

**Meeting the Legal Needs of Faith-Based Congregations**

*Presentation by the faith-based working group of the Minnesota/Dakotas chapter of the American Immigration Lawyers Association*

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**What is Sanctuary?**

- In its simplest 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.

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**Sanctuary Movement of 1980's**

- John Fife, a Presbyterian minister, wanted to help central American refugees apply for asylum
- Started nonprofit, but of 13,000 applications filed, <2% approved
- Fife started secret "Sanctuary Movement" and soon 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 were convicted for violating federal laws against smuggling, transporting, and harboring undocumented people

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**New Sanctuary Movement of 2000's**

- Increased immigration enforcement led to a New Sanctuary Movement
- Focus was on passing *policy and legislation* to stop or slow down deportations; emphasis on immigration reform

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**Sanctuary Movement Today**

- Congregations across America are discerning their role in response to Trump Administration's priorities
- It is believed that more than 60 congregations throughout Minnesota have declared themselves sanctuary or sanctuary supporting congregations to immigrants seeking refuge
- Two general types:
  - Congregations that offer shelter and direct services
  - Congregations that support those that offer shelter and direct services

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**Sensitive Locations Policy**

- October 24, 2011, DHS issued Sensitive Locations Policy: Immigration enforcement should be avoided at sensitive locations, including:
  - Schools (including colleges and universities)
  - Hospitals
  - Sites during occurrence of public demonstration
  - Places of worship
  - Sites of public religious ceremonies
- Does not apply if ICE has written prior approval or urgent circumstances
- **This was rescinded in January 2025, which brings us to where we are today.**

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### Challenges to the Rescission of the Sensitive Locations Policy

- *Philadelphia Yearly Meeting of the Religious Society of Friends v. DHS (Maryland)*
  - Plaintiff religious groups say enforcement at places of worship violates the First Amendment.
  - Court issued a preliminary injunction prohibiting DHS from conducting immigration enforcement at the plaintiffs' places of worship. Only applies to the plaintiffs.
- *Mennonite Church USA et al. v. DHS (Washington D.C.)*
  - The group of plaintiff religious groups have asked for a preliminary injunction against DHS immigration enforcement under the new 2025 policy, which the court will rule on in April.
- *Denver Public Schools v. Noem (Colorado)*
  - On 3/7/2025, the court declined to issue a preliminary injunction as requested by plaintiff.

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### Criminal Liability Under INA § 1324

- Subjects to criminal punishment anyone who:
  - 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**

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### Anti-Harboring Provisions of § 1324

- Federal law imposes criminal liability for:
  - “**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 by any means of transportation.”

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### Anti-Harboring Provisions of § 1324

- To establish a violation of the anti-harboring provision, normally the government must establish the defendant's conduct **substantially 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 Elias, 531 F.3d 428 (9th Cir. 1975) [“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].

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### “Harboring” in the Courts

Conduct that:

- substantially facilitates an immigrant's remaining in the U.S. illegally and that prevents authorities from detecting the individual's unlawful presence. (2d Cir.)
- is affirmative, such as providing shelter, transportation, direction about how to obtain false documentation, or warnings about impending investigations, and facilitates a person's continuing illegal presence in the United States. (3rd Cir.)



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### “Harboring” in the Courts

Conduct that:

- tends to substantially facilitate an immigrant's remaining in the U.S. illegally. (5th Cir.)
- clandestinely shelters, succors, and protects improperly admitted immigrants. (6th Cir.)
- provides or offers a known undocumented individual a secure haven, a refuge, a place to stay in which authorities are unlikely to be seeking him. (7th Cir.)
- affords shelter to undocumented aliens with criminal intent. (9th Cir.)



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**“Harboring” in the Courts**

In the 8th Circuit, no court has yet decided that providing housing alone is unlawful harboring.

Geographic Boundaries  
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**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.**”

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**Anti-Transporting Provisions of § 1324**

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

\* U.S. v. Hernandez, 913 F.2d 568 (8<sup>th</sup> Cir. 1990).

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### However...

- It is not a violation of the anti-harboring or anti-transporting provisions of the statute for a religious denomination having a bona fide nonprofit to:
  - encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States
  - as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other living expenses,
  - provided the minister or missionary has been a member of the denomination for at least one year.

(thank you, LDS brethren)

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### What is an ICE Raid?

- Term used to refer to ICE agents who go to a location **without notice** as part of an investigation.
- ICE raids often target *individuals* suspected of being in the United States without authorization.
- While local police officers or agents from other law enforcement agencies may accompany ICE agents on ICE raids, St. Paul and Minneapolis both have separation ordinances that prevent their police officers from enforcing immigration laws.

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### Fourth Amendment of the U.S. Constitution

*"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."*

- Protects from unreasonable searches and seizures by the government.
- Sets requirements for issuing warrants by requiring that warrants (1) be based on probable cause and (2) provide sufficient detail of place to be searched and things to be seized.

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Public v. Non-Public Areas

It is crucial to understand difference between Public Areas and Non-Public/Private Areas

Public Areas	Non-Public/Private Areas
Public areas include those areas where there is <u>not</u> an expectation of privacy.	Non-public/private areas include those areas where there <u>is</u> an expectation of privacy.
Agents may enter public areas of a congregation without a warrant or consent.	Non-public/private areas are those in which access is restricted. These include spaces that may be unlocked during normal hours that require permission to enter, including offices, restricted waiting areas, meeting rooms, auditorium space, respite areas.
Agents may also question any person present in public areas and seize information they find in public areas.	To enter a <u>non-public/private</u> area, agents must have either the consent of the facility or a <u>judicial warrant</u> (see below).
Public areas may include dining areas, lobbies, waiting areas, worship spaces, parking lots and outside grounds, (except areas that are locked and not open to the public).	

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Public Areas v. Non-Public Areas

- Public Areas
  - Federal agents may enter public areas and may access documents in public areas without a warrant or without consent. One cannot prevent access to public areas.
    - Agents are permitted to listen to conversations in public areas, search items in public areas, seize information they find in public areas, and even question individuals present in public areas (though individuals should be aware that they have the right to remain silent and do not have to answer).
- Non-public Areas
  - Agents must have either the facility's consent or a judicial warrant to enter a non-public area.
  - Non-public areas should be clearly marked with signage.

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Consent

- Agents may search non-public areas if they have consent.
- Consent waives the warrant requirement, and the probable cause requirement associated with a judicial warrant.
- Requirements for consent:
  - Consent must be voluntarily given
  - Consent must be given by an individual with authority over the site to be searched
- Consider saying "I cannot consent" or "I do not consent."

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**Judicial Warrants**

- A *judicial warrant* is an official court document that contains the designation of a specific federal or state court and is signed by a judge of that court.
- To obtain a judicial warrant, the agency must show a court that it has probable cause to search the location. Judicial warrants must be signed by a judge and say the name of the court (e.g., "U.S. District Court" or a State Court) at the top of the document.

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**Actions to take with Judicial Warrants**

- Ask agent for official identification (name, badge number, department affiliation). ICE agents will carry these.
- Review the warrant to ensure that (1) it is a valid judicial warrant, and (2) it is signed by a judge or magistrate.
- If the agent has a valid judicial warrant, employees must allow agents to enter non-public/private areas IF:
  - Warrant provides sufficient detail of place to be searched;
  - Warrant includes time and scope of search; AND
  - Search is within the place, time and scope listed on warrant.
- Employees should limit access only to those areas listed in warrant.

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**Sanctuary Takeaways**

- Sensitive Locations policy that limits enforcement activities in congregations has been rescinded.
- 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, aiding or abetting, another person to come to the United States illegally.
- In the 8<sup>th</sup> Circuit, providing housing alone is not known to be illegal, but neither is it known to be legal.

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**Sanctuary Takeaways (continued)**

- 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.
- 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.

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**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.
- Agents may enter public areas without a warrant and without consent.
- Agents must have consent or a judicial warrant to enter non-public areas.

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