
WHAT SOUTH CAROLINA'S VERSION OF THE ARIZONA LAW (SB 20) MEANS FOR IMMIGRANTS WHO HAVE CONTACT WITH LAW ENFORCEMENT

On June 27, 2011, the Governor signed Senate Bill 20 (SB 20) into law. Several civil rights groups sued to stop the law. On March 4th, 2014, a Federal Judge issued a final judgment on the case. This document explains what police can and cannot do.

What will happen if I am stopped by the police?

The law says that when a police officer stops you or has "lawful contact" with you because s/he believes you are breaking the law, that officer must ask if you are in the country legally. **This is the "papers please" provision.**

If your identification shows you are here legally, the police should not ask you anything else about your legal status. Your green card, a US passport or a valid driver's license are proper identification.

If you do not have identification that shows you are here legally, then the police must take additional steps. You do not have to answer questions about your legal status. You can remain silent. You must say you want to remain silent.

The police do not have the right to decide if someone is here legally. Instead, they must contact one of the following.

- An Immigration and Customs Enforcement (ICE) officer.
- The Law Enforcement Support Center (LESC).
- An officer from the SC Illegal Immigration Enforcement Unit.

The police **may not**:

- Keep you longer than needed. For example, if you are stopped for speeding, the police must let you go once the ticket is written, unless they plan to arrest you for something else.
- Make you wait for an officer from ICE or the SC Illegal Immigration Enforcement Unit.
- Arrest you for not having legal status or violating other immigration laws.

I do not have valid identification. What should I do if I am stopped by law enforcement?

You have the right to remain silent and should say so out loud. You do not have to talk about your immigration or citizenship status with police or immigration agents. You do not have to answer questions about where you were born, your citizenship, or how you came to this country. Do not lie. Do not show fake documents. Just say, "I wish to remain silent."

If I am not here legally, should I show my foreign passport or matricula consular card?

It depends. Some law enforcement agencies like these because it shows you have a local address and is identification. However, it can show that you are probably not here legally and this could cause you further problems.

If you want to show law enforcement you live locally, to try and get a ticket instead of being arrested, show them a utility bill or other bills that have your name and address. Keep a recent copy with you. Mention places that you go, like your church or English classes.

I am here legally, but do not have valid US identification. What should I do?

If possible, get a valid SC driver's license or identification card. If you are here legally but cannot obtain ID, ask your immigration attorney to draft a document stating you have legal status or are here with permission. This may not stop you from being arrested. It could keep you from being held for a long period. Memorize your attorney's telephone number. Ask to call your lawyer or have law enforcement call your attorney.

I do have valid US identification. What should I carry with me?

You should always carry your driver's license or state identification card. State law does not require people to carry their immigration papers, but some people carry the following to show they are here with permission:

- a legal permanent resident card (I-551)
- a temporary resident card
- an arrival-departure record (I-94)
- a work authorization permit (I-766)

How should I respond if asked about my legal status?

The only information you have to give is your name. You have the right to remain silent. It is usually better not to answer when asked, where you were born, if you are a citizen, or how you came to the US. Without getting into an argument with the officer, decline to answer questions. Say you want to speak to an attorney. You can say this even if you do not have an attorney. Do not lie or provide fake documents. It is illegal to have those documents.

If you have legal status, tell the officer this. Also, if possible, show the officer proof of your legal status.

Can law enforcement ask a passenger in my car about their legal status?

Passengers do not have to carry identification. An officer has to suspect the passenger of committing some type of a crime to question him or her. You and the passenger should not draw attention to yourselves. Sit quietly with your hands where law enforcement can see them. Do not look for things in the car or make phone calls.

If a passenger is asked about legal status, he should remain silent and tell the officer out loud his wish to remain silent. Passengers with legal status can and should show documents.

Some documents the passenger may wish to show if he does not have a driver's license or identification card include:

- a legal permanent resident card (I-551)
- a temporary resident card
- an arrival-departure record (I-94)
- a work authorization permit (I-766)

Does this law apply to check points too?

