations
  2. random employer inspections
- ▶ Discourage discrimination.
- ▶ Deter unauthorized workers.
- ▶ Identify and prosecute violators for civil and criminal sanctions offenses.
- ▶ Discourage use of fraudulent employment documentation.

The goal of the Employer Sanctions enforcement is removal of the “magnet” that draws many aliens to enter and/or remain illegally in the United States. Many illegal entrants and status violators come solely for the plentiful job opportunities available in the U.S. labor market.

INS agents lessen those opportunities by promoting compliance with laws and regulations, which shifted enforcement from individual aliens to employers. When combined with effective enforcement of sanctions (a tiered system of civil money and criminal penalties), the pull effect is reduced and jobs are preserved for U.S. citizens and aliens lawfully authorized to work in the United States.

INS employs a dual enforcement strategy to meet the Employer Sanctions program priorities: lead-driven investigations of reported employer violators and random employer compliance inspections generated through neutral selection process.

The random employer inspections are initiated under a general administrative plan (GAP) to ensure neutrality, permit INS to gauge nationwide employer compliance levels, and increase employer awareness of their legal responsibility to comply without discriminating.

Effective sanctions enforcement occurs through lead-driven investigations targeting employer violators. The tiered sanctions system permits INS to pursue progressively stronger penalty phases, culminating in criminal prosecutions for serious violators.

While documenting employer offenses, INS agents place individual alien violators in deportation proceedings. Also, INS agents determine employer/employee collusion to evade the

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# **The INS Role:**



## **Mechanisms and Procedures for Deportation**

# Branches of the INS

1. Examinations
2. Border Patrol
3. Inspections
4. Investigations
5. Detention and Deportation

## **1. Examinations (Adjudications)**

Reviews and processes applications for residency, work authorization, and naturalization

## **2. Border Patrol**

Uniformed Division of the INS responsible for detecting, apprehending and deterring undocumented aliens attempting illegally to enter the United States.

## **3. Inspections**

Responsible for inspecting the entry documents of all persons, and admitting or denying their entry into the United States at all Ports of Entry (i.e., international airports, seaports, and designated border crossing stations)

## **4. Investigations**

Responsible for conducting both criminal and administrative investigations, and arresting all persons in violation of Immigration law. This involves work site enforcement, anti-smuggling, fraud, and the Criminal Alien Program.

## **5. Detention & Deportation**

- Detention is responsible for housing and transporting detained aliens, and for escorting them back to their countries of origin.
- Deportation is responsible for tracking deportation hearings and making travel arrangements for aliens ordered deported.



# Ways to obtain citizenship

- ★ Born in the United States, Puerto Rico, Guam, the U.S. Virgin Islands, or the Northern Mariana Islands
- ★ Derived citizenship from one or both United States Citizen (USC) parents when birth occurs outside the United States
- ★ Naturalization

## The Naturalization Process:

- ✓ Must be a Lawful Permanent Resident (LPR) for at least five (5) years—only three (3) years required for spouses of USCs
- ✓ Good Moral Character (GMC) required—no major criminal convictions
- ✓ Naturalization Examination: tests ability to read, write, and speak English, as well as fundamental knowledge of U.S. history and government
- ✓ Oath of Renunciation and Allegiance

## Alien

- ◆ *Definition: Any person not a citizen or national of the United States*

**There are two (2) general categories of aliens:**

1. **Illegal**
2. **Legal**

### 1. Illegal Aliens

- ⇒ Those aliens present in the United States without being inspected and admitted by an Immigration Officer (i.e., “jump” the border, stowaways)
- ⇒ Aliens who overstay or violate the terms of their admission (a visitor who fails to depart, a student who fails to attend school, etc.)
- ⇒ Aliens who enter the U.S. by fraudulent means (use of a counterfeit passport or fraudulent birth certificate etc.)

### 2. Legal Aliens

**There are two classes of legal aliens:**

1. **Immigrants:** Permitted lawfully to work and reside in the United States (i.e., have a “green card”) and are properly documented.
2. **Non-Immigrants:** Temporarily permitted to enter the United States for a specific reason and time period, and are properly documented. Some classes of non-immigrants are NOT allowed to work in the United States

# Provisions And Mechanisms for Removal

The INS has the authority to charge—**criminally and administratively**—most aliens. However, most aliens encountered by the INS are charged administratively (the criminal caseload would create an overwhelming burden on the Federal Criminal Justice System).

## **Administrative:**

- ◆ Deportation/Removal
- ◆ Immigration Judge
- ◆ Reasonable Suspicion
- ◆ No requirement for government to provide legal representation
- ◆ Burden of proof on alien
- ◆ No formal period of incarceration

## **Criminal:**

- ◆ Prosecution
- ◆ Federal Judge
- ◆ Probable Cause
- ◆ Government required to provide legal representation
- ◆ Burden of proof on government
- ◆ Possible formal period of incarceration and/or fine

## **Deportable Offenses:**

- ◆ Illegal entrants
- ◆ Non-Immigrant Status Violations
- ◆ Aggravated Felonies
- ◆ Convictions for certain other crimes

## **Illegal Entrants**

- ◆ Present in the U.S. without being inspected or admitted by an immigration officer (i.e., jump the border, stowaway, etc.)
- ◆ Entered the U.S. by fraudulent means

## Non-Immigrant Status Violations

- ◆ Overstay (stayed in the U.S. longer than permitted)
- ◆ Out of Status (i.e., working students, tourists, etc; students not attending school or who changed schools without permission)

## Crimes Involving Moral Turpitude

- ☞ Usually involves a Class “A” misdemeanor or higher, where a sentence of one (1) year or more may be imposed.
- ☞ Includes deferred adjudication, adjournment contemplating dismissal, etc.
- ☞ In certain circumstances, two (2) convictions may be required for deportation.

## CIMTs

- |                  |                  |
|------------------|------------------|
| ◆ Assault        | ◆ Robbery        |
| ◆ Sexual Assault | ◆ Prostitution   |
| ◆ Fraud          | ◆ Manslaughter   |
| ◆ Burglary       | ◆ Statutory Rape |
| ◆ Theft          | ◆ Forgery        |
| ◆ Arson          |                  |

## Aggravated Felonies/NO sentence required (includes deferred adjudication)

- ☠ Murder
- ☠ Sexual assault of a child
- ☠ Rape
- ☠ Trafficking in a controlled substance
- ☠ Aggravated Prostitution
- ☠ Fraud (> \$10,000)
- ☠ Conspiracy to commit any of these felonies.

## **Aggravated Felonies/Sentence of one (1) year or more required**

- 💣 Assault
- 💣 Burglary
- 💣 Arson
- 💣 Perjury
- 💣 Kidnapping
- 💣 Injury to a Child
- 💣 Robbery
- 💣 Theft
- 💣 Crime of Violence

## **Aggravated Felonies**

- ◆ Defined by Congress
- ◆ Retroactive

## **Miscellaneous Crimes**

- ◆ Possession of a controlled substance
- ◆ Unlawful carrying of a weapon
- ◆ Violation of a protective order
- ◆ Assault/Family violence, stalking, child abuse, child neglect or abandonment
- ◆ Federal firearms convictions
- ◆ Alien smuggling
- ◆ False claim to U.S. citizenship
- ◆ Fraud involving visas, passports, and other entry documents
- ◆ Unlawfully voting (non-citizens)

**To be deportable for above crimes, alien must have a conviction.**

# Deportation/Removal Process

**Criminal aliens come to the attention of the INS in the following manner:**

- ◆ **Release from incarceration**
- ◆ **Referral by law enforcement agency**
- ◆ **Complaints by the public**
- ◆ **Benefit requests**

## Four Types of Deportation/Removal

- 1. Voluntary Departure**
- 2. Order of Deportation**
- 3. Administrative Removal**
- 4. Reinstatement of Deportation**

### **1. Voluntary Departure**

*Definition: An alien's request to return voluntarily to his country as soon as possible, based on his admission that he has no legal status in the United States. This is NOT a formal deportation*

**Who gets it? Illegal aliens with no criminal record**

### **2. Order of Deportation/Removal**

*Definition: An official finding by an Immigration judge of an alien's deportability, and an order to deport that alien*

**Who gets it? An alien who is accorded a hearing before an Immigration judge and found to be deportable**

### **3. Administrative Removal**

*Definition: Formal order of deportation by an INS District Director (or other authorized official) WITHOUT a hearing by an Immigration judge, and with only limited rights to appeal.*

**Who Gets It? Aliens who are not lawful permanent residents and have been convicted of an aggravated felony**

### **4. Reinstatement of Deportation**

*Definition: The formal deportation of an alien by the INS based on the reinstatement of that alien's PRIOR Order of Deportation, WITHOUT right to appeal.*

**Who Gets It? ALL aliens previously deported under an Order of Deportation or an Administrative Removal Order, who illegally re-enter the United States.**

## **Penalties for being deported/removed from the United States:**

**Administrative Removal (Aggravated Felon)—  
Inadmissible (Forever)**

**Reinstatement (Previously Deported/Removed)—  
Inadmissible For 20 Years**

**\*\*exception: special permission from the U.S. Attorney General**

## **Penalties for Returning to the United States:**

**Criminal Prosecution:** Any alien can be criminally prosecuted for illegally re-entering the United States after being formally deported from the United States (Title 8, United States Code, Section 1326)

**8 USC 1326(a), NO criminal convictions—maximum 2 years**

**8 USC 1326(b)(1), felony convictions—maximum 10 years**

**8 USC 1326(b)(2), Aggravated felony convictions—maximum 20 years**

# INS Resources Available for Law Enforcement

## ✓ Immigration Casefiles (“A” files):

✎ fingerprints

✎ photographs

✎ biographical data

## ✓ Assist with informants and witnesses

## ✓ Participate in joint task forces

## ✓ INS information systems:

✎ CIS CLAIMS

✎ NIIS STSC

✎ DACS NAILS

## ✓ El Paso Intelligence Center (EPIC)

## ✓ LESC: The Law Enforcement Support Center





# Technological Achievements



**Improving the Way  
INS Does Business**

## **TECHNOLOGICAL ACHIEVEMENTS:**

### **Improving the Way INS Does Business**

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In 1993, the technology employed by the Immigration and Naturalization Service was rudimentary and out-of-date. Few employees had computers other than the "lookout" system in use at airports. The creation and maintenance of files, reports and records on aliens was extremely time-consuming and almost entirely paper-based. Border Patrol agents lacked the equipment needed to combat illegal border crossings, let alone disrupt the activity of increasingly sophisticated smuggling rings.

