

TO: Conference Ministers

FROM: Office of General Counsel

DATE: January 4, 2016

RE: The Sanctuary Movement and Legal Risks

MEMORANDUM

I. Introduction

The Office of General Counsel has received numerous inquiries related to legal risks associated with the sanctuary movement in churches. The sanctuary movement among faith communities advocates resisting the deportation of and discrimination against undocumented immigrants. The sanctuary movement may, in part, call upon faith communities (churches, Conferences, religious organizations, etc.) to house and/or provide other services such as transportation to undocumented immigrants in an effort to prevent their arrest and/or deportation.

Certain legal risks are involved in housing and assisting undocumented immigrants. These risks are highest for the undocumented immigrant, but also extend to the faith

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communities and the individuals involved in providing housing and other services. This memorandum outlines the most prevalent risks but does not give comprehensive legal advice on legal risks associated with providing housing and other services in connection with the sanctuary movement.

II. Risk to the Undocumented Immigrant

A. Sanctuary Provides No Legal Protection

Undocumented immigrants are one of the most vulnerable segments of our population. It is critical that undocumented immigrants seeking sanctuary from a faith community be well-informed about the legal limits of sanctuary: **A faith community can provide no legal protection to an undocumented immigrant from an immigration or other law enforcement action. No law prohibits immigration enforcement actions, or any other law enforcement actions, in a church.**

The concept of sanctuary in a church is largely a medieval tradition with no modern counterpart in the United States.¹ This is fundamental, as the life and well-being of the undocumented immigrant and their family is at risk if they decide to seek shelter from an enforcement action in a church under the false impression that they have some legal protection by doing so. The primary concern of our faith communities involved in the sanctuary movement should be ensuring that an undocumented immigrant knows that no legal protection is conferred by the sanctuary concept.

B. Immigration and Customs Enforcement Sensitive Locations Policy

Many sanctuary movement advocates point to a policy adopted by the Department of Homeland Security's Office of Immigration and Customs Enforcement (ICE) as support for the position that ICE is unlikely to enforce immigration laws in a church. This policy, adopted by

¹ See Opinion of the Office of Legal Counsel, 7 Op. O.L.C. 168 (1983).

ICE in 2011 under the Obama Administration, is known as the “sensitive locations policy.”² It is directed toward preventing injury to members of the public, and is not necessarily concerned with providing special deference or accommodation to churches. Under the policy, enforcement actions may not occur at a sensitive location unless exigent circumstances exist, prior approval is obtained, or circumstances exist that require an exception to the general rule. Sensitive locations include schools, hospitals, churches and buildings where worship services occur, public religious ceremonies such as weddings and funerals, and public demonstrations.

Churches should consider the following risks when relying upon the sensitive locations policy:

- **Enforcement at a church is not prohibited under the policy.** The general rule requires that prior approval from one of a number of officials be sought. Importantly, the general rule states that special consideration to enforcement requests at sensitive locations will be given “if the only known address of a target is at or near a sensitive location.”³ While it is difficult to anticipate how ICE will apply its policy under any particular set of circumstances, it is clear on the face of the policy that if an undocumented immigrant is known to be residing at a church, ICE will give special consideration to an enforcement action there; this is likely especially true if worship services would not be disrupted by the action, given that the point of the policy is to prevent injury to members of the public.
- **An exception to prior approval will be made for exigent circumstances, the presence of which is unilaterally determined by ICE.** Exigent circumstances include: national security or terrorism; imminent risk of death, violence, or physical harm to any person or property; the apprehension of a dangerous felon or suspect or any other dangerous individual; and imminent risk of destruction of evidence in an ongoing criminal case.

² Enforcement Actions at or Focused on Sensitive Locations, Policy No. 10029.2, U.S. Immigration and Customs Enforcement (Oct. 24, 2011).

³ *Id.* at 2.

