



IRANIAN-AMERICAN COMMUNITY ADVISORY:

Know Your Rights at the Airport and the Border

UPDATED MARCH 2019

Given the “Muslim Travel Ban” presidential proclamation and increasing issues of violations of U.S. sanctions against Iran, many Iranians are concerned about their right to enter the United States (U.S.) and interacting with the U.S. Customs and Border Protection (CBP), which polices the border. This advisory provides some general guidance.¹

ENTERING THE U.S.

Your right to enter the U.S. depends on whether you are a

- (1) U.S. citizen;
- (2) a “green card” holder (also known as a “lawful permanent resident” or “LPR”); or
- (3) a visa holder.

U.S. CITIZENS have an absolute right to enter the U.S. The government must allow entry with proof of identity and citizenship. Showing an unexpired U.S. passport is normally sufficient.

GREEN CARD HOLDERS (LPRS) have a strong right to enter the U.S. CBP normally cannot refuse entry as long as the trip abroad was brief (usually 6 months or less) and innocent (which usually means no criminal issues). Otherwise, you may be subject to deportation.

IMPORTANT: CBP officers do ***not*** have the right to take away your immigration status; only an immigration judge has that authority. A green card holder (LPR) has the right to go before an immigration judge, who will decide whether or not to revoke the green card. Do not sign any document that you do not understand. You often will not immediately see a judge because of backlogs in the court. Depending on your case, you may or may not be detained in a detention center during this process. As such, consult with an immigration attorney ***before*** you travel.

VISA HOLDERS with valid travel documents to enter the U.S. are still inspected at the border. CBP officers can question you at the airport or border. If they find that you are not seeking to enter the U.S. for the purpose of your visa, or if there is a visa violation, they can refuse your entry into the U.S.

If CBP detains and prohibits you from entering the U.S., and you fear returning to your home country, you may want to tell the CBP agent of your fear of returning home. Doing so triggers the “Credible Fear Interview,” which requires CBP to determine if you have a legitimate fear. Claiming fear will start the asylum process and prohibits CBP from immediately making you return to your home country. However, you may be held in a detention center for several months until you can see an immigration judge. Alternatively, CBP may release you from the airport with paperwork on the next steps of your asylum case.

¹ This advisory is intended as a general reference only; it does not constitute legal advice, nor does it establish an attorney-client relationship. For specific questions, please contact our organizations to speak with an attorney.

NOTE ON THE MUSLIM TRAVEL BAN: U.S. citizens, dual nationals, green card holders (LPRs), and any Iranian nationals entering the U.S. with any printed valid visa or valid travel documents (such as advance parole document) are **NOT** included in the Muslim Travel Ban. The Muslim Travel Ban applies to particular Iranian nationals seeking new visas that have not been issued yet. Please see our organization websites for more information.

GOING THROUGH CUSTOMS

CBP has broad authority at the border and airport. This includes the ability to ask questions to decide whether non-U.S. citizens can enter the U.S. CBP officers can ask about your immigration status when you are entering and leaving the U.S., as well as routine customs questions about the nature and purpose of your travel.

U.S. citizens do not have to answer questions outside the scope of immigration status/presenting a valid passport and basic customs questions, but refusing to answer them may lead to delay.

- **YES:** The agent can ask questions to confirm you are who you say you are.
- **YES:** The agent can ask what countries you visited while you were abroad.
- **YES:** The agent can ask why you went to specific countries.
- **YES:** The agent can ask how much money you are taking/returning with.
- **NO:** The agent cannot ask you about your religion, your politics, or other irrelevant and inappropriate questions of this nature. If this happens, politely ask for a supervisor and try to remember the agent's name and the questions you were asked.

Green card holders (LPRs) have a lot of protections, but not as much as U.S. citizens. CBP can ask questions about your immigration status and routine questions about whether or not your trip was brief and innocent (see above). However, green card holders (LPRs) are not required to answer broader and intrusive questions (see above).

Visa holders have the least amount of protection, particularly non-immigrant visa holders. CBP can ask a range of questions to confirm: your identity; that you are coming to the U.S. for a legitimate reason; that you are not breaking the law by entering; and other related questions. Unfortunately, visa holders can be denied entry for not answering questions. Before you step off your flight, make sure to review the visa paperwork so that the answers to the CBP agent match the information on your application.

For all travelers, regardless of your immigration status, if a CBP officer asks questions beyond the scope of routine travels (such as questions about political beliefs, religious practices, or questions about family and community), you can ask to speak with a supervisor. You can also ask for the name and badge number of the CBP officer to file a complaint with U.S. Department of Homeland Security's Office of Civil Rights & Civil Liberties. **Contact our organizations for assistance.**

NOTE ON SANCTIONS ISSUES: If you are traveling to Iran to manage finances, land, property, or an inheritance, you may want to consult with an Iran sanctions attorney before you leave the U.S. Moreover, **if you are asked questions about your bank accounts, assets, or property by CBP, please note that your answers may result in evidence of a sanctions violation. Please contact us for a list of attorneys who specialize in sanctions issues.**

IF YOU ARE SEARCHED

There are two stages of inspection at the airport: primary and secondary. Everyone goes through primary inspection, where you go up to the CBP agent and show your passport and any immigration paperwork. If CBP pulls you aside and questions you further (usually in a different room and by a different agent), then you are in secondary inspection.

