



Office of
New Americans
DELAWARE

Know Your Rights on Immigration

Guidance for individuals

Immigrants have rights.

The Delaware Department of Justice’s mission is to protect the constitutional rights of every resident of this state. Regardless of who holds office, every Delawarean has basic rights and civil liberties that govern the authority of law enforcement and the criminal justice system. Those rights are **independent of citizenship or immigration status**—everyone has them, including undocumented immigrants. The material listed below will help you understand your rights when interacting with federal immigration enforcement.

Is Delaware a “sanctuary state”?

- “Sanctuary state” is an informal phrase and does not appear in Delaware law.
- Immigration enforcement is a federal responsibility, and the federal government cannot force state or local police or prosecutors to enforce immigration law in the absence of a formal agreement to do so.¹ State and local law enforcement focus on public safety and the laws of Delaware.
- All residents of Delaware, regardless of immigration status, are entitled to the protections of state and federal law, including under the Delaware Constitution and the United States Constitution, and the rights outlined in this document.

What if I have contact with an immigration officer?

- You may tell an immigration officer that you choose to remain silent.
- You may tell the immigration officer that you will not speak to them without an attorney present.
- You may request an interpreter if an officer does not speak your language.²
- If you are not a U.S. citizen and you are carrying your immigration papers, you must show your papers to an immigration officer if the officer asks to see them.

¹ Section 287(g) of the U.S. Immigration and Nationality Act (8 U.S.C. § 1357(g)) allows state and local law enforcement to enter formal agreements (“287(g) agreements”) to work under the supervision of U.S. Immigration & Customs Enforcement. **287(g) agreements are unlawful in Delaware.**

² Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (2000)
<https://www.govinfo.gov/content/pkg/FR-2000-08-16/pdf/00-20938.pdf>.



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- The United States and Delaware Constitutions protect all residents of Delaware, regardless of immigration status, from law enforcement searches of their person, their belongings, or their home without a warrant supported by probable cause. An officer may however pat you down if they have reason to believe you are carrying a weapon.
- If you speak to an immigration officer, you should be honest in your interactions. Do not lie about citizenship. If you do not understand a question, say that you do not understand.

What if immigration officers want to search me, or want to come inside my home?

- **For your safety, do not resist immigration officers if they enter your home, whether or not they enter with legal authority.**
- The Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,”³ and the Fourth Amendment applies regardless of a person’s immigration status.⁴
- You have the right to deny immigration officers entry into your home without an arrest warrant or a search warrant that has been signed by a federal or state court judge, unless exigent circumstances exist. A warrant of deportation/removal does not allow officers to enter your home without consent.⁵
- You may ask which agency the officers represent, and specifically if they are immigration officers or from Immigration and Customs Enforcement (ICE). You may also ask to know their name and badge numbers.

If immigration officers enter your home without your consent or a valid search or arrest warrant that has been signed by a judge, you or someone acting on your behalf may file a complaint with the Delaware Department of Justice’s Division of Civil Right & Public Trust (DCRPT) at de.gov/publictrust.

³ *Lange v. California*, 594 U.S. 295, 301, 141 S. Ct. 2011, 2017, 210 L. Ed. 2d 486 (2021)

⁴ See, *Lee v. Immigration & Naturalization Serv.*, 590 F.2d 497, 499–500 (3d Cir. 1979) (In construing the Immigration and Nationality Act, “courts have held that INS officers are limited by the fourth amendment in exercising the powers conferred upon them by Congress.”); see also *Yoc-Us v. Attorney Gen. United States*, 932 F.3d 98, 108 (3d Cir. 2019) (noting that “the INS has its own comprehensive scheme for deterring Fourth Amendment violations by its officers.”); and *Plyler v. Doe*, 457 U.S. 202, 212, (1982).

⁵ See, e.g., Congressional Research Service, *Immigration Arrests in the Interior of the United States*,” (2021), <https://crsreports.congress.gov/product/pdf/LSB/LSB10362> (citing *Payton v. New York*, 445 U.S. 573, 586 (1979) for the proposition that searches and seizures inside a home without a judicial warrant are presumptively invalid).



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- The Division of Civil Rights and Public Trust's responsibilities include enforcement of Delaware laws protecting the individual rights and liberties of Delawareans, including but not limited to rights secured by the Delaware and United States constitutions.
- Delawareans wishing to file a complaint with the Division MUST fill out this complaint form (available at de.gov/dcrptcomplaint) and include all relevant information and contact information. The complaint form will automatically be sent to the Division of Civil Rights and Public Trust.

What if immigration officers approach me when I am in my car?