- **The policy may be replaced, revoked, or interpreted differently than it has been interpreted previously, at any time, without notice.** Churches should anticipate changes with the incoming executive administration.
- **Deviation from the policy is not actionable.** If ICE does not follow its own policy regarding sensitive locations, neither undocumented immigrants, churches, nor individuals providing sanctuary services in connection with a church have any recourse for the deviation.

III. Risk to the Church and to Individuals Providing Sanctuary Services

A. Criminal Penalties

It is a felony for an organization or individual to conceal, harbor, shield from detection, or transport an undocumented immigrant.⁴ Likewise, it is a felony for any person or organization to bring an undocumented immigrant into the United States or to encourage an undocumented immigrant to remain in the United States.⁵ These crimes are punishable by fines and up to five years in prison, with longer prison terms if any person is injured or dies in connection to the crime.⁶

While a church as a corporation or business entity cannot serve a prison term, it can be subject to fines, and the officers and executive employees of the church may be subject to individual criminal prosecution resulting in fines and prison sentences. Individuals, such as congregation members, who are providing sanctuary services on behalf of a church may be prosecuted individually and receive fines and prison sentences.

Some promoters of the sanctuary movement believe that to be prosecuted under 8 U.S.C. § 1324, the harboring of an undocumented immigrant must be in secret. They reason that if they are open about offering sanctuary to an undocumented immigrant, such as through a press

⁴ 8 USC § 1324(a)(1)(ii) and (iii).

⁵ *Id.* at § 1324(a)(1)(iv).

⁶ A felony conviction also carries its own separate legal consequences, such as loss of voting rights, and may impact a person's ability to secure employment and housing.

release or a letter to ICE, the risk of prosecution under the statute becomes very low. This reasoning may be misplaced. In the Federal Court of Appeals for the Ninth Circuit,⁷ “harboring” has been construed as “affording shelter to” and not requiring concealment from law enforcement for prosecution.⁸ Other Courts of Appeals have interpreted the law as requiring concealment from law enforcement.⁹

Moreover, harboring is not the only activity that can result in prosecution under the statute. Note that any person who “encourages . . . an alien to . . . reside in the United States knowing . . . that such residence is or will be in violation of law” also commits an aggravated felony and is subject to the same penalties as a person who harbors an undocumented immigrant. 8 U.S.C. § 1324(a)(1)(iv). The prohibited conduct covers a potentially wide range of behavior, including providing food, shelter, legal services, and other services.

B. Civil Forfeiture

Individuals and churches should also be aware that 8 U.S.C. § 1324 provides for the forfeiture of vehicles or other modes of conveyance used in the course of violating the statute, meaning that a person’s car, van, or boat used to transport an undocumented immigrant can be confiscated by the government, even if the owner of the vehicle is not convicted of a crime. Forfeiture is a civil proceeding that requires the government to show probable cause that the person claiming the vehicle violated the law, and the burden of proof then shifts to the claimant to rebut the government’s case.

IV. Conclusion

This memorandum does not take a position on whether faith communities should provide sanctuary or sanctuary services to undocumented immigrants. Individuals and faith communities

⁷ Opinions issued by the Ninth Circuit Court of Appeals are controlling in Alaska, Arizona, California, Guam, Hawaii, Idaho, Northern Mariana Islands, Montana, Nevada, Oregon, and Washington until otherwise overruled by subsequent decisions of the Ninth Circuit or by the Supreme Court of the United States.

⁸ *United States v. Acosta de Evans*, 531 F.2d 428 (9th Cir. 1976). *See also United States v. Aguilar*, 883 F.2d 662 (9th Cir. 1989).

⁹ *United States v. Vargas-Cordon*, 733 F.3d 366, 382 (2d Cir. 2013).

who are engaging in the sanctuary movement should consult with qualified immigration and criminal defense attorneys to ensure a comprehensive understanding of the risks involved. The level of risk is difficult to assess and will vary with the particular circumstances of the participants and with the policies of Immigration and Customs Enforcement. Faith communities should consider these risks in determining how to best steward resources in fulfilling their calling to mission and ministry.