

Protecting Immigrants' Rights: Guidance for Private Establishments in Ohio

Note: This is not legal advice and does not substitute for consultation with an attorney.



Although private establishments are not required to enforce immigration laws, there are still important requirements and restrictions to be aware of. This guidance provides information, FAQs, and recommendations for private establishments relating to immigration enforcement.

RELEVANT FEDERAL AND OHIO LAWS

Federal Law

The Fourth Amendment provides a constitutional right for all individuals to be free from illegal searches or seizures. The Fourth Amendment may limit immigration enforcement agents' activities at a place of worship. Whether or not an agent may search an area without a judicial warrant depends on whether a person has a reasonable expectation of privacy in that area.

Another federal law, the criminal harboring statute, prohibits concealing, harboring, or shielding from detection (or attempting to conceal, harbor, or shield) an undocumented immigrant, when done with knowledge or reckless regard of the immigrant's unlawful status.

Additionally, a federal criminal transporting law prohibits transporting or moving (or attempting to transport or move) an undocumented immigrant from one place to another, with knowledge or reckless disregard of the fact of the immigrant's unlawful status, where the transportation helps the immigrant remain in the United States unlawfully.

Ohio Law

Obstruction of Justice

In Ohio, there is also an "obstruction of justice" law that makes it unlawful to do any of the following with the intent to purposefully hinder the discovery or apprehension of another person who has committed or is suspected of committing a crime:

- Harbor or conceal that person;
- Provide money, transportation, disguise or other means of avoiding discovery;
- Warn that person of impending discovery;
- Destroy or conceal physical evidence;
- Communicate false information to anyone; or
- Prevent or obstruct—via force, intimidation, or deception—discovery of the other person.

This means that if someone has committed a crime, you cannot hide or assist them in avoiding detection from law enforcement. **Note that being undocumented, on its own, is not a crime—rather, it is a civil violation.** Most undocumented immigrants in our country entered legally, but overstayed or otherwise violated the terms of their visa, which is a civil violation, not a crime.

However, entering the U.S. without being inspected and admitted ("illegal entry") is a crime, and re-entering the U.S. without permission after being formally removed is also criminally punishable. (For more information, please read the [ACLU's issue brief on Criminalizing Undocumented Immigrants](#).)

Obstruction of Official Business

Ohio also has an "obstruction of official business" law that makes it a crime to purposefully hamper or impede an Ohio government official in the performance of their official duties.

This law covers many affirmative acts, such as physical resistance, subjecting officers to verbal abuse, and acting with a volume and demeanor that makes it impossible for the officers to investigate a complaint. Refusing to provide information to the police generally does not render one guilty of that offense.





FAQs

Obligation to enforce immigration law:

Are private establishments required to enforce immigration laws?

No. Private establishments and their staff are not required and may not be forced to enforce immigration laws.

If an immigration official comes to your private establishment:

Under what circumstances can an immigration official, such as ICE, enter my private establishment?

If the immigration official has a judicial warrant:

- Generally, a judicial warrant—one signed by a state or federal judge—grants access to all spaces specified in the warrant, even non-public spaces.
- A judicial warrant will include the date and describe the place to be searched, and must have been issued within the past 14 days. The search should not exceed the scope of what is described in the judicial warrant.
- However, it is recommended that staff consult with legal counsel before permitting entry.

Here is an example of a judicial warrant issued by a federal court. (Note that a state court can also issue a judicial warrant.):

AO 93 (Rev. 11/13) Search and Seizure Warrant

UNITED STATES DISTRICT COURT
for the

In the Matter of the Search of)
(Briefly describe the property to be searched)
or identify the person by name and address) Case No.)
)
)
)

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the _____ District of _____
(Identify the person or describe the property to be searched and give its location):

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal (Identify the person or describe the property to be seized):

YOU ARE COMMANDED to execute this warrant on or before _____ (not to exceed 14 days)
☐ in the daytime 6:00 a.m. to 10:00 p.m. ☐ at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to _____
(United States Magistrate Judge)

☐ Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box)
☐ for _____ days (not to exceed 30) ☐ until, the facts justifying, the later specific date of _____

Date and time issued: _____ Judge's signature _____
City and state: _____ Printed name and title _____

If the immigration official has no warrant, or only has an administrative warrant (known as a deportation order):

- An administrative warrant—one signed by an officer, not a judge—only gives an immigration official the authority to enter public spaces, such as a lobby or waiting area that is open to the public.
- An administrative warrant does not grant an immigration official the authority to enter non-public spaces, such as a staff-only room, an examination room, or any other space that would be reasonably considered private.

Here is an example of an administrative warrant:

U.S. DEPARTMENT OF HOMELAND SECURITY Warrant for Arrest of Alien

File No. _____
Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

☐ the execution of a charging document to initiate removal proceedings against the subject;

☐ the pendency of ongoing removal proceedings against the subject;

☐ the failure to establish admissibility subsequent to deferred inspection;

☐ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or

☐ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____ (Location)

on _____ (Name of Alien) on _____ (Date of Service), and the contents of this notice were read to him or her in the _____ (Language) language.

Name and Signature of Officer

Name or Number of Interpreter (if applicable)



FAQs CONTINUED

**Under what circumstances can an immigration official, such as ICE, enter my private establishment?
CONTINUED**

To enter any non-public space, an immigration official must have a judicial warrant.

- There are also some situations in which no warrant would be required, such as if the officials have consent from the property owner or if there are emergency circumstances.

It is strongly recommended that private establishments identify and distinguish (ideally with legal advice) public spaces from non-public ones.

- This can be done by placing signs identifying non-public areas, or by placing security guards tasked with signing in visitors at main entrances.

Even in a public space, however, staff can refuse entry to immigration officials or law enforcement officers for legitimate and non-discriminatory reasons.

- For example, if an immigration official is harassing staff members, causing a disruption, or not complying with stated rules, they may be asked to leave the premises.

FOR MORE INFORMATION ABOUT WARRANTS AND SUBPOENAS, PLEASE VISIT THE [NATIONAL IMMIGRATION LAW CENTER'S GUIDANCE](#) ON THIS ISSUE.

Am I required to talk to a police officer or immigration official if they enter the private establishment and ask questions?

It Depends.

- You are generally not required to answer any questions by a law enforcement officer unless you have committed or are suspected of committing a crime, in which case you should, if asked, provide your name, date of birth, and address.
- You are generally not required to provide information about anyone's immigration status, and you should seek legal advice before answering any questions.

But, in the event that you are notified of a Form I-9 audit, contact an immigration lawyer regarding compliance.

- For more information on Form I-9 audits and other immigration-related actions in the workplace, please visit the [National Immigration Law Center's guidance](#) on this issue.

RECOMMENDATIONS

Prepare and implement an internal policy to protect you and your staff from immigration enforcement:

- Establish a written policy designating public and non-public areas, and place signs or otherwise identify the non-public areas.
- Create an internal protocol about how to interact with immigration agents, including protocol for handling law enforcement requests.
- Train all workers not to interact with ICE and not to allow ICE entry into your establishment. Workers can insist that ICE speak instead with their employer.
- Designate a well-trained individual or immigration advocacy group personnel to approach immigration officials outside or near the property.
- If an immigration official or law enforcement officer does not have a judicial warrant, and they are disturbing or harassing employees, or otherwise causing a disruption, staff can ask the officer to leave.

