



SANCTUARY CONGREGATIONS AND HARBORING FAQ

NOTE: THIS IS NOT LEGAL ADVICE AND DOES NOT SUBSTITUTE FOR CONSULTATION WITH AN ATTORNEY.

What does it mean for a faith group to provide “sanctuary” to immigrants?

Traditionally, “sanctuary” is a term that has been used to describe the protection of individuals in a place of worship. With respect to immigrants, different faith groups may use this term in different ways, but sanctuary is generally considered to involve providing comfort and assistance to immigrants and their family members at risk of apprehension by federal immigration authorities or mistreatment by others. Exactly what type of assistance a faith group or its members may choose to provide to immigrants is for each congregation or member to decide.

In recent years, many sanctuary congregations have focused on assisting immigrants who are facing deportation who are in the process of pursuing alternative legal avenues for which they may be eligible, to stop or suspend their removal. In these cases, sanctuary is provided while the immigrant, supported by the congregation and broad community, fights for relief through avenues such as asylum or other humanitarian relief, cancellation of removal, a U or T visa application, or a request for the exercise of prosecutorial discretion.

What criminal laws should sanctuary congregations be aware of?

The federal criminal harboring law 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.

The 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.

Federal courts across the country have approached convicting a person of harboring in different ways, and have applied different standards. Whether or not a certain action places you at risk for a criminal conviction depends somewhat on where you are in the country.

Any faith group, faith leader, or congregation member who is considering engaging in “sanctuary” activities should consult a lawyer.

What are some examples of activities that my faith group can participate in to support immigrants' rights that steer clear of potential criminal liability?

- Adopting a policy of nondiscrimination at your place of worship and of welcoming and helping persons in need, regardless of immigration or citizenship status, race, ethnicity, gender identity, or sexual orientation, etc.; making a public statement regarding such a policy.
- Adopting a policy that respects privacy by not asking members of the congregation, or members of the public who interact with the congregation, about their immigration status, and adhering to a policy of not recording any information about any individual's immigration status.
- Providing shelter, food, or other services to a broad set of people, including citizens and noncitizens, regardless of immigration status.
- Speaking out on behalf of immigrants' rights, and expressing support for keeping families together and reforming the immigration laws to make it possible for undocumented immigrants to adjust to a lawful status. Supporting or working with local and state governmental authorities to adopt legislation and regulations that protect immigrants and refugees.
- Referring undocumented immigrants (or all persons your congregation is serving) to legal assistance resources, including pro bono immigration legal help. Holding legal information (or "know your rights") sessions, hosting legal clinics, and making referrals for social services.
- Exercising the right to refuse to consent to law enforcement officers coming into or searching non-public areas of the church, and demanding to see a lawful warrant signed by a federal judge.
- Creating a rapid response team to document what happened in a raid, gathering information to support legal or public education efforts.
- Accompanying a person to an ICE check-in or immigration court.

Public Declarations of "Sanctuary"

If a faith group publicly declares its place of worship as a "sanctuary" for immigrants, can that provide any additional legal protection to the congregation or to immigrants?

No. The concept of "sanctuary" in a place of worship is not recognized by federal law and it provides no protection from prosecution for members of the congregation.

As explained further below, in most jurisdictions, publicly declaring that an identified particular undocumented individual is living at the congregation, or directly informing federal immigration authorities of a particular individual's presence, may offer protection to church leaders or members from criminal prosecution for harboring, since in that situation – absent other factors – it would be difficult to prove this conduct tended to or was intended to shield the individual from immigration authorities.

However, it may place the individual immigrant at greater risk of arrest, especially if efforts to secure relief from deportation ultimately fail. The fact that an undocumented immigrant is seeking sanctuary at a place of worship does not provide legal protection to that individual. Congregations should make that clear to any immigrants seeking shelter with them.

Are there any risks that could result if a faith group makes a public declaration as a “sanctuary” for immigrants?

It depends. A declaration itself probably would not justify a prosecution, but it may put the congregation on the government's radar. Importantly, most courts have found the federal harboring and transporting statutes have an “intent” requirement, which means that to convict someone, the prosecutor must prove that the person or organization providing shelter to or transporting an undocumented immigrant *intended* to help the immigrant to remain unlawfully in the United States.

If members of the congregation then take additional steps, such as engaging in activities that constitute harboring or transporting (as explained elsewhere in this FAQ), the public sanctuary declaration could potentially be argued by the government to prove that members of the congregation intended to help an immigrant unlawfully remain in the country and avoid detection.

My congregation has decided to publicly declare itself a “Sanctuary Congregation” – what actions are more risky for us now?

