

# KNOW YOUR RIGHTS

## Transporting and Harboring

As we watch the inhumane war on immigrants unfold across the country, many people want to provide as much assistance as they can to people who are living in fear daily, afraid for their safety. But what exactly does transporting and harboring an undocumented person mean?

The federal appeals court with jurisdiction over Wisconsin has said that harboring “has a connotation of deliberately safeguarding members of a specified group from the authorities, whether through concealment, movement to a safe location, or physical protection.”

Interactions with undocumented people are only illegal under the harboring and transporting laws if your interactions with that undocumented person are done with the intent to conceal or hide their identity or immigration status, or in the case of transporting, knowing that your transport will help them to enter or remain in the country unlawfully. Here’s everything you should know.

### IT IS NOT ILLEGAL TO

- Engage in regular social and business transactions with people who are undocumented.
- Know a person’s immigration status and maintain regular interactions with them.
- Live with or offer housing to an undocumented immigrant, without more.

### WHAT DOES THE LAW SAY?

Federal law makes it illegal, in some cases, to transport or harbor undocumented immigrants. Specifically, the law establishes criminal penalties for any person who:

- **[K]nowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law.**

There are also criminal penalties for anyone who:

- **[K]nowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation.**

### WHAT THAT MEANS

#### **To unlawfully transport an undocumented immigrant, you must:**

- know that the person is undocumented or recklessly disregard information that should have alerted you to the person’s undocumented status, **and**
- transport or try to transport the person, **and**
- do so knowing that your transportation of them is helping them enter or remain in the United States illegally (“in furtherance of such violation of law”).

#### **To unlawfully conceal, harbor, or shield an undocumented immigrant from detection, you must:**

- know that the person is undocumented or recklessly disregard information that should have alerted you to the person’s undocumented status, and conceal, harbor, or shield them from detection, or try to do any of these things.

#### **Other relevant factors in deciding whether someone knew that they were helping the undocumented immigrant to enter or stay in the United States illegally could include:**

- Getting money to transport someone, and whether the person got money for their transportation activity,
- Taking precautions to conceal the undocumented immigrant
- Whether the undocumented immigrant was the person’s friend or co-worker, or “merely” human cargo.

## FREQUENTLY ASKED QUESTIONS

### **Q: My roommate is an undocumented immigrant. Am I guilty of harboring?**

**A:** Simply living with an undocumented immigrant is not illegal, even if you know of the immigrant's undocumented status. But concealing the person's presence from the authorities is illegal.

### **Q: I provide housing to an undocumented immigrant. Am I guilty of harboring?**

**A:** Giving an undocumented immigrant a place to stay is not "harboring." For example, you can rent to someone whom you know is undocumented, which is not, in itself, a crime. However, concealing the person's presence from the authorities is illegal. For instance, to be prosecuted for harboring, the government could prove that you intended to "safeguard" the immigrant from authorities if you moved the individual to a hidden location or provided them physical protection.

#### ***Cases where courts held that a defendant did not commit illegal harboring:***

- Renting apartments to individuals they knew were undocumented
- Allowing a partner to live with you if they have unlawfully entered the country.

#### ***Cases where courts held that a defendant committed illegal harboring:***

- Employing an undocumented immigrant as a live-in worker and not filing any IRS forms to document the worker's payments.
- Bringing a child into the U.S. for an authorized 45-day stay, then allowing the child to remain with them for longer
- Employing undocumented people and not requiring them to fill out tax documents or employment forms, leasing apartments for them, paying them in cash, telling them they could buy fake immigration papers, and omitting them from state employment forms.

### **Q: I am driving an undocumented immigrant somewhere. Am I guilty of unlawful transporting?**

**A:** To be illegal, your transport must, in some way, aid their ability to enter or remain in the country unlawfully. Receiving compensation outside of your regular, routine business functions for transporting someone or taking precautionary efforts to conceal them in transport may make it more likely that you have crossed from lawful to unlawful activity. Another thing to consider is your relationship to the person you are transporting. Transporting someone you do not know may be riskier than transporting friends or co-workers, for instance.

#### ***Cases where courts have held that a defendant did not commit unlawful transporting include:***

- a foreman for a reforestation company, driving his co-workers from one job site to another as part of the ordinary and required course of his employment;
- a person driving undocumented immigrants to an Immigration and Naturalization Service Office to apply for political asylum
- a cab or rideshare driver who, in a routine commercial transaction, transports someone they know to be undocumented.

#### ***Cases where courts have held that a defendant did commit unlawful transporting include:***

- an employer transporting undocumented employees to and from work (the Court said this could indicate that the employer was attempting to limit the opportunity for community members to speak to the workers and discover their immigration status);
- a defendant driving a tractor-trailer with 16 people hidden behind a curtain in the truck;
- a defendant driving undocumented immigrants, all lying down in the back of the van, to a city to attempt to find work there.

**It's essential to know your rights! For more ACLU of Wisconsin Know Your Rights materials, go to [www.aclu-wi.org/know-your-rights](http://www.aclu-wi.org/know-your-rights).**