Law enforcement does not need a reason to stop your car. They can stop all cars at checkpoints. Checkpoints are done for different reasons, like to catch drunk drivers or people driving without a license. Just like with other stops, law enforcement must only keep you as long as needed for the stop. If they give you a ticket, they must let you go, unless they plan to arrest you. They cannot arrest you for not having legal status.

If you see a checkpoint and do not have legal status, avoid it. However, do not start to drive into a checkpoint, then turn around, and leave. Law enforcement will stop you for this because they suspect you are hiding something or committed a crime. Fleeing a checkpoint will make matters much worse.

What can the police do if I am just walking down the street?

If the police suspect you of a crime, then he must also ask about your legal status. You do not have to answer any questions about your legal status. Say you wish to remain silent. If you have documents that prove you are here legally, show them.

Just like a traffic stop, the police cannot do the following:

- Keep you longer than necessary. For example, if you were stopped for jaywalking, the police must let you go once the ticket is written, unless he plans to arrest you for something else.
- Make you wait for an officer from ICE or the SC Illegal Immigration Enforcement Unit.
- Arrest you for not having legal status or for violating other immigration laws.

What should I do if I am arrested?

Stay calm and do not resist arrest, no matter how unfair it seems. Say only that you wish to remain silent, and ask for a lawyer immediately. If you have a lawyer, memorize their telephone number. You should be allowed a local call. Do not sign any papers unless an attorney reviews them and says it is okay. If you do not understand or cannot read the papers, ask for an interpreter. You can also have an interpreter to help understand what is being said.

Once arrested, you will be booked into the jail. At that point, law enforcement must check your legal status through a federal system. This will also let ICE know you are in the jail.

Once ICE is aware you are in the jail and knows you do not have legal status or violated immigration laws, they can start the deportation process. ICE can put a “detainer” or hold on a person. This lets the jail know they plan to start the deportation process. If someone has a detainer, bonding out on state charges will not help. The detainer will keep the person in jail. ICE has 48 hours, not including weekends and holidays, to pick someone up once a detainer is placed. Therefore, it is important to avoid being arrested.

If you are moved to ICE custody, you still have the right to remain silent. You do have a right to a lawyer, but the government is not required to give you a lawyer. You will have to hire one. You do have a right to contact your consulate.

What are some things I can do to try to avoid being arrested?

DO NOT DRIVE if you do not have a valid/legal South Carolina license.

Driving without a South Carolina license is a crime. It is okay to drive with a valid, unexpired out of state license. In the past, many people were arrested for illegally obtaining North Carolina and New Mexico licenses with false papers. The police might question you more if you have a license from one of those states.

Take a taxi, arrange a carpool, bike or walk to work.

It is not worth the risk to drive if you do not have a South Carolina license. Arrange a carpool with a licensed driver. You will protect yourself from arrest and deportation.

Make sure your car is in good condition.

If your car windows are tinted, a headlight is out, or you forget to use your turn signal to change lanes, the police can stop and cite you. They will ask for your driver's license. If you do not have one, the police could arrest you and/or issue you a citation.

Do not use or carry false papers! This is a serious crime. If you give the police false papers or a false name you will likely face serious criminal and immigration charges.

If you have valid US immigration documents and are able to show them, do so.

How to avoid being stopped

Drive carefully: Learn the rules of the road and follow them as best you can.

Wear your seatbelt.

Have all young children in proper car and booster seats.

DO NOT DRINK AND DRIVE! Even one glass of alcohol may put you over the legal limit.

Do not walk down the street while drunk- this is a crime.

Do not drive with open containers of alcohol in the car.

Do not speed or drive too slowly.

Use your turn signals when switching lanes or making turns.

Do not run red or yellow lights.

Come to a complete stop at stop signs and lights.

Do not call attention to yourself by displaying flags or anything else on your vehicle including license plate frames that cover your license plate number.

Do not throw trash out of the window of your vehicle.

Do not play loud music.

Do not drive with cracked windshields.

Make sure your license tags are not expired.

Can the police stop me because of my skin color?

It is illegal to stop someone because of the color of their skin. The law sometimes allows the police to look for someone based on skin color. For example, if they have a report of a suspect of a certain race fleeing from a crime.