CBP does not allow attorneys into secondary inspection, but you should still have the name and number of your attorney with you and ask to contact her/him if you believe that your rights are being violated or you are being forced to answer questions that may incriminate you. Asking for an attorney cannot be used against you.

ELECTRONIC DEVICES

CBP has the authority to stop, detain, and search any person and any item at the border (which includes airports) and within 100 miles of the border.² However, the U.S. Constitution prohibits searches or questioning *solely* because of national origin, ethnicity, race, religion, political beliefs, or gender. If you are stopped and searched for any of these reasons, you can politely object and state that you do not consent to a search. It is very important that you never physically resist a search. Instead, you can ask to speak with a supervisor and keep a record of the CBP agent's name and badge number.

Recently, CBP agents have started searching electronic devices such as laptops, phones, etc. much more frequently. The law is currently unclear on the right to search laptops and cell phones at the border. Nevertheless, CBP will often ask travelers to unlock their devices to search them, even when they have no reason to think you did anything wrong.³

U.S. citizens cannot be denied entry to the U.S. for refusing to provide access to their device, produce passwords, or submit their electronic devices for a search. Green card holders (LPRs) cannot be denied entry for the same activity unless the trip was not brief or innocent. While visa holders, particularly non-immigrant visa holders, can also refuse to provide access to their electronic devices, doing so may complicate their entry and result in denial of entry to the U.S.

A CBP agent can confiscate your electronic devices regardless of your immigration status. In such instances, write down the name and badge number of the CBP officer and ask for a receipt for your confiscated property. Contact one of our organizations for help.

LEGAL ASSISTANCE

If you or your family members are detained at the airport and transferred either into immigration custody or criminal custody, please note that the case may involve an immigration matter or a U.S. sanctions matter. In either case, please seek legal assistance. Similarly, please seek legal assistance if any of your travel documents (such as passport or visa) is revoked.

² Immigration and Nationality Act 287(a)(3) states that CBP agents, without a warrant, may “within a reasonable distance from any external boundary of the United States... board and search for aliens in any vessel within the territorial waters of the United States and any railcar, aircraft, conveyance, or vehicle.” The term “reasonable distance” is defined by 8 Code of Federal Regulations 287(a)(1) as 100 air miles from the U.S. border.

³ Note: In Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington (state), CBP has to have “reasonable suspicion” to conduct a forensic search of a digital device (a detailed search using special equipment).

TRAVEL TIPS

- **BE HONEST.** It is important to remain silent or tell the truth. Lying to a federal officer can be a federal crime. Even an accidental lie can lead to a federal criminal charge. For example, if you are asked about travels dates and accidentally give a wrong date that may constitute lying to a federal officer.
- **DO NOT SIGN ANY DOCUMENTS YOU DO NOT UNDERSTAND.** If you are asked to sign any documents by CBP, it is very important that you understand what you are signing to ensure you are not waiving your rights or immigration status.
- **ASK FOR AN INTERPRETER** if you are not fully comfortable communicating in English. If one is not available, tell the agent that you cannot answer questions in English because you don't understand it well enough.
- **BACK UP THE DATA ON YOUR ELECTRONIC DEVICES** before traveling. Please see the Electronic Frontier Foundation [pamphlet](#) *Digital Privacy at the U.S. Border: Protecting the Data on Your Devices and in the Cloud*.
- **CONSIDER USING TEMPORARY DEVICES WHEN TRAVELING.** If you have to bring your main phone or laptop with you: i) log out of social media and email accounts; ii) check to make sure there is no information on your phone that you would not want an agent to see (e.g. photos, frequently visited websites, contacts); and iii) make sure you completely power down your device before you go in front of the agent (do not just close it or put it in sleep mode).
- **MAKE SURE TO USE STRONG PASSWORDS** on your electronic devices (instead of fingerprint passcodes). Consider encrypting your entire device as well.
- If you have other questions about your rights, particularly relating to the FBI, please read the following [Know Your Rights pamphlet](#) that covers such topics.

CONTACT INFORMATION

Please contact us with any questions by clicking on the links below. We have Farsi speakers available at all organizations.

[Asian Americans Advancing Justice-Asian Law Caucus](#)

www.advancingjustice-alc.org

[Iranian American Bar Association](#)

www.iaba.us

[National Iranian American Council](#)

www.niacouncil.org

[Pars Equality Center](#)

www.parsequalitycenter.org