- People inside vehicles have a lesser expectation of privacy than in their homes or businesses. Immigration officers do not need a warrant to stop a vehicle when they have reasonable suspicion that federal crimes, including immigration offenses, have occurred.
- Race and ethnicity cannot be the sole basis of the officer's reasonable suspicion.
- If you are stopped when you are driving a car, a immigration officer may ask to see your driver's license or driving privilege card. You must provide your license to prove you are lawfully operating your car.⁶
- Only show your Delaware state-issued driving privilege card (DPC) if it is requested to establish that you are properly authorized to drive a car. A DPC cannot be used for identification purposes.
- You have the right to remain silent and you do not have to answer questions about your immigration status.
- If you are a passenger, you may ask if you are free to leave. If the officer says yes, calmly do so.
- You can refuse to consent to a search if an officer asks to look inside your car. However, an officer can search your car without your consent if the officer has reason to believe that your car contains evidence of a crime.

What if I am arrested?

- Do not try to resist arrest.
- Every resident of Delaware has the right to an attorney and does not have to answer any questions without an attorney's advice. Specifically, you have the right to consult with an immigration attorney before making any decisions about your case or signing any documents. No one can force you to make a final decision or sign a document if you do not fully understand it.
- You have the right to request an interpreter.

⁶ 21 Del. C. § 2701.



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- You can ask to call a family member or a friend if you have children with you when you are arrested or if you need to alert your employer.
- You may inform the immigration officer if you are the primary caregiver of a child under the age of 18 who is a U.S. citizen or a legal resident. Federal law grants ICE officers the discretion to choose not to detain any immigrant who is not subject to a mandatory detention order.⁷

If I am worried that someone has been detained by ICE, how can I find out more information?

- ICE's [Online Detainee Locator System](#) allows you anonymously check whether an individual is in ICE custody if you know the person's Alien number and country of origin, or by the detainee's name, birth date, and country of origin.
- You may also call the ICE Office of Enforcement and Removal Operations at (888) 351-4024.

Important Reminders

- Carry valid identification at all times. This includes U.S. government issued immigration documentation, valid immigration papers, and work permits.⁸
- Memorize your Alien number.
- Never carry false or fraudulent documents, and never provide false or fraudulent documents or information to an immigration officer.
- If you suspect your rights were violated during an encounter with officers, you should write down as much information about the encounter as possible in case you choose to file a complaint with DCRPT.

This information is not intended as legal advice. Separate rules apply at checkpoints and when entering the U.S. (including at airports).

⁷ 8 U.S.C. § 1226; see also ICE Directive 11064.3: Interests of Noncitizen Parents and Legal Guardians of Minor Children or Incapacitated Adults, July 14, 2022 (requiring ICE officers to inquire into the parental or guardianship status of a noncitizen) (<https://www.ice.gov/doclib/news/releases/2022/11064.3.pdf>); Congressional Research Service, The Law of Immigration Detention: A Brief Introduction (September 1, 2022) ([https://crsreports.congress.gov/product/pdf/IF/IF11343#:~:text=INA%20%C2%A7%20236\(a\)%20permits,be%20made%20within%2048%20hours/](https://crsreports.congress.gov/product/pdf/IF/IF11343#:~:text=INA%20%C2%A7%20236(a)%20permits,be%20made%20within%2048%20hours/))



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Resources for Additional Assistance:

- The [Delaware Office of Immigration Assistance](#) (a program of the Delaware Department of Justice) provides counseling services and assistance for residents of Delaware applying for citizenship and/or immigration benefits, establishes case files and follows up with federal agencies to determine status, and serves as the liaison between residents of Delaware and the U.S. Citizenship and Immigration Service.
 - Phone: (302) 577-8390
 - de.gov/immigration
- The National Immigration Law Center offers Know Your Rights guidance for those arrested or detained by immigration authorities and under the U.S. Constitution generally.
 - <https://www.nilc.org/resources/know-your-rights-what-to-do-if-arrested-detained-immigration/>
 - <https://www.nilc.org/resources/everyone-has-certain-basic-rights/>
- The Community Legal Aid Society of Delaware offers legal services to qualifying vulnerable Delawareans.
 - Wilmington Phone: (302) 575-0660 Email: clasincc@declasi.org
 - Dover Phone: (302) 674-8500
 - Georgetown Phone: (302) 856-0038
 - <https://www.declasi.org>
- La Esperanza Community Center (Southern Delaware), La Red Health Center (Southern Delaware), and the Latin American Community Center (Wilmington) are all local nonprofit resources supporting Delaware's Latino and immigrant communities.
 - La Esperanza: (302) 854-9262 Email: info@laesperanza.org
 - La Red: (302) 855-1233 <https://www.laredhealthcenter.org/>
 - LACC: (302) 655-7338 <https://www.thelatincenter.org/>
- HIAS offers legal services to refugees and those seeking asylum in the U.S.
 - Phone: (800) HIAS-714 Email: info@hias.org
- For a complete list of BIA (Board of Immigration Appeals) Non-Profit Recognized Organizations and Accredited Representatives in your area, visit:
<https://www.justice.gov/eoir/recognized-organizations-and-accredited-representatives-roster-state-and-city>
- The Delaware Domestic Violence Coordinating Council offers guidance for immigrant victims of domestic violence, regardless of their legal status.
 - <https://dvcc.delaware.gov/committees/immigration-committee/>