



Sanctuary Movements & Sanctuary Congregations Today

Legal Considerations

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What is Sanctuary?

- In its most simple terms, sanctuary refers to a place of refuge and protection.
- The word is also used to define a holy and consecrated place.
- While it is tempting to believe such places have immunity from the law, this is a misconception.
- When we talk about sanctuary in the current political climate, we are typically referring to places of worship that have taken some form of action to provide support to undocumented immigrants.
- When we talk about sanctuary, we are not talking about places that shield such individuals from the law.



Brief History of Sanctuary

- Long tradition rooted in Judeo-Christian norms
- Type of “early asylum” in Medieval England
 - Once inside church, fugitives had 40 days to surrender and face trial or confess guilt and go into permanent exile
 - Benefit was to delay a legal decision, to negotiate other options
- Outlawed in 1623
- But use of sanctuary to provide protection to those most vulnerable continues to this day
- Sanctuary practice of early church brought to light the notion of sanctuary as a sacred and moral duty



Examples of Sanctuary

- Convents that housed battered women in Middle Ages
- Underground railroad that helped slaves escape to freedom
- Families that hid European Jews from Nazi terror of 20th Century



Sanctuary Movement of 1980's

- Presbyterian minister (John Fife) wanted to help central American refugees apply for asylum
- Started nonprofit, but of 13,000 applications filed, <2% approved
- Fife started secret smuggling operation (“Sanctuary Movement”)
- Over 500 member churches declared themselves sanctuary congregations and provided food, shelter, legal advice
- Movement won international human rights award in 1984
- Fife and others convicted violated federal laws against smuggling, transporting, and harboring undocumented people



New Sanctuary Movement of 2000's

- Increased immigration enforcement led to new movement
- Focus was on passing policy and legislation to stop or slow down deportations; emphasis on immigration reform
- Influenced Obama administration to use prosecutorial discretion when deporting, and to issue benefits (such as DACA) through executive orders



Sanctuary Movement Today

- Congregations across America are discerning their role in response to Trump Administration's priorities
- Since November 2016, more than 30 congregations throughout Minnesota have declared themselves sanctuary to immigrants seeking refuge
- Two general types (ISAIAH):
 - Congregations that offer shelter
 - Congregations that support those that offer shelter



Sensitive Locations Policy

- October 24, 2011, DHS issued Sensitive Locations Policy: Immigration enforcement (arrests, searches, interviews) should be avoided at:
 - Places of worship
 - Schools (including colleges and universities)
 - Hospitals
 - Sites of public religious ceremonies
 - Sites during occurrence of public demonstration
- Does not apply if ICE has written prior approval or if there are exigent circumstances
- Still adhered to, though can be rescinded at any time

Bringing in and Harboring Certain Aliens - U.S. Code § 1324

- Federal law imposes criminal liability for:
 - Alien smuggling – knowing person is an alien and attempts to bring into the United States
 - Encouraging/Inducing – encouraging or inducing alien to come to the United States knowing entry or residence will violate the law.
 - Conspiracy/Aiding – engaging in a conspiracy to aid or abet commission of entry/residence in violation of the law.
 - Harboring – knowingly conceals, harbors, or shields from protection
 - Domestic Transporting – knowingly transports, moves, or attempts to do so



Anti-Harboring Provisions of § 1324

Imposes criminal liability on any person who “knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of the 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.”



Anti-Harboring Provisions of § 1324

- To establish a violation of the anti-harboring provision, normally the government must establish the defendant's conduct facilitated a person's remaining in the United States illegally, and that the defendant prevented government authorities from detecting that person's presence.*

* *See* U.S. v. McClellan, 794 F.3d 743 (7th Cir. 2015 [when the basis for the harboring conviction is housing, there must be evidence that the defendant intended to safeguard the person from authorities]; U.S. v. Vargas-Cordon, 733 F.3d 366 (2nd Cir. 2013) [‘harboring’ means more than ‘sheltering’] *but see* U.S. v. Acosta de Evans, 531 F.2d 428 (9th Cir. 1976) [“harbor’ means to afford shelter to”]. But more recent case law out of the 9th Circuit suggests ruling of *Acosta* may no longer be in effect. U.S. v. You, 382 F.3d 958 (9th Cir. 2004) [holding that knowledge and criminal intent are both required].



Anti-Harboring Provisions of § 1324

- Many sanctuary congregations believe that if they openly provide shelter they are not violating the anti-harboring provisions of § 1324
- Case law in some parts of the country require government to prove an act or an intention of *concealment* in order to impose liability (which is partly why some congregations go so far as to notify federal authorities they are providing shelter to an individual).
- In Minnesota, neither the 8th Circuit or the US Supreme Court has answered the question of whether or not merely providing shelter is sufficient to violate the anti-harboring provisions.*

*The absence of an intent to conceal was rejected as a defense against a harboring charge in a case involving housing plus providing employment and access to banking and medical services. U.S. v. Rushing, 313 F.3d 428, 434 (8th Cir. 2011), citing U.S v. Evans, 531 F.2d 428 (9th Cir. 1976).



Anti-Transporting Provisions of § 1324

Imposes criminal liability on any person who “knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of the 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 the law.”



Anti-Transporting Provisions of § 1324

- Elements required to impose liability (8th Circuit):
 - Defendant transported or moved alien within United States;
 - Alien was in the United States in violation of the law;
 - Defendant knew or acted in reckless disregard of this fact; and
 - Defendant acted willfully *in furtherance of* the alien's illegal presence.*

* U.S. v. Hernandez, 913 F.2d 568 (8th Cir. 1990).



Sanctuary Takeaways

- Sensitive Locations policy limits enforcement activities in congregations to situation where ICE officer has written prior approval or if there exist exigent circumstances (including national security or terrorism matter)
- Federal law imposes criminal liability for smuggling another person into the United States; harboring another person in the United States; transporting another person in the United States in furtherance of that person's illegal presence; encouraging or inducing another person to come to the United States illegally; or engaging in a conspiracy, or aiding or abetting, another person to come to the United States illegally.



Sanctuary Takeaways (continued)

- In this jurisdiction, providing housing alone is not known to be illegal, but neither is it known to be legal.
- Housing + employment + access to banking and medical services was found to be illegal harboring in this jurisdiction, but there has been no decision if any alone is sufficient on its own to constitute unlawful harboring.
- Absence of an intent to conceal was rejected as a defense against unlawful harboring in this jurisdiction.
- In other (persuasive) jurisdictions, housing alone without criminal intent is not illegal harboring.
- Providing housing with intent to conceal is illegal harboring in every jurisdiction that has addressed it.



Sanctuary Takeaways (continued)

- Liability for transporting an individual under § 1324 requires the government to show the defendant acted willfully *in furtherance of* the alien's illegal presence.
- While it is crucial that a congregation not conceal an undocumented immigrant guest from enforcement, there is not necessarily any legal advantage to publicity.
- Some publicity can be a deterrent to enforcement, especially if it is focused on the congregation and not on the individual being housed, but the wrong kind of publicity can provoke enforcement.
- Sanctuary supporting congregations are not necessarily immune from illegal harboring.

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