- Highest Risk: Providing housing exclusively to undocumented immigrants and actively concealing their whereabouts from the government. Transporting undocumented immigrants in an attempt to hide them from federal authorities.
- Minimal Risk: Providing housing to individuals without regard to their immigration status, or only to immigrants whose deportation proceedings are still underway, or who have submitted an application to immigration authorities, and who are in compliance with all requirements in their proceedings and therefore not in the United States “unlawfully” under the statute. Providing rides for ordinary errands to individuals with a personal connection to the congregation (e.g., congregation members, friends, family) without regard to their immigration status.

Harboring

What is criminal harboring?

Under the federal immigration laws, harboring is sheltering an undocumented immigrant and assisting him or her to remain unlawfully in the United States. Importantly, in order to be found guilty of harboring, it must be proven that the defendant harbored the immigrant with knowledge or reckless disregard of the immigrant's unlawful status.

Our congregation is providing food and shelter to an undocumented immigrant – can we be found guilty of harboring?

Not without something more. For example, a congregation that operates a shelter is under no obligation to ascertain or monitor the immigration status of those whom it serves. To constitute harboring, knowledge or reckless disregard of an individual's unlawful presence would be required. Caselaw also requires evidence of substantial facilitation or intent to violate the immigration laws. In most jurisdictions, such evidence could include activities such as concealing the undocumented immigrant from the authorities or providing advice on how to evade immigration authorities. Evidence suggesting that food and shelter is being provided to the individual *because of*, rather than without regard to, his or her immigration status could be argued by a prosecutor as evidence that members of a congregation intended to help an immigrant remain unlawfully in the United States, or that their conduct substantially facilitated his or her unlawful presence. As previously explained, a prosecutor might attempt to use a public sanctuary declaration as such evidence.

Does the harboring law and risk of prosecution vary across the country?

Yes. Federal courts across the country, which are divided into various judicial “circuits,” have looked at the harboring law and arrived at different interpretations of the law. In addition, the closer a congregation is located to the international borders, including ports, the greater the risk of liability for transporting undocumented immigrants, for any purpose. (Transporting is discussed further below.) As a result, the risk that particular activities would be found to violate the law may depend on where in the country the activities take place. Because these differences can be subtle, yet important, it is urged that faith groups considering sanctuary activities seek advice from legal counsel.

Is it unlawful for members of my congregation to live with an undocumented immigrant, rent to an undocumented immigrant, or allow an undocumented immigrant to visit their houses as an overnight guest?

In most circuits, providing housing to (or rooming with) a friend or loved one who happens to be undocumented is not considered unlawful under the federal harboring law. Similarly, renting a room or apartment to a tenant who happens to be undocumented is unlikely to be considered unlawful.

Does it still constitute harboring if my congregation provides sanctuary to an undocumented immigrant whose location is known by immigration authorities?

No, in most jurisdictions. In most jurisdictions, in order to secure a conviction under the federal immigration laws, the prosecution must prove that an action taken in aid of an undocumented immigrant has been done with the intent to evade detection by the authorities. If the government knows of that person's location, it would be difficult to say that they are shielding the person from the authorities or that they are intending to violate the law.

Some congregations have adopted the approach of informing federal immigration authorities about specific undocumented immigrants offered sanctuary at their place of worship. While this approach may mitigate potential criminal liability for members of the congregation, it may create a greater risk of arrest for the individual immigrant. The individual immigrant and his or her attorney should be part of the decision-making process regarding communication with ICE.

What if the undocumented immigrant being offered sanctuary is currently going through and complying with immigration proceedings?

The congregation is not in violation of harboring laws if the person's present location is known to immigration authorities and he or she is fully complying with his or her hearing dates and any check-in requirements.

Transporting

What is criminal transporting?

Under the federal immigration laws, a person could be liable for transporting if he or she moves an undocumented immigrant from one place to another, knowing that the immigrant is present in the country unlawfully (or in reckless disregard of that fact), and where the activity helps the immigrant remain unlawfully in the United States.

Can I take an undocumented immigrant to the doctor? Grocery shopping? To a faith-based function?

Generally, giving a ride to a friend or congregation member who happens to be an undocumented immigrant to regular everyday activities, to help him or her run errands, attend a doctor's appointment, to see an immigration attorney, or attend church, is unlikely to lead to criminal liability. Transporting an undocumented immigrant to a location or activity where the purpose of moving the person is not to further his or her remaining in the United States, is generally not a violation of the federal immigration laws.

On the other hand, the act of transporting someone while attempting to conceal his or her presence would likely to be found to be a violation of the law. For example, in one case,

an individual was convicted for transporting an undocumented immigrant behind a fake wall in a van for purposes of hiding the individual.

Immigration Enforcement Actions

Does the ICE “Sensitive Locations” memo protect my place of worship from being the subject of an ICE raid?