Commissioner Doris Meissner made it a top priority to bring a wide range of state-of-the-art computers and other electronic technology to INS. With the backing of the Administration and the generous support of Congress, INS is implementing new technological initiatives that vastly improve its capacity to enforce the nation's immigration laws and to provide better customer service.

Described below are some of the key components of INS' technology infrastructure. From databases that store information about benefit applications and criminal and administrative violations to machines that identify aliens based on their fingerprints, voices and characteristics of their hands and faces, INS has made linking its repositories of information the center of its automation strategy. This infrastructure, while still under construction, is already yielding positive results as it dramatically changes the way INS does business.

### **Enforcement and Border Initiatives**

#### **■ Introduction**

In 1995, Commissioner Doris Meissner and Attorney General Janet Reno unveiled a comprehensive, multi-year strategy for deterring illegal crossings while facilitating legal entry along the Southwest border. At that time, Border Patrol agents relied on inefficient, labor-intensive methods to track and apprehend illegal aliens. By having to fill out paper forms,

agents' productivity and effectiveness was reduced even further. A central component of INS' border-control strategy was the deployment of technology along the border.

Sensors, low-light television, night-vision equipment, encrypted radios, and improved computer software applications have been critical to INS' success in gaining control of the Southwest border, as these high-tech resources act as force multiplier, allowing one officer to do the job of many.

# The Law Enforcement Support Center

The United States Immigration and Naturalization Service is expanding its service to law enforcement. This resource is the Law Enforcement Support Center (LESC), which provides a link between local, state and federal officers in the field and the INS's vast data base.

The problem of criminal alien activity continues to grow. The threat is not confined to the large metropolitan areas. Officers in small towns and rural America encounter foreign-born individuals on a daily basis.

When an alien is arrested by a federal, state or local law enforcement officer, the INS may be able to provide information and guidance. Federal law provides for mandatory detention of serious criminal violators. The problem facing the law enforcement community is how to obtain timely and accurate information from INS.

The answer is the LAW ENFORCEMENT SUPPORT CENTER (LESC). This facility operates 24 hours a day, seven days a week and is staffed by trained special agents and highly skilled analysts. Although the vast databases of the INS are not totally automated, most inquiries are answered in less than twenty minutes. This response provides information on the alien's immigration status, previous deportations or removals, location of any relating files and the location and telephone number of the INS enforcement unit responsible for the location of the requester. Additionally, photographs and fingerprints may be available to assist in the identification of criminal aliens.

The gateway to the LESC is the National Law Enforcement Telecommunications System (NLETS). Officers use their state criminal justice network to access a dedicated message key. The required identifying data is entered and electronically transmitted to the LESC. The center personnel check criminal records and the INS database. The results are analyzed and a response is prepared. The information is sent to the requesting officer with a copy sent to the local INS enforcement office.

The Law Enforcement Support Center stands ready to assist local, state and Federal officers. It offers quick and easy access through the existing state law enforcement networks. ***It only takes a minute*** to fill in the required information and send it to the LESC. The result may be the removal of a criminal alien from your community!

For additional information, please call the Law Enforcement Support Center, South Burlington, Vermont (802-652-2000).



## **ENGLISH / SPANISH VERSIONS OF WARNING AS TO RIGHTS**

### **WARNING AS TO RIGHTS**

Before we ask you any questions, you must understand your rights:

You have the right to remain silent.  
Anything you say can be used against you in court, or in any immigration or administrative proceedings.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer now without a lawyer present, you will still have the right to stop answering at any time.

You also have the right to stop answering at any time until you talk to a lawyer.

Do you understand your rights?

### **AVISO DE DERECHOS**

Antes de que le hagamos cualquier pregunta usted debe de comprender sus derechos:

Usted tiene el derecho de guardar silencio.  
Cualquier cosa que usted diga puede ser usada en su contra en un juzgado de leyes, o en cualquier procedimiento administrativo o de inmigración.

Usted tiene el derecho de hablar con un abogado para que el lo aconseje antes de que le hagamos alguna pregunta y de tenerlo presente con usted durante las preguntas.

Si usted no tiene el dinero para emplear a un abogado, se le puede proporcionar uno antes de que le hagamos alguna pregunta, si usted lo desea.

Si usted decide contestar nuestras preguntas a ora, sin tener a un abogado presente, siempre tendrá usted el derecho de dejar de contestar cuando guste.

Usted también tiene el derecho de dejar de contestar cuando guste, hasta que pueda hablar con un abogado.

¿Entiende sus derechos?

