



PROVIDING SANCTUARY

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With the dramatic rise in aggressive immigration enforcement efforts under the Trump Administration, there is understandable concern among advocates about how to assist potentially removable non-citizens (for the purposes of this discussion, we will call them “vulnerable immigrants” or simply “immigrants”) without running afoul of the federal harboring law, Immigration and Nationality Act §274(a).

To establish a violation of the harboring law, the government would need to prove that: (1) the vulnerable immigrant entered or remained in the U.S. in violation of the law, (2) you concealed, harbored, transported, or sheltered the immigrant in the U.S., (3) you knew or recklessly disregarded the fact that the immigrant was not authorized to be present in the U.S., and (4) you took some action that tended to substantially facilitate the immigrant’s remaining in the U.S. in violation of the law. Although the law is broadly written, there are nonetheless actions that advocates can lawfully take to assist these vulnerable and frightened members of our community.

Providing shelter

Merely providing shelter to vulnerable immigrants is not enough to run afoul of the harboring law. It depends on whether or not the government knows that the immigrant is there.

a. The government knows

If the government knows that the immigrant is in your building and is seeking refuge there, and you are not hiding them from detection, that is not against the law. So for instance a public, high-profile case of an immigrant seeking refuge in your church would not be unlawful harboring.

b. The government does not know

On the other hand, if by providing shelter you are hiding the immigrant to help them avoid detection by the government, that would be a violation of the law.

Transporting

If you help a vulnerable immigrant move from one location to another, and if that helps the immigrant stay in the U.S. without permission and/or it helps them to avoid detection by the government, that would be a violation of the law.

Encouraging noncompliance

If you tell a vulnerable immigrant not to cooperate with the government, like not to show up for a check-in with Immigration and Customs Enforcement, that can be considered harboring. Merely advising the person about the consequences of noncompliance is not harboring.

No financial gain

For all types of sanctuary assistance, it is critically important that you not seek any commercial advantage or financial gain from helping the vulnerable immigrant.