Institute for
Constitutional Advocacy and Protection
GEORGETOWN LAW

"Sanctuary Cities" and the Federal Crime of "Harboring"

The Trump Administration has filed civil lawsuits against the states of Illinois and New York (along with some of their instrumentalities), alleging that certain policies of those states, at the state, county, or city level, violate the Constitution and federal laws.[1] These lawsuits, and recent statements made by administration officials and members of Congress,[2] have raised questions about whether states, counties, cities, or their officials might be subject to criminal prosecution for illegally harboring any "alien who has come to, entered, or remains in the United States in violation of law." 8 U.S.C. § 1324. This guidance document is intended to explain the limits of the federal crime of "harboring," and how it might apply to states, counties, cities, or their officials.

What is a "sanctuary city"?

The term "sanctuary city" is not one that is defined in law. This term, along with "welcoming city," is sometimes used loosely to apply to jurisdictions that have put in place policies that limit the cooperation of state and local authorities with federal immigration authorities so as to build the trust and community with immigrant populations that is necessary to ensure public safety and effective governance.[3] "Sanctuary city" policies can take a number of forms,[4] but the most common are policies that restrict local law enforcement from sharing information with federal immigration authorities (other than that which is required to be shared under federal law)[5] and that restrict local authorities from holding immigrants in state or local jails following a "detainer" request from Immigration and Customs Enforcement (ICE).[6] These policies have been sustained in various court cases.[7]

What is the federal prohibition against harboring?

Federal law subjects to criminal punishment 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 law, **conceals, harbors, or shields from**

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[1] *See United States v. Illinois,* Civil Action No. 25-01285 (N.D. Ill.), ECF 1, Compl. (Feb. 6, 2025); Derek Hawkins and David Nakamura, *Justice Department sues Chicago and Illinois over immigration enforcement*, Wash. Post (Feb. 6, 2025), https://www.washingtonpost.com/national-security/2025/02/06/justice-dept-chicago-illinois-lawsuit/; *United States v. State of New York*, Civil Action No. 25-00205 (N.D.N.Y.), ECF 1, Compl. (Feb. 12. 2025); Perry Stein, Jeremy Roebuck and Shayna Jacobs, *AG Bondi, Justice Dept. sue New York officials over immigration laws*, Wash. Post. (Feb. 12, 2025), https://www.washingtonpost.com/national-security/2025/02/12/pam-bondi-immigration-lawsuit-angel-mom/; *see also Wash. v. Adams County*, Civil Action No. 25-00099 (W.D. Wash.), ECF 5, Statement of Interest on Behalf of the United States of America (Apr. 18, 2025); *DOJ Sides with Adams County in Legal Clash over Immigration Enforcement Law*, Source ONE News (Apr. 22, 2025), https://www.yoursourceone.com/columbia_basin/doj-sides-with-adams-county-in-legal-clash-over-immigration-enforcement-law/article_7288ad3c-353d-44db-9434-95f0b821bab7.html.

[2] *See, e.g.,* Glenn Thrush, *Justice Dept. to investigate local officials who obstruct immigration enforcement*, New York Times (Jan. 22, 2025), https://www.nytimes.com/2025/01/22/us/politics/justice-department-immigration-enforcement.htmll; Patricia Mazzei*, Takeaways from a Contentious Hearing on Big-City Immigration Policies*, New York Times (March 5, 2025), https://www.nytimes.com/2025/03/05/us/sanctuary-cities-congress-mayors-immigration.html.

[3] *Cf.* Meg Anderson, *Police say ICE tactics eroding trust in local law enforcement*, NPR (Mar. 30, 2025), https://www.npr.org/2025/03/30/nx-s1-5304236/police-say-ice-tactics-are-eroding-public-trust-in-local-law-enforcement.

[4] *See, e.g.,* American Immigration Council, *Sanctuary Policies: An Overview*, https://www.americanimmigrationcouncil.org/sites/default/files/research/sanctuary_policies_an_overview.pdf (last visited Feb. 6, 2025).

[5] 8 U.S.C. § 1373 prohibits federal, state, and local officials from prohibiting or restricting sending or receiving information regarding citizenship or immigration status of an individual, but does not require state and local officials to ask those who they encounter about their citizenship or immigration status. For further information about Section 1373, see Inst. for Const. Advocacy & Protection, *Fact Sheet on State and Local Cooperation with Federal Immigration Enforcement*, https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2025/02/Fact-Sheet-on-State-and-Local-Cooperation-with-Federal-Immigration-Enforcement.pdf.

[6] *See, e.g., United States v. California*, 921 F.3d 865, 875-878 (9th Cir. 2019) (describing California laws).

[7] *See, e.g., California*, 921 F.3d at 879-893; *Galarza v. Szalczyk,* 745 F.3d 634, 643-45 (3rd Cir. 2014) (interpreting immigration detainer as a request to detain, and not a mandate, to avoid unconstitutional commandeering concerns); *People ex rel. Wells v. DeMarco*, 168 A.D.3d 31, 53 (2018) (finding that New York state law did not provide legal authority for state law enforcement agencies to hold people on a federal immigration detainer); *Lunn v. Commonwealth*, 78 N.E.3d 1143, 1159 (Mass. 2017) (same as to Massachusetts).

detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation." 18 U.S.C. § 1324(a)(1)(A)(iii).[8] The penalties for violating this provision include fines and imprisonment, with the severity of the punishment increasing where the action is done for financial gain or if done in a way that causes serious bodily harm or death. *See* 18 U.S.C. § 1324(a)(1)(B). Conviction for harboring can also result in mandatory forfeiture of "any property real or personal" that was "used to facilitate ... the commission" of that crime. 18 U.S.C. § 982(a)(6)(A); *see also* 18 U.S.C. § 1324(b) (allowing for seizures of conveyances).[9]

What does it mean to "harbor" an alien?

Unfortunately, there is no clear definition of "harboring."[10] The United States Supreme Court has not decided a case addressing the harboring provision of 18 U.S.C. § 1324, although it has decided cases addressing other provisions of that section.[11] The Courts of Appeals have adopted differing interpretations of the term harboring.[12] The majority view is that harboring is "conduct tending substantially to facilitate an alien's remaining in the United States illegally and to prevent government authorities from detecting his unlawful presence."[13]

A few Circuits, however, define harboring as any conduct that "substantially facilitate[s] an alien's remaining in the United States illegally,"[14] without including any element of evading government detection. The Court of Appeals for the Ninth Circuit, for example, has held that "The purpose of the section is to keep unauthorized aliens from entering or remaining in the country. … We believe that this purpose is best effectuated by construing 'harbor' to mean 'afford shelter to' and so hold."[15] The court specifically rejected the contention that "the word 'harbor' in § 1324(a)(3) means to harbor so as to prevent detection by law enforcement agents,"[16] although the Ninth Circuit has since clarified that "the purpose of avoiding the alien's detection by immigration authorities" is relevant to demonstrating the necessary criminal intent.[17]

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[8] Section 1324 also prohibits: knowing a person is an alien, bringing them into the United States other than at a designated port of entry, 18 U.S.C. § 1324(a)(1)(A)(i); knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transporting or moving such alien within the United States, *id.* § 1324(a)(1)(A)(ii); or encouraging or inducing an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such will be in violation of law, *id.* § 1324(a)(1)(A)(iv); as well as attempts or conspiracies to do any of these things.

[9] *See United States v. George*, 779 F.3d 113, 122 (2d Cir. 2015) (approving forfeiture of defendant's home where defendant harbored an alien by employing her as a live-in nanny/domestic worker in her home for five years, failing to file employment records required by law, and instructing her not to discuss her immigration status).

[10] *See generally* Catholic Legal Immigration Network, Inc., *Harboring: Overview of the Law*, https://asistahelp.org/wp-content/uploads/2019/08/Harboring-Overview-of-the-Law-CLINIC.pdf.

[11] *See, e.g., United States v. Hansen*, 599 U.S. 762 (2023) (interpreting 8 U.S.C. § 1324(a)(1)(A)(iv), which prohibits "encourag[ing] or induc[ing] an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law").

[12] For a map of the Courts of Appeals and the states each covers, see https://www.uscourts.gov/file/18039/download.

[13] *United States v. Kim*, 193 F.3d 567, 574 (2d Cir. 1999) (emphasis added); *accord United States v. Vargas-Cordon*, 733 F.3d 366, 382 (2d Cir. 2013); *United States v. Cuevas-Reyes*, 572 F.3d 119, 122 (3d Cir. 2009); *United States v Zheng*, 87 F.4th 336, 343 (6th Cir. 2023); *see Reyes v. Waples Mobile Home Park Ltd. Partnership*, 91 F. 4th 270, 277 (4th Cir. 2024) ("statute only applies to those who intend in some way to aid an undocumented immigrant in hiding from the authorities"); *United States v Costello*, 666 F.3d 1040, 1050 (7th Cir. 2012) (defining "harboring' as "providing ... a known illegal alien a secure haven, a refuge, a place to stay in which the authorities are unlikely to be seeking him"); *United States v. Dominguez*, 661 F.3d 1051, 1063 (11th Cir. 2011) (harboring is conduct "tending to substantially facilitate an alien's escaping detention thereby remaining in the United States illegally").

[14] *United States v. Tipton*, 518 F.3d 591, 595 (8th Cir. 2008) (citation omitted).

[15] *United States v. Acosta de Evans*, 531 F.2d 428, 430 (9th Cir. 1976).

[16] *Id.*

[17] *United States v. You,* 382 F.3d 958, 966 (9th Cir. 2004) (approving jury instruction in harboring prosecution to require finding that defendant acted with "the purpose of avoiding the alien's detection by immigration authorities" in order to demonstrate the necessary criminal intent (emphasis in original)); *cf. United States v. Tydingco*, 909 F.3d 297 (9th Cir. 2018) (reiterating *Acosta de Evans*'s definition of harboring and reconciling that case with *You* by noting that "*You* requires only an instruction that the defendant intended to violate the law. One way to demonstrate such an intention is to prove that the defendant sought to prevent immigration authorities from detecting an illegal alien's presence. But that is not the only way."). The rule in the Fifth Circuit is similarly a bit unclear. *Compare United States v. Varkonyi*, 645 F.2d 453, 459 (5th Cir. 1981), *with id.* at 456 (rejecting challenge to indictment language which did not contain the words "from detection" because "[i]mplicit in the wording "harbor, shield, or conceal," is the connotation that something is being hidden from detection, and, therefore, the absent wording was mere surplusage"); *Cruz v. Abbott*, 849 F.3d 594, 600 (5th Cir. 2017) ("This court interprets the words "harbor, shield, or conceal," which appear in a federal immigration statute, to mean that "something is being hidden from detection."); *accord Villas at Parkside Partners v. City of Farmers Branch*, 726 F.3d 524, 529 (5th Cir. 2013) (en banc).

What sorts of conduct have been found to constitute "harboring"?

Courts have found that defendants engaged in criminal harboring in a variety of circumstances, including where defendants employed undocumented workers and encouraged them to provide false paperwork;[18] provided undocumented individuals with apartments and fraudulent immigration papers;[19] instructed undocumented aliens that, if questioned, they should deny that they were aliens;[20] installed security systems designed to alert undocumented individuals to impending INS on-site inspections and facilitate their escape;[21] and warned undocumented employees that immigration agents were on site by speaking loudly and making gestures toward the agents to encourage the employees to flee the work facility.[22]

What sorts of conduct are not "harboring"?

Employing undocumented workers, without more, does not seem sufficient to support a charge of harboring.[23] Courts that have found harboring in the context of employment of undocumented workers have all relied on additional facts beyond the mere fact of providing employment. Thus, in *United States v. Kim*, the defendant not only knowingly employed undocumented workers, but also instructed an employee to bring in new papers with a different name to indicate that she was work-authorized, and instructed her to change her name a second time while immigration authorities were investigating the company.[24] In *United States v. Shum*, the employer not only hired workers without legal status, but also provided the workers with false identification to facilitate background checks so that they could enter and clean government buildings and failed to file paperwork for the workers with the Social Security Administration.[25] In *United States v. Zheng*, the employers not only hired undocumented workers, but also housed the workers, paid them low wages for long hours of work, and failed to withhold federal taxes or pay into Social Security.[26]

Similarly, simply entering into a lease agreement or renting accommodation to an undocumented immigrant does not seem sufficient to constitute harboring.[27] In *United States v. Costello*, the court found that the defendant did not engage in harboring when she merely provided her boyfriend, who she knew was in the country illegally, a place to stay.[28]

Cases addressing services provided to undocumented immigrants are rare. Providing assistance with the immigration process, or helping immigrants to obtain legal status seems insufficient to support a charge of harboring. So, in *United*

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[18] *Kim*, 193 F.3d at 575; *see also Edwards v. Prime Inc.*, 602 F.3d 1276 (11th Cir.2010) (employed undocumented individuals, provided them with false names and Social Security numbers, and paid them in cash).
[19] *United States v. Sanchez,* 963 F.2d 152, 154–55 (8th Cir.1992).
[20] *United States v. Smith*, 112 F.2d 83, 84 (2d Cir. 1940).
[21] *United States v. Herrera*, 584 F.2d 1137, 1145 (2d Cir. 1978).
[22] *United States v. Rubio-Gonzalez*, 674 F.2d 1067, 1072–73 (5th Cir.1982)
[23] *But see Edwards*, 602 F.3d at 1299 (suggesting that "one who hires an alien knowing or recklessly disregarding his illegal status is guilty of concealing, harboring, or shielding from detection" but declining to definitively so hold given that defendants, in addition to employing, also "provided [the aliens] with social security numbers and names, and paid them in cash in order to conceal, harbor, and shield the aliens from detection").
[24] 193 F.3d at 575.
[25] 496 F.3d 390, 393 (5th Cir. 2007).
[26] 87 F.4th at 345.
[27] *See Reyes*, 91 F.4th at 277 ("the anti-harboring statute simply does not apply to landlords merely leasing to undocumented immigrants"); *see also United States v. McClellan*, 794 F.3d 743, 751 (7th Cir. 2015) ("[W]hen the basis for the defendant's conviction under [the anti-harboring statute] is providing housing to a known illegal alien, there must be evidence from which a jury could conclude, beyond a reasonable doubt, that the defendant intended to safeguard that alien from the authorities."); *United States v. Vargas-Cordon,* 733 F.3d 366, 382 (2d Cir. 2013) ("The mere act of providing shelter to an alien, when done without intention to help prevent the alien's detection by immigration authorities or police, is thus not an offense under [the statute]."); *DelRio-Mocci v. Connolly Props. Inc.*, 672 F.3d 241, 247 (3d Cir. 2012) ("We do not know of any court of appeals that has held that knowingly renting an apartment to an alien lacking lawful immigration status constitutes harboring."); *Lozano v. City of Hazleton*, 724 F.3d 297, 320 (3d Cir. 2013) ("Renting an apartment in the normal course of business is not, without more, conduct that prevents the government from detecting an alien's unlawful presence. Thus, it is highly unlikely that renting an apartