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CENTER FOR CONSTITUTIONAL RIGHTS

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INTRODUCTION



The Center for Constitutional Rights (CCR) created If an Agent Knocks to provide advice to activists likely to be targeted by FBI or other federal agents[1] who have a long history of targeting radical and progressive movements.

Since its original release in 1989, *If an Agent Knocks* has been widely circulated in progressive activist communities across the country. This guide includes both the timeless advice[2] from the previous versions and updates to reflect the current state of the law and law enforcement tools. This guide should be seen as a resource for the information needed to protect yourself and other activists from government investigation and to empower you to continue the struggle.

We have attempted to provide answers to a broad range of questions for the many scenarios that one can encounter as an activist or as a member of a targeted community. We've also taken into account how important it is for everyone to be aware of our basic rights when encountering law enforcement, and expanded the resource to include more information for noncitizens —individuals who do not have U.S. citizenship, including:

- tourists
- students and others who are in the U.S. on visas or visa waiver programs
- lawful permanent residents
- refugees
- undocumented people

However, we note that this publication does not address forms of electronic surveillance that are used by law enforcement today. There are other organizations and resources that provide excellent and in-depth resources for protecting yourself against digital surveillance. Some we would recommend are:

- Electronic Frontier Foundation's Surveillance Self-Defense Guide
- Vice's Motherboard Guide to Avoiding State Surveillance

[1] This guide focuses on interactions with federal law enforcement agents, not state or local law enforcement agents.

[2] **Disclaimer: This booklet is for informational purposes only and does not constitute legal advice.** CCR aims to provide a general description of the legal and practical issues that progressive or radical activists might face. Each person's circumstances are unique, and minor factual differences may result in very different answers to the questions presented here. For answers to specific legal problems, issues or questions, obtain the advice of a qualified attorney in your area.

While these resources go into much more depth, we encourage you to be wary of all electronic communications and assume that they may be intercepted, and can also reveal details about your location, associations, and activities at the time.

This publication consistently emphasizes that professional legal advice should be sought in all cases. The Center for Constitutional Rights does not have the capacity to provide individual representation in the range of matters covered by this document. Each state has bar associations that should be able to make attorney referrals, some of whom may provide pro-bono services. If there is a chapter of the National Lawyers Guild (www.nlg.org) in your city, they are often able to make referrals to attorneys who are experienced in dealing with the issues outlined in this resource. Some organizations and lawyers can provide these services pro bono or at low rates. If you don't already know, don't be ashamed to reach out to local groups who may be able to point you in the right direction. Note that if an agent knocks, it is helpful to have a lawyer who has some prior experience dealing with this type of situation.

We hope individuals and groups use this pamphlet to develop and prepare practical responses – IF AN AGENT KNOCKS AT YOUR DOOR.

Why Would Federal Agents Contact You?

Federal agents may directly or indirectly contact or surveil you for a number of reasons. Often we might assume it is because they have opened an investigation into an individual or organization, but that is not always the case. Agents often use their presence simply as an intimidation tactic, to scare people–whether they are involved in organizing or not–from participating in movements for social change.

However, any encounter with a federal agent should be taken seriously. Federal agents have used everything from door-knocks to infiltration to social media surveillance as a way to "map" and target certain communities, organizations or people they deem "criminal" or "suspicious."

Examples of this include:

The surveillance and targeting of Muslims in the New York City and New Jersey area after 9/11

Black activists and Black-led organizing after the murders of Michael Brown and Eric Garner in 2014, and George Floyd in 2020

Organizations in support of Palestinian rights as well as animal rights activists

Law enforcement agencies develop and promulgate frameworks drawing on the often flawed idea of "predictive policing," which they then use to justify or validate their surveillance and criminalization of communities of color as well as those organizing for social change.

Whatever the reason, agents are usually not going to tell you exactly why they have contacted you. Which means your best move is not to engage with them at all–contact a lawyer, and follow the best practices we lay out below.

BEST PRACTICES

Don't Talk to Agents!

This is the most important piece of information in this booklet: YOU HAVE THE RIGHT TO REMAIN SILENT, and it is important to do so.

The Fifth Amendment of the United States Constitution protects you from being forced to reveal self-incriminating information to law enforcement, and the First Amendment prevents the government from compelling you to speak–about your political beliefs, and your political or religious associations, among other things.

This is easier to say than to do. Agents are trained investigators: they have learned the power of persuasion and the ability to make a person feel scared, guilty or impolite for refusing their requests for information.

An agent may suggest that any unwillingness to speak with them means you must have something to hide

They may suggest they only want you to answer a few questions and then they will leave you alone

The agent may threaten to get a warrant

Don't be intimidated or manipulated by an agent's threats or assurances. It is always best to not talk without an attorney present. If you do talk, anything you say can be used against you and others. Even if you tell the whole truth, if the agent doesn't believe you, they can threaten to charge you with lying to a federal officer–which is a real crime.

TIPS ON CLEARLY CONVEYING YOUR INTENTION TO REMAIN SILENT. YOU CAN SAY:

- "I'm not talking to you."
- "I'd like to talk to my lawyer before I say anything to you."
- "I have nothing to say to you. My lawyer will contact you."

You should ask the agent for a business card and say you will have your lawyer contact them. This should end the questioning.[3][4]

The same basic rules apply if an agent calls on the phone. You do not have to speak to any agent who spontaneously calls you. Agents will often say that you are not part of any investigation. This may not be the truth. Tell anyone who identifies themselves as law enforcement that you will have your lawyer call them back–and then stop talking to them.

These rights apply to noncitizens as well–with a caveat. If you are a noncitizen, you do not have to answer any questions that a law enforcement agent asks you. You do not have to answer questions relating to your immigration status. However, if you are a green card holder or have a valid visa, you must have it with you and may need to *provide documents* regarding your immigration status to immigration officers if asked. Do not falsely claim U.S. citizenship or lie about your immigration status.

The two limited exceptions to the right to remain silent for "nonimmigrants" (noncitizens authorized to be in the U.S. on tourist, student, or work visas, for example):

- 1) Noncitizens are required to provide information related to their immigration status if asked by immigration officers. Even in this situation, you have the right to say that you would like to have your lawyer present before answering any questions.
- 2) Noncitizens 18 years of age or older who have been issued valid U.S. immigration documents are required by law to carry them and show them if asked by immigration officers.

[3] The one exception to this rule is if you are in a state that has a "stop-and-identify" statute. All states require you to produce a driver's license if you are pulled over while driving an automobile, and the Supreme Court has held that laws that require you to state basic identifying information, such as your name and address, are not considered incriminating and that law enforcement may demand such information from you. They may only demand that information from you, however, if you are in a state that has a stop-and-identify statute. An activist attorney in your state should be able to tell you if your state has a stop-and-identify statute.

[4] If you identify as trans or gender non-comforming and are concerned about what to do if your ID has an incorrect gender marker or will reveal you are trans and put you in danger, we highly recommend these resources: https://transequality.org/know-your-rights/ and https://transgenderlawcenter.org/resources/id/id-please-quick-guide

Document the Situation

If possible, get the agent's name, telephone number and agency. This should be on their business card, or they should be willing to provide this information



As soon as the agent leaves or hangs up, try to write down as many details about the interaction as you can



Take photos of anything you think might be significant, including damage to property if the agent entered your home or office, or conducted a search

This information will be useful to a lawyer and to others who have been contacted by law enforcement.

In addition to getting the name of the agent(s), try to write down:

- their physical description
- the questions asked and comments made during the interaction
- any names of people they asked you about, the date, time and location of the encounter
- the contact information of any witnesses to the interaction

You may also choose to try and video record law enforcement. Please take into consideration whether recording seems safe, or could potentially escalate a situation with an armed federal agent. **If you choose to record, you must make it obvious that you are recording–do not try to hide or conceal your camera/phone or pretend you are not recording.** Also, your right to record law enforcement typically comes with the qualification that you must not "interfere" as agents are carrying out their job. If you choose to record, try and stand several feet back from any law enforcement action taking place so not to interfere.

Contact a Lawyer

Why contact a lawyer? A lawyer can offer advice on how to proceed while protecting your rights. A lawyer can talk to the agent; find out what the investigation is about or if there even is an investigation; and assess if it's in your or your movement's best interest to answer questions, and if it is, ensure that there are limitations on the subject matter of any questioning. A lawyer can be present to advise and protect you if you are questioned. Often, a call from a lawyer is all it takes to get an agent to back off.

There are different types of lawyers. We highly recommend talking to lawyers with experience working with social movements, and who have experience litigating against the government, such as public defenders and civil rights attorneys. If you are not a citizen, we recommend speaking with someone who also has experience in immigration law.

With the advice of a lawyer, you may consider publicizing the encounter, or to inform others who may be affected by an investigation. If activists know that there is an investigation, they can be more vigilant in protecting their rights.

Interactions with agents are intimidating and stigmatizing, and often their very purpose is to silence. Thus, exposure, organizing and public pressure can counter that silencing, and limit intimidation and fishing expeditions.

What Are The Consequences If I Talk?

A situation may arise where you feel it is advisable to talk to an agent. Even in those circumstances, you should have a lawyer present. A lawyer can make sure your rights are protected while you provide only necessary information relevant to a specific incident. They may be able to help you avoid a witness appearance before a grand jury or control the circumstances of the appearance so that no one's rights are jeopardized.[5]

If you do decide to answer questions, be aware that lying to a government official is a crime. In fact, this is one of the most important reasons to not talk to an agent. A standard federal law enforcement tactic is to discover as much information as possible about a suspect or merely a person of interest to the government. Federal law enforcement agents will then approach that person at an otherwise ordinary time, such as during dinner or at work, and ask the person questions to which they already know the answers.

> *For example, an agent might ask if you know a person (whom they know that you know) or might ask if you were at an event (at which they know you were in attendance). If you instinctively say "No," that is a federal felony punishable with five to eight years in prison.*

The most daunting aspect of this investigative tactic is that many people will instinctively answer no to a question because they are scared or nervous. This tactic is used extensively by federal agents in all types of investigations and has been used to target and turn activists into informants against their former associates.

Lying to a federal officer is a federal offense and only applies to questions asked by federal agents. Be aware, however, that some local and state agents, such as members of a city's Joint Terrorism Task Force ("JTTF"), are also considered "federal" agents. As well, some states have similar crimes regarding lying to a state officer. The safest choice is not to talk to law enforcement.

[5] It is possible that in certain circumstances, it is in your interest to meet with the agents - for instance, to avoid a subpoena or prosecution. But in most cases, those things are not in the balance, and there's no advantage to meeting with the FBI. Moreover, FBI agents have no obligation to follow-through on their promises. That's why it's so important to have the right legal counsel. Some lawyers with less familiarity with dealing with the FBI may be more likely to advise you to meet with the agents to simply "make the problem go away." Unfortunately, that's often not the case. This is why, if possible, you should seek to connect with a lawyer that has experience dealing with the FBI, or with activists' cases.

There may also be immigration consequences.

> *For example, agents have been known to question individuals about the basis of their asylum claims outside of the regular immigration interview process, and then used their statements against them at their scheduled interview. Statements made during law enforcement interactions have been used to deny, or stay, an individual's immigration petition.*

Finally, keep in mind that consequences are not limited to the individual level. What you say may also be used against others, often in ways that you cannot foresee. What you think might be harmless information or details may be used to coerce, intimidate, or otherwise make vulnerable other members of your group or community.



If you start answering questions, you can refuse to continue answering questions at any time. Finally, if you did talk, **MAKE SURE TO DOCUMENT AND WRITE DOWN EVERYTHING YOU CAN ABOUT THE CONVERSATION WITH AN AGENT.** Do this as soon as possible so it's fresh in your memory.

Tell your people!

It is important to have collective, intergenerational conversations about the communal harms of law enforcement questioning campaigns, its history in your particular community, and collective strategies to push back.

If you've come across this resource, you're probably already plugged in or have searched for it in light of a recent incident.

- **Educating your peer**s–your colleagues, classmates, movement partners or friends is an important part of being prepared and protecting yourselves
- **Consider sharing** this resource with others
- **Host/initiate conversations, workshops** by local movement leaders or elders where you can safely raise these concerns and develop a collective strategy

If federal agents have tried to contact you, it's likely that they're going to keep probing your people. Surveillance of communities thrives on us remaining silent, so do your part to break the silence! Consider letting your community know that you've been contacted; there is no reason to be ashamed. We must protect each other! However, before publicizing outside of your community or organization, we recommend consulting with a lawyer.

VISITS & SEARCHES

The Fourth Amendment protects people against unreasonable searches. Unless an exception applies, law enforcement agents are required to obtain a search warrant to conduct a search. Fourth Amendment protections extend to noncitizens.

Law enforcement agents have the right to search your property with a search warrant. If you do not grant them access when they have a search warrant, they will likely use force to execute the search. If an agent claims to have a warrant, ask to see it. If the agent is outside your door or entrance, ask them to slide the warrant under the door if possible. It must be signed by a judge and have the correct address and date to be valid. Do not consent to an agent searching any areas not specifically included in a search warrant.

TIPS ON SEARCHES AND WARRANTS:

- **Just because an agent has a search warrant doesn't mean you have to answer any questions.** Maintain your right to silence during the search -- clearly state that intention if you are asked any questions.
- **Don't be intimidated by an agent's threats to get a warrant or subpoena.** This is one of the oldest tricks in the book. If it were so easy for the agent to get a warrant or subpoena, they wouldn't have wasted time trying to get your voluntary cooperation. Again, simply state that you will not consent to any search and that you will not talk without a lawyer present.
- **Simply because a piece of paper says "warrant" does not mean it is a valid arrest or search warrant.** For example, a deportation/removal warrant is an *administrative warrant* and does not grant law enforcement authority to enter a home to do a search or make an arrest.
- **Document!** Remember to always document any search done by an officer as soon as possible. Write up what you observed, what the officer may have said, and anything else you think is relevant.

Home

Never allow law enforcement to search your person or property without a warrant.
Law enforcement agents are required to have a warrant to search your property except for certain limited circumstances. You are only legally required to allow law enforcement agents into your home, office or other private space if they have a search warrant.

Agents may search your house without a warrant if you allow them to, and they are trained to seek your consent to warrantless searches. Be careful of questions that are designed to elicit your consent to search. These questions may be as innocuous as "Do you mind if I come in?" Simply allowing an agent into your home may be construed as consent to search the whole place.

Legally, the best answer to a request to search is "I do not consent to a search." Say it loudly and proudly so any witnesses can hear.

AN IMPORTANT LOOPHOLE: An agent may try and use an *arrest warrant* to gain entry, which we discuss below.

What If I'm Not Around and an Agent Asks My Roommate to Search My Property?

A roommate can consent to a search of common, shared space and to their own space. A roommate cannot consent to search of another person's private space in a shared house or apartment. In other words, a roommate could consent to a search of your kitchen, living room or shared bathroom, but not your private bedroom, unless you share it with them or it is used as a common space in some way.

If you share a bedroom with a partner or roommate, they can consent to the search of their partner's private rooms because they are considered to have shared authority over all space in the house. Similarly, parents can consent to a search of their children's private space. In sum, if you share a bedroom with a roommate or partner, they can consent to a search of that space.

To protect against unwanted searches, make sure private space remains private. If you allow roommates to have mutual access and control over your private space, they can consent to a search of that space. Tell roommates, office mates and anyone with whom you share space to never consent to searches of any space, especially your private space.

Offices andCommunity Spaces

Federal agents need a search warrant to search your office, just like they do for your home. However, there may be other loopholes they can use that you should be aware of.

If you rent your space in a building owned by another company or individual, it is a good idea to review your lease and see what rights your landlord has to access your space, and whether the lease gives permission to your landlord or their agents to allow police or other government agents access to your spaces for any reason.

You can also take proactive steps so that you and your colleagues are aware of any risks.

- You can put up posters or signs on doors and hallways within your office or space letting staff and others know not to let law enforcement enter without showing a warrant.
- Make sure front desk personnel, who might be the first to interact with an agent who shows up, are trained in what to do and who to contact in case they encounter an agent.
- Additionally, keep track of who and where all the keys to your office are, and retrieve any keys from people no longer working with your organization, such as previous staff.

If your office hosts meetings or gatherings of community members or other non-staff members, it can be good to come up with a system for ensuring that you know who the attendees are, but also that you can maintain confidentiality.

> *For example, if your building has a security protocol that requires signing in, you can consider moving locations if attendees are uncomfortable with a sign-in sheet.*

Unfortunately, although the rules governing their behavior in these spaces are slightly more stringent, FBI agents and informants can and have infiltrated religious spaces, political groups, and academic groups. Although many of these instances arguably violate the First Amendment, it is often difficult to know for sure if that infiltration has occurred.

Can Agents Search My Trash?

Once you have placed your trash outside your house, agents can search it without a warrant or any other legal restraint. Courts have found that you have no privacy interest in your trash because you are surrendering it to the general public. Shred or otherwise destroy any and all sensitive documents before disposing of them.

What Should I Do If My Office or Home Is Broken Into and I Suspect That the Motive Was Intelligence Gathering?

If your home or office is broken into, or if threats have been made against you, your organization or someone you work with, document everything and share this information with everyone affected and take immediate steps to increase personal and office security. Contact a lawyer immediately.

Car

If a law enforcement officer or immigration agent asks to search your car, you can refuse to consent to the search. However, law enforcement has extremely broad power to conduct warrantless searches of cars. If an agent has probable cause to believe that a car contains evidence of a crime, the agent may, without a warrant, search the vehicle and any container inside the vehicle that is large enough to contain the item for which they had probable cause to search.

> *For example, if an agent has probable cause to believe you stole a large television, they can search the trunk of the car but not the glove box or a small toolbox in the trunk. If they only have probable cause to search a container recently placed in the car, they can only search that container.*

If you are arrested and your car is impounded, law enforcement is allowed to perform a warrantless inventory search. This basically means the police may search your car for the purpose of cataloging what is inside, but they also may use anything they find against you for any reason. Inventory searches must follow local established procedures, and the police may not use an inventory search as pretext for performing a warrantless search.

Arrest Warrants

An arrest warrant is a tool used by police and other law enforcement agents to enter your home to make an arrest. Arrest warrants are signed and issued by a judge based on sworn applications from law enforcement attesting that there is probable cause that a crime has been committed and the person or people named in the warrant committed the crime.[6]

One of the many loopholes in search warrant requirements is that once the agents are inside your home, even if they are there with only an arrest warrant, they have great leeway to conduct a search. They can search the immediate area around you without a search warrant. Law enforcement agents can even search the whole house as part of a "protective sweep" if they have a reasonable belief that a dangerous person might be present there.

If law enforcement arrives at your home and they state that they have an arrest warrant (or any other space with an arrest warrant):

- Ask to see the warrant and have the officer slide it under the door.
- Verify that the warrant has the name of the individual to be arrested and
- Check that it Is signed by a judge (and not, for example, the director of an agency).

If the arrest warrant is real, the best practice is to inform the officer that you will surrender yourself outside, then go outside and give yourself up. If it is safe to do so, lock the door behind

[6] There are two common exceptions to this rule: First, in most but not all states, law enforcement agents need a warrant to make an arrest for a misdemeanor that they did not witness personally. It is important to note, however, that agents can still make arrests for felonies they did not witness without an arrest warrant. Second, law enforcement generally needs an arrest warrant to make an arrest in your home. They can, however, make a warrantless arrest in your home if they believe there is a risk that you will destroy evidence or if they are chasing you in hot pursuit and you duck into your or someone else's home.

you. If law enforcement agents have an arrest warrant, they will arrest you. Do not give them the chance to conduct a warrantless search of your home as well.

It is additionally important to note that while law enforcement generally needs an arrest warrant to make an arrest in your home, they can, however, make a warrantless arrest in your home if they believe there is a risk that you will destroy evidence or if they are chasing you in hot pursuit and you duck into your or someone else's home.

In summary, it is best not to be in your home when you are arrested.

ICE Ruses

ICE agents also cannot enter your home without a warrant signed by a judge or your permission. However, official ICE policy allows ICE agents to use "ruses" to attempt to gain access into your home or office. The Immigrant Defense Project has excellent materials on available on their website about your rights if you encounter ICE agents, and we encourage you to review and download them. In regards to ruses, IDP warns that "ICE agents are allowed and encouraged to use ruses. ICE agents use ruses to gain entry to homes without judicial warrants or to obtain information about the individual for whom they are looking. One common ruse is where ICE agents pretend to be local law enforcement in order to hide that they are ICE."

Customs & Border Searches

Constitutional protections are weakened–although not totally diminished–at the border. The Fourth Amendment requirements of probable cause and reasonable suspicion do not apply to searches at the border.[7] However, stops, searches, detentions or removals cannot be based on race, religion, national origin, sex or ethnicity.

Border officials–who may include Transportation and Safety Administration (TSA) officers, customs agents, Customs and Border Protection (CBP) officers, and immigration officers–are allowed to stop, detain, and search any person[8] or item. Even if your bags pass an initial screen, officials can conduct a further in-depth search of your bags.

Generally, border officials can search your laptop and other electronic devices and copy data stored on those devices. They can ask for access to your social media profiles, but whether you're legally required to share this information is unclear. If you decline to hand over your password, the implications can be different for you based on your immigration status. For more information on electronic searches and what to do, we strongly suggest reviewing EFF's excellent guide.

If you are a foreign national perceived as being non-cooperative, you can be denied entry to the U.S. Green card holders cannot be denied entry or stripped of their Lawful Permanent Resident

[7] The same is not true in the "border zone," which refers to the territory within 100 miles of the U.S. border; although federal immigration agents routinely stop individuals within this area, the Fourth Amendment fully applies.
[8] Airport and border searches can present particular challenges to individuals from trans or gender non-conforming or who have religious needs. We recommend reviewing these more specific resources: https://transequality.org/know-your-rights/airport-security

(LPR) status without a hearing before an immigration judge. U.S. citizens cannot be denied entry but might be delayed.

Border officials can question you about your immigration status, travel itinerary, items you are bringing with you, and generally anything that relates to your admissibility into the U.S. If you are selected for secondary inspection, which entails a longer interview, note that you do not have to answer any questions beyond those that pertain to identifying yourself and the safety of the border, and you have the right to an attorney *if you are a U.S. citizen*. Noncitizens do not have the right to have an attorney present during questioning at the border, unless the questions relate to anything other than immigration status (such as, for example, political or religious beliefs).

INFILTRATION & HUMAN SURVEILLANCE

The use of undercover agents and informants is widespread in investigations by modern law enforcement agencies. The ability to place undercover agents or informants in progressive movements or organizations gives law enforcement a kind of access that is otherwise nearly impossible to obtain. Infiltration helps collect confidential information on the activities of private individuals and gives law enforcement enough information to initiate an investigation. Undercover agents and informants can report to law enforcement on the participants, tactics and actions of movements. They can even suggest, encourage and/or participate in illegal activity in their efforts to arrest participants. Courts have generally held that public policy forbids the disclosure of an informant's name unless essential to the defense in a criminal court, so informants are rarely called upon to testify, enabling them to act with only a limited amount of responsibility or accountability.

Informants

Informants are individuals who are not employed as law enforcement agents who provide law enforcement agents with information, often in exchange for money, or because they have some vulnerability (e.g. criminal or immigration-related) that's being leveraged against them. An informant ordinarily has previous involvement in–and more intimate knowledge of–the movement, organization, or community that the agents are investigating.

Cooperating Witnesses

Cooperating witnesses are similar to informants, except that cooperating witnesses usually agree to "flip" or "snitch" after being threatened with prosecution. Cooperating witnesses will testify in court in exchange for lesser charges being filed against them if there are any charges filed against them at all.

Undercover Agents

An undercover agent is a law enforcement officer who uses an assumed name or fake identity to infiltrate a movement, event or organization to gather information or evidence. In political infiltration cases, an agent will typically pose as a sympathizer to a particular organization, gain the trust of its key members and then use this access to gather confidential information to pass on to the investigative agency. A secondary objective may be to lay the groundwork for a separate

investigation. Undercover agents typically concoct a cover story as detailed as the assignment requires as well as a basic biography and plausible story covering past and present activities.

Are There Limits on What Undercover Agents and Informants Can Do?

No specific law governs or limits law enforcement's use of undercover agents or informants, and there are no restraints on what types of crimes infiltration can be used to investigate. Unlike other countries, the use of covert practices do not require a warrant, so law enforcement officers don't need to show that the use of an undercover agent or informant is necessary for a particular investigation. The FBI's use of undercover agents and informants is governed only by loose internal guidelines established after U.S. Congressional findings in the Final Report of the Select Committee to Study Government Operations with Respect to Intelligence Activities (1976).

The report exposed details about the FBI's now-infamous Counter Intelligence Program (COINTELPRO), in operation between 1956 and 1971, which targeted activists and organizations, including Dr. Martin Luther King, Jr. and the Black Panther Party. In response to the report, the U.S. Attorney General enacted internal guidelines for covert FBI operations that regulated both undercover agents and informants. While these guidelines were initially strong, they have been progressively weakened by subsequent administrations. The current guidelines permit many of the invasive law enforcement practices they were originally designed to prevent. Moreover, the guidelines are not enforceable in court, so they offer only limited protection from infiltration and surveillance. In other words, if an agent gathers evidence in violations of FBI regulations, that evidence might still be used in court.

What is Entrapment?

The strongest restraint on undercover agents and informants is the requirement to avoid entrapment. Entrapment occurs when an agent or informant plants the idea to commit an offense in the mind of an individual who would not otherwise have been disposed to commit such an offense and then encourages that individual to commit the offense in order to prosecute them. Courts view entrapment very narrowly, and tend to give wide latitude to undercover agents or informants who suggest or encourage illegal activity. While exceptions to the entrapment defense vary from state to state, it is generally not an effective defense if the undercover agent merely suggested the commission of a crime. In many states, entrapment is not a viable defense if a jury believes someone was predisposed to commit the crime.

In other states, entrapment is not a defense at all when the crime involves "causing or threatening bodily harm." For these reasons, one cannot rely on the availability of an entrapment defense.

What are the Constitutional Limits to an Agent's Power to Infiltrate?

Undercover agents or informants are generally allowed to attend public meetings, including those that take place in houses of worship. Courts have sometimes found First Amendment violations when it is determined that enforcement agents interfered with a group's ability to exercise the right to freedom of speech and association. Similarly, courts have found law enforcement in violation of the First Amendment when it gathers and publicly releases information on an activist or organization. Courts have not found First Amendment violations when law enforcement agents merely create an uncomfortable atmosphere at public meetings.

Courts have routinely found that the covert recording of conversations by undercover agents and informants does not violate the Fourth Amendment, which protects against unreasonable searches and seizures.

Courts have also found that the covert recording of conversations by undercover agents and informants does not violate the Fifth Amendment protection against self-incrimination. Similarly, if you unknowingly invite an undercover agent into your home or other private space, courts consider it "consent" to a search by that agent. If the undercover agent sees probable cause of a crime, the agent can then summon other law enforcement agents to join in the search based on the so-called consent granted to the undercover agent. Some courts have even applied the same reasoning for situations in which targets unknowingly invite an informant to enter a home.

How Can I Identify Infiltration?

There is no way to be certain about infiltration, which is part of why infiltration is so harmful to movement-building. Suspicion of infiltration severs trust, disrupts organizing, and can be very stressful. It must be navigated with caution. Law enforcement agencies have historically infiltrated political movements, but they have also engaged in a practice of disseminating false accusations against effective activists. Movement organizers have, over the years, identified some characteristics of undercover agents or infiltrators. For instance:

They may not have a backstory that "makes sense" – including sudden deeply held political or religious beliefs that do not reflect the common trajectory of everyone else in the movement.

They may quickly volunteer for tasks that provide access to your group's important meetings and papers, such as financial records, membership lists, minutes and confidential files.

In some contexts, undercover agents and informants have encouraged or urged the use of violence or illegal tactics and accuse others who resist those tactics as being cowards, or otherwise sow discord that distracts from the movement's goals.

An undercover agent or informant may also have no obvious source of income over a period of time or have more money available than their job should pay.

Just because a person fits these characteristics does not mean they are an undercover agent or informant.

- Use a lot of caution and do not publicly accuse someone of being an agent or informant unless you have gathered substantial evidence against them.
- If somebody bothers you, distance yourself from them.
- If you think they might be making others vulnerable, consider raising your concerns with trusted leadership or other activists.

You can try to obtain information on a suspected agent or informant's background.

- Check with organizations in areas the suspected agent lived in the past to see if anyone can vouch for them.
- See what you can turn up on the internet or on social media.
- Public records such as credit reports, voter registration and mortgages contain a wealth of information, including past and present addresses.
    - If they are available, you might want to check listings of local police academy graduates; but, remember that the suspected person may not be using her/his/their real name.

What Precautions Can I Take to Protect My Organization?

DOCUMENT:

Maintain a file of all suspected or confirmed experiences of surveillance and disruption. Include the date; place; time; those present; a complete description of everything that happened; and any comments explaining the context of the experience and a description of the impact the event had on the individual or organization.

DISCUSS:

The chilling effect of surveillance thrives in silence. Hold a meeting to discuss spying and harassment. This can help determine if any of your members have experienced any harassment or noticed any surveillance activities that appear to be directed at the organization's activities. Review past suspicious activities or difficulties in your group, and try to determine if one or several people have been involved in these events. Depending on the context as well as the available resources in your area, consider bringing in outside facilitators, movement lawyers, or trusted elders and movement leaders.

SEEK INFORMATION:

You may try to file **Freedom of Information Act (FOIA)** requests for your organization from agencies such as the FBI, Department of Homeland Security (DHS), other federal agencies. File similar requests with local and state law enforcement agencies utilizing your state's freedom of information laws. For more information on making FOIA and open records requests, check out CCR's FOIA Basics for Activists guide.

MOST IMPORTANTLY, DO NOT ALLOW FEARS ABOUT INFILTRATION PARALYZE YOUR MOVEMENT OR ORGANIZATION. This "chilling effect" can be as destructive as infiltration itself.

COURT TOOLS USED AGAINST ACTIVISTS

Subpoenas

A subpoena is an order issued by a government authority that demands someone turn over physical evidence, such as documents, or that the person testify in court.

Subpoenas are extremely easy to obtain. They are often filed by a government employee, a court clerk and even private attorneys. A subpoena does not need to be presented to a judge before it is issued. The showing required to issue a subpoena is extremely low; a subpoena may be issued if there is any reasonable possibility that the physical evidence or testimony demanded will provide information relevant to the subject being investigated.

The ease with which subpoenas are issued makes them a powerful tool, but unlike search warrants or other government tools, they can be challenged in court prior to compliance. If you receive a subpoena, you can move to "quash" the subpoena if it is too broad or too burdensome or if it seeks legally protected materials, including materials protected by the First Amendment. Once a subpoena is quashed, the documents or testimony demanded are no longer required of the recipient.

Subpoenas are particularly dangerous because law enforcement can subpoena "third parties" that may have information about you, such as a person or company that you interacted or did business with. The government can subpoena other people for emails you have sent them, or they can ask your e-mail provider for them. Because these third parties do not always have the same interest in defeating these subpoenas that you do, they are more likely to comply with the subpoena without a fight. Unfortunately, you are unlikely to be informed if a third party has been subpoenaed for documents that concern you. For more information, see EFF's Surveillance Self-Defense guide.

If you receive a subpoena:
You should seek to quash the subpoena before the date of compliance specified on the subpoena itself, but even subpoenas that state they require immediate compliance cannot be enforced without a judge.

If someone shows up at your door and tries to serve you with a subpoena, just take it.

- Don't let the person in
- Don't answer any questions and
- Don't consent to a search.

A subpoena does not give an agent the right to take any immediate action.

If you receive a subpoena, immediately contact a lawyer for advice. A lawyer can also potentially "quash" the subpoena. In the unlikely event that you are informed that a third party (such as a landlord, bank or internet platform) has been subpoenaed for records about you, you can also move to quash that subpoena–it does not matter if a subpoena wasn't issued directly to you.

GRAND JURIES & GRAND JURY RESISTANCE

What are Grand Juries and What Threats Do They Pose to Activists?

A grand jury is a panel of citizens brought together to investigate crimes and issue indictments. In their original conception, grand juries were intended to be radically democratic. In their original formation, any citizen could bring an allegation of wrongdoing to the original grand jury and the grand jury could indict on a majority vote.

Modern day grand juries are very different. Today, all federal criminal cases are brought to a federal grand jury by a prosecutor. The prosecutor picks the witnesses and asks the questions. The prosecutor drafts the charges and reads them to the grand jury. Witnesses are not allowed to have a lawyer present. There is no judge present. There is no requirement that the grand jury members be instructed on the law at issue. And, unlike in other juries, grand jury members are not screened for bias.

Since the prosecutor solely orchestrates the proceedings, it is no surprise that grand juries almost always serve as a rubber stamp for prosecution. In the rare event that a grand jury does not indict, the prosecutor can simply impanel a different grand jury and seek an indictment before a new grand jury.

In political cases, federal grand juries have been used to execute fishing expeditions against activists. Prosecutors will bring in activist witnesses and attempt to get them to snitch on other

activists with threats of jail time for civil contempt (see more info below) if they refuse to cooperate with the grand jury. It is critical to understand how a grand jury works; what your rights are; what rights you cannot exercise; and how to resist a grand jury.

Many rights we take for granted do not exist for grand jury witnesses. Grand jury witnesses have no right to be represented by an attorney and no right to a jury trial if they are threatened with jail. Grand jury witnesses do retain the right against self-incrimination but can still be forced to snitch on themselves and others in exchange for immunity from prosecution and punishment. Immunity only protects witnesses, others can still be prosecuted.

Grand jury proceedings are secret. The activist community often does not know when a grand jury investigation is being pursued. As a result, many activists believe in publicizing the fact that they have received a subpoena. This may be an effective tactic to explore with your attorney if you receive a subpoena.

What Should I Do If Someone Shows Up With a Grand Jury Subpoena?

Grand juries get information from people by issuing subpoenas**. A grand jury subpoena is an order to testify before a grand jury or provide the grand jury with certain information.** Grand juries issue two different types of subpoenas:

- Subpoenas for testimony and
- Subpoenas for information

Sometimes both types will be issued to one person. We recommend consulting an attorney immediately if you receive either type of grand jury subpoena.

Grand jury subpoenas are served by law enforcement agents, usually police officers or federal marshals. A grand jury subpoena must be personally served on you, meaning, it must be handed to you. If you refuse to accept it, it must be placed near you.

If an agent shows up and tries to serve you with a subpoena, take it and do not do anything else.

- Do not answer any questions
- Do not consent to a search and
- Do not invite them into your home for any reason.

A grand jury subpoena does not give an agent the right to search a home, office, car or anywhere else, nor does it require you to relinquish any documents or say anything at that time. A grand jury subpoena only requires you to do something on the future date stated on the subpoena.

What Options Do I Have If I Receive a Grand Jury Subpoena?

If you receive a subpoena, you should speak with a lawyer before taking any action. If the subpoena is politically motivated, it is best to speak with an attorney in your activist circle who does criminal defense or grand jury work.[9]

Once you have received a grand jury subpoena, you typically have three options:

1
You can comply with the subpoena

2
You can move to "quash" the subpoena

3
You can refuse to comply

Complying with a subpoena is relatively straightforward. However, grand jury subpoenas have hard-to-understand Latin names. For a subpoena "ad testificandum,"[10] you arrive at the date, time and location stated on the subpoena and answer the prosecutor's questions. For a subpoena "duces tecum,"[11] you show up on the date, time and location stated on the subpoena with the documents or other evidence required.

If you comply with a subpoena, you avoid the possibility of being punished for ignoring it; however, complying with a subpoena may get you into a different type of trouble.

> *For example, if you are a target of the investigation, complying with the subpoena may provide the government with information it might need to charge and convict you. You might also place another activist in jeopardy by complying with a subpoena.*

Challenging a subpoena in court by a motion to "quash" the subpoena. "Quashing" a subpoena means a court declares it null and void. A court will only grant a motion to quash if there is a sufficient legal basis, such as misidentification or lack of jurisdiction.

[9] Remember, although in some rare cases it might be advisable to testify, securing any guarantees can be challenging. Some people who have complied have served as many years in prison as the individuals against whom they testified.
[10] An "ad testificandum"subpoena is a subpoena ordering a witness to appear and give testimony.
[11] A subpoena "duces tecum," which means "bring it with you" in Latin, is a subpoena ordering a witness to provide the grand jury with certain documents.

Even if you cannot successfully quash a subpoena, litigating a motion to quash in court can buy you some time. Time is important, especially if you do not plan to cooperate with the grand jury, because non-cooperation can land you in jail (see more info below). Grand juries can last for as long as 24 months, and whatever time is spent litigating the motion to quash may save you the experience of spending that entire period in jail. An experienced movement lawyer should be able to provide advice on whether moving to quash a subpoena is a good idea or not in your particular circumstances.

Refusing to comply with a grand jury subpoena. There are two ways to do this:

1

Refuse to show up

2

Refuse to answer any of the prosecutor's questions

If you simply refuse to show up for your testimony, you may be in contempt and the government can choose to arrest you and jail you until you testify or until the grand jury expires. If your testimony is not particularly important to the prosecutor, they may choose not to take action.

If you appear to testify, you will not be allowed to have an attorney present. You can, however, have an attorney just outside the grand jury room, and you can usually consult with them after every question. Because you retain your Fifth Amendment right against self-incrimination, you can refuse to answer the prosecutor's questions by saying "I invoke my Fifth Amendment privilege against self-incrimination" after every question. At this point, the prosecutor may simply dismiss you or they may seek to grant you immunity.

Immunity prevents the witness from having criminal charges brought on the basis of the grand jury testimony. A judge must approve a grant of immunity. A prosecutor can get a judge to pre-approve a grant of immunity; otherwise, a witness is brought before a judge who, upon the prosecutor's request, virtually always grants immunity.

If you continue to refuse to answer questions after being granted immunity, the prosecutor can bring you before a judge, and the judge will order you to testify. If you continue to refuse, the judge can have you jailed for civil contempt. Witnesses who refuse to provide physical exemplars, i.e. samples of handwriting, hair, appearance in a lineup or documents, upon the request of a grand jury may also be jailed for civil contempt.

While civil contempt is not a crime, it can result in the witness being jailed for the duration of the grand jury. Grand juries can last for up to 18 months, although some "special" grand juries can obtain up to three extensions of six month periods each. The purpose of incarcerating a recalcitrant witness is to coerce them to testify. Judges will sometimes free witnesses before the expiration of the jury if it is clear that there is no chance the witness will testify.

If you are jailed, you can periodically file a motion stating that:

1

Jail will not coerce you into testifying

2

Your confinement is merely punitive and therefore unconstitutional. If you win one of these motions, you will be released

Some activists create files to prepare for being called before a grand jury. A file that memorializes your stalwart belief against cooperating with grand jury proceedings can be used as evidence that civil contempt will not work to coerce you and thereby help you win release.

There may be special risks involved for non-U.S. citizens refusing to comply with a subpoena. You should consult with your attorney before engaging in noncompliance.

What Happens After a Grand Jury?

What takes place in grand jury proceedings is secret. The government relies on this secrecy to create fear and distrust in activist communities. Some activists have successfully dispelled that fear and distrust in activist communities by publishing the questions asked of them by the prosecutor and the answers they provided. If you are considering taking action in this way, you must talk with an attorney to ensure that you are not creating more problems than you are solving.

SPECIAL CONSIDERATIONS FOR NONCITIZENS

Noncitizens are individuals who do not have U.S. citizenship, including tourists, students and others who are in the U.S. on visas or visa waiver programs; lawful permanent residents; refugees; and those without legal immigration status. Noncitizens in the U.S. enjoy most of the same constitutional rights as citizens. However, how that plays out in practice can sometimes be different. Noncitizens engaging in political activism should be aware of several special considerations. Noncitizens should not, however, entirely avoid political activism based on an unreasonable fear of government repression. Many political or community formations recognize that their noncitizen members are more vulnerable, and implement protocols and principles to ensure the minimization of their exposure.

Speech and Political Affiliations

In most cases, the government treats speech by noncitizens in the U.S. the same way it treats speech by citizens. Noncitizens cannot be criminally punished for speech that would be protected

if uttered by a citizen. Similarly, noncitizens cannot be sued for speech that would be protected if said by a citizen.

The government does, however, have broad powers to withhold immigration benefits (such as discretionary relief or naturalization) and may potentially even initiate removal proceedings based on a noncitizen's speech, including their social media postings. Practically speaking, it is extremely rare for the government to remove someone based purely on speech or association, and it can be challenged, especially in egregious situations. The government, however, is allowed to selectively enforce immigration laws.

> *For instance, the government can remove noncitizens for violations of immigration law (such as overstaying a visa or working without authorization) even if the government's motivation in initiating removal proceedings is a noncitizen's speech or political association. The government could also potentially deny a visa or entry based on their speech or association, and has searched social media handles at borders.*

We also know that the FBI and other federal agencies often use a pending immigraton application as a reason to question people about their affiliations, political or religious activism, or even to try to coerce them into becoming informants. They have threatened to place individuals' petitions on hold. Individuals who have a concern should contact a lawyer.

Finally, applicants for permanent residence and naturalization are asked to list the organizations with which they have worked, been members of or otherwise affiliated with. Politically active noncitizens are advised to consult an immigration lawyer before applying for a change in status because some associations may cause problems in your application process.

Searches and Seizures

Noncitizens in the U.S. largely enjoy the same Fourth Amendment protections against unreasonable searches and seizures that citizens do. Law enforcement must get a warrant to perform any search on a noncitizen or a noncitizen's property just as they must to perform a search on a citizen. Evidence obtained in violation of the Fourth Amendment is excluded from a noncitizen's criminal trial the same way it is for citizens.

Unfortunately, the use of evidence obtained in violation of the Fourth Amendment is generally permissible in immigration proceedings. This means the government can use illegally obtained evidence that cannot be used in criminal proceedings for immigration proceedings. It is possible that evidence obtained through especially egregious violations of the Fourth Amendment or through other constitutional violations (for example blatant racial profiling) may be excluded in immigration proceedings.

Also, the government can generally search and seize any person, package or vehicle traveling across the border or at an airport.

Right to Remain Silent

Noncitizens in the U.S. generally have the same right to remain silent that citizens do. If questioned by law enforcement agents, you can remain silent and refuse to answer their questions even if they detain you temporarily or arrest you. You can simply say nothing or say something like "I'd like to talk to my lawyer before I say anything to you." Do not sign anything without reading and fully understanding the consequences of signing it.

One exception to this rule is if an immigration officer asks a noncitizen to provide information related to their immigration status; however, even in this situation, you can still state that you would like a lawyer present before you answer any questions.

The law also requires adult noncitizens with valid immigration documents to carry these documents at all times. If an agent asks for your documents and you refuse to provide them, you can be charged with a misdemeanor. Never show fake immigration papers or claim that you are a U.S. citizen if you are not. Instead, you should remain silent or say you would like to talk to a lawyer. Lying to a federal agent is a much more serious crime than the misdemeanor of failing to produce documents--it is better not to produce anything than to produce false documents. Also, falsely claiming to be a U.S. citizen may bar you from obtaining lawful status or citizenship in the future.

CONCLUSION

As noted before, the information presented in this booklet is a primer on your basic rights. This guide is meant to help you prepare yourself, your organization and your fellow activists to be fully informed and protected in the event that an agent knocks at your door. And remember, **different states have different laws**--it is a good idea to learn the laws of your state and to have access to a lawyer who is familiar with them. We hope this booklet can be a tool for you and your organization as we work towards a more socially just world.

APPENDICES

Glossary

Agent: People employed by federal agencies and with the authority to investigate, question, and potentially arrest you.

Arrest Warrant: A legal document authorizing law enforcement to arrest those identified by the warrant.

Civil Contempt: Can result in the witness being jailed for the duration of the grand jury.

Criminal Contempt: Extremely rare charges. Punishes a witness for impeding the legal process. No maximum penalty.

Entrapment: Entrapment occurs when an agent or informant plants the idea to commit an offense in the mind of an individual who would not otherwise have been disposed to commit such an offense and then encourages that individual to commit the offense in order to prosecute her/him.

Fifth Amendment: Enshrines a number of protections, among them is your right to not be deprived of "life, liberty or property" without "due process," as well as your right not to incriminate yourself and remain silent. It also mandates that anyone charged with a felony must be indicted by a grand jury.

First Amendment: Enshrines a right to assemble peacefully, to have freedom of speech, and your ability to petition the government for "redress of grievances."

Fourth Amendment: Prohibits unreasonable searches and seizures of you or your property. It also sets requirements for issuing warrants.

Grand Jury: A grand jury is a panel of citizens brought together to investigate crimes and issue indictments.

Immunity: Prevents the witness from having criminal charges brought on the basis of the grand jury testimony.

Informant: Someone collecting and passing information from a movement, organization or community to federal law enforcement.

Movement Lawyer: Attorneys who are connected to and understand social justice movements. Movement lawyers have experience using the law as a tool to support and assist communities and activists rather than only to litigate.

Noncitizen: Noncitizens are individuals who do not have U.S. citizenship, including tourists, students and others who are in the U.S. on visas or visa waiver programs; lawful permanent residents; refugees; and those without legal immigration status.

Nonimmigrants: Noncitizens authorized to be in the U.S. on tourist, student, or work visas, for example.

Probable Cause: Probable cause means that facts must exist to establish that evidence of a crime will probably be found in the area to be searched.

Quash: To void or nullify something through a legal procedure.

Ruse: A fictional but legal reason an ICE agent may give you in an attempt to gain access to your home or other property.

Search Warrant: A legal document authorizing law enforcement to search and potentially seize property at a specific location identified by the warrant.

Subpoena: Court papers ordering someone to appear before court, or possibly ordering them to provide some type of information to a court or legal party.

Types of Federal Agents

Federal agents could be associated with a range of agencies. They might also be local law enforcement that have been "tasked" to the Joint Terrorism Task Force (JTTF). While questioning of activists is often done by the FBI, agents from any number of agencies may also be involved. Tracking which agencies are involved in the investigations can be helpful for your lawyer or for other activists. However, reports have increasingly suggested that federal agencies are overlapping and coordinating, so that a "visit" from ICE agents does not necessarily mean that the matter involves borders or immigration. You should also assume that agencies will share information amongst each other, or with local law enforcement as well.

1. **Federal Bureau Investigation (FBI)**

    - The FBI is the primary domestic intelligence and enforcement agency in the U.S. and has several branches which collect and analyze information, and investigates and prosecutes federal crimes It also operates local "field offices" throughout the country.

2. **Central Intelligence Agency (CIA)**

    - The CIA is technically not supposed to carry out domestic enforcement or investigative operations. However it does operative intelligence gathering within the U.S. through components such as its "National Resources Division" and collects and shares information with other intelligence agencies.

3. **Department of Homeland Security (DHS)**

    - The DHS is a very large federal agency that does its own surveillance work through components such as the Office of Intelligence and Analysis. It also houses several

other law enforcement agencies, including ICE, CBP, Secret Service and the TSA described below.

4. **U.S. Immigration and Customs Enforcement (ICE)**

   - ICE has many components and offices but two are key to be aware of: Homeland Security Investigations (HSI), which handles most of its investigative work, and Enforcement and Removal Operations (ERO) which are often the ICE agents responsible for "frontline" work, such as making arrests.

5. **Transportation Security Administration (TSA)**

   - You will find TSA agents primarily in airports, in charge of screening passengers and cargo. Federal Air Marshals, who travel on planes, are also part of the TSA.

6. **U.S. Customs and Border Protection (CBP)**

   - CBP is the largest law enforcement agency within DHS, operating throughout the country, especially at any points of entry. CBP agents will often work in tandem with ICE and other law enforcement in carrying out their operations. The Border Patrol is part of CBP.

7. **Bureau of Alcohol, Tobacco, and Firearms (ATF)**

   - The ATF is part of the DOJ, and investigates, enforces and regulates interstate firearm, alcohol and tobacco product offenses, including arsons and explosives. Agents can sometimes be involved in crimes labeled as "terrorism" and often work with local law enforcement.

8. **Secret Service**

   - Agents are charged with protecting government leaders including the President, and also carry out investigations and missions regarding cyber crime and some economic-related crimes.

9. **Joint Terrorism Task Force (JTTF)**

   - Joint Terrorism Task Forces (JTTF) are locally-based multi-agency partnerships, usually run by the FBI/DOJ, between various federal, state, and local law enforcement agencies tasked with investigating terrorism-related crimes.