Is there anything I can do if I think I was stopped because of my skin color?

Yes. You can complain to the Internal Affairs department of the police department. The Internal Affairs department has officers who check to make sure other officers follow the law.

You can also fill out this form. There is one in English and one in Spanish. <http://www.aclusouthcarolina.org/issues/immigrants-rights/>

http://www.aclusouthcarolina.org/files/5513/5515/5704/Interview-Complaint_sheet_ENGLISH_FINAL.pdf

http://www.aclusouthcarolina.org/files/9313/5515/6388/Interview-Complaint_sheet_SPANISH_FINAL.pdf

What does SC law say about harboring and transporting (giving people rides)?

You cannot be arrested for giving someone a ride under SC law.

However, there is a federal law that says you cannot help someone hide from law enforcement or ICE officers. In addition, you cannot lie about someone who is hiding from law enforcement or ICE officers.

In SC, domestic violence shelters, churches, food banks, health care services and homeless shelters can help people who are not here legally since they are helping people with their needs.

Can I be arrested if I am a US citizen and am driving my undocumented husband to work?

Generally, no. However, if you are stopped by law enforcement, your husband's status might be questioned. If that happens, your husband must give his name. You and your husband have the right to remain silent. You do not have to answer any other questions.

Can I be arrested if I volunteer at my church and give rides or shelter undocumented members of my congregation?

Generally, no. To be charged with unlawfully giving an undocumented person a ride under federal law, you have to purposely help hide them or help them stay in the US. This does not typically include humanitarian assistance.

Can I be arrested if I am a teacher and frequently give rides to undocumented students for field trips, sports, or club events?

Generally, no. The US Supreme Court ruled that undocumented students in grades K-12 have the right to a free public education. This includes activities that help further their education. It could be said you are helping your students, which is allowed.

Is there anything else I can do to prepare for contact with law enforcement?

Yes. You might want to have a “Power of Attorney,” written for you. This legal document gives a friend or family member the right to care for your children and property, including any bank accounts, in case you and/or your spouse is deported. Make sure you trust this person.

Everyone in the family should obtain valid identification and passports. Be sure to have a copy of the long form birth certificates for children born in SC. Your US citizen children should get their passports and their Social Security cards. You will need your own identification to apply for your minor children’s documents. You may get this from your consulate here in the US. If your children are eligible for dual citizenship take care of this now.

Meet with an immigration attorney to find out if you have any grounds to stay in the US. It is important this attorney knows immigration law. Identify groups that provide free or low cost legal help for people detained by ICE. It is easier to locate those services before you are arrested. This link may be helpful: <http://www.justice.gov/eoir/probono/states.htm> .

ICE detains very few people in SC, so if detained by ICE, you will probably be taken to an ICE facility in another state.

Finally, if you are here legally but cannot prove it, have your immigration attorney draft a document that says you have legal status or applied, but are waiting for the paper work to be completed. This may not keep you from being detained, but may help you get released.

Memorize your immigration number (“A” number) and make sure several family members or friends know your number. Make copies of your immigration documents and give the copies to someone you trust for safekeeping.

Carry your ACLU **Rights Card** with you at all times. You can hand this card to the police. It states your rights.

Prepared SC Appleseed Legal Justice Center

Updated March 2015

ACLU Rights Card

Cut this portion and keep it in your wallet at all times.

_____ Cut here _____

TO WHOM IT MAY CONCERN:

Please be informed that I am choosing to exercise my right to remain silent and the right to refuse to answer your questions. If I am detained, I request to contact an attorney immediately. I am also exercising my right to refuse to sign anything until I consult with my attorney. Thank you.

—Fold Here—

This is not all of the information that you need to know about the law. Speak to an attorney.

If you do not have a lawyer, the South Carolina Bar Lawyer Referral Service can give you the name of a lawyer who is willing to meet with you and advise you at a lower rate. For the name of a lawyer, call the Lawyer Referral Service (800) 868-2284.

To find out more about SCALJC, go to www.scjustice.org on the Internet. This brochure and others can also be found online by going to www.scjustice.org and clicking on 'Brochures.'

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