The “Sensitive Locations” memo provides guidance to immigration officers, but it has no binding legal authority and provides no absolute protection. On October 24, 2011, the U.S. Department of Homeland Security circulated an internal memorandum which reaffirmed decades-long policies treating houses of worship as “sensitive locations.” The memo, which in 2013 was extended to Customs and Border Protection (CBP) in addition to ICE, directs federal immigration enforcement officers to seek prior approval before executing a planned enforcement action in such locations. The current administration has thus far not rescinded this policy. It is possible that, in the future, the administration could rescind or change the policy.

Can an ICE agent or law enforcement officer enter my house of worship without a warrant? What about private spaces?

ICE agents and others may enter the public spaces of a church or other place of worship without a warrant, but not private areas. If an ICE agent or other law enforcement officer wants to enter those private spaces, they must present a hard copy of a warrant *signed by a federal judge*. If ICE agents or others ask to enter the private space, the occupant or owner may demand to see the warrant. Ask that it is slipped under the door or shown through a window. Only after confirming it is signed by a federal judge should you allow them to enter. If the officer does not have such a warrant (including if he or she only has an ICE warrant), you may instruct the officer to leave.

Here is an example of a warrant signed by a federal judge:

UNITED STATES DISTRICT COURT

for the
Eastern District of California

In the Matter of the Search of)
(Briefly describe the property to be searched)
or identify the person by name and address)) Case No.
540 Oak Avenue)
Davis, California 95616)

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer 2:11-SW-0161 EFB

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 EASTERN District of CALIFORNIA
(Identify the person or describe the property to be searched and give its location):
SEE ATTACHMENT A, ATTACHED HERETO AND INCORPORATED BY REFERENCE

The person or property to be searched, described above, is believed to conceal (Identify the person or describe the property to be seized):
SEE ATTACHEMNT B, ATTACHED HERETO AND INCORPORATED BY REFERENCE

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property.

YOU ARE COMMANDED to execute this warrant on or before 5-9-2011
(not to exceed 14 days)

in the daytime 6:00 a.m. to 10 p.m. at any time in the day or night as I find reasonable 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

(name)

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: 4-25-2011
9:10:00 AM


Judge's signature

City and state: SACRAMENTO, CALIFORNIA

EDMUND F. BRENNAN, U.S. MAGISTRATE JUDGE
Printed name and title

Note the hallmarks of such a warrant: The United States District Court for the district in which the location exists is prominently displayed and the title of the federal judge, here a U.S. Magistrate Judge, is also detailed.

An ICE warrant allows ICE officers to arrest an individual who is unlawfully residing in the United States. An ICE warrant does not, however, allow officials to enter a *private space*. To arrest an undocumented immigrant inside a private space, the officials must also have a judicial warrant, as private spaces are covered by the Fourth Amendment protections. The courts have not clearly defined what is and is not considered a private space within a place of worship, but the general rule is that a space would be considered private if there is a “reasonable expectation of privacy.”

Am I required to talk to a police officer or ICE agent if they enter the congregation and ask questions?

No. You are not required to answer any questions and you should seek advice from a lawyer before answering any questions from law enforcement authorities. You are not required to tell them anything about anyone's immigration status. You should, however, be careful not to provide false information to the authorities regarding an undocumented immigrant, as it could potentially put you at risk.

Defenses

Are there defenses against harboring prosecution?

There are limited defenses, including housing a person who has been a member of the denomination for at least a year and who is serving as an *unpaid* minister or missionary. In the past, some individuals have also attempted to rely on their religious beliefs as a defense against harboring prosecution. Some courts have rejected such attempts in the past, but it may still be available as a defense in some circumstances. You should consult with a lawyer if you are considering engaging in sanctuary activities, and your lawyer can help you determine whether any defenses could be available to you.

Penalties

What are the potential penalties under the law for criminally harboring or transporting an undocumented immigrant?

It is a felony to harbor or transport, or to attempt to harbor or transport, undocumented immigrants. Upon conviction, the penalties include fines and potential imprisonment of five years for simple harboring or transporting, ten years if the harboring was done for the purpose of private financial gain, and up to twenty years if serious bodily injury occurs or a life is placed in jeopardy during or in relation to the offense. Similarly, anyone who conspires with someone who is guilty of harboring or transporting undocumented immigrants may, if convicted of conspiracy, be subject to the same penalties.

Can my congregation have its property or assets seized for harboring or transporting?

Yes, vehicles used to transport and, although less likely, real property used to harbor undocumented immigrants may be seized and subject to forfeiture, depending on the circumstances. While this penalty does exist, it is very uncommon—generally only used when the harboring or transporting has been done in connection with exploitation of the undocumented immigrant for personal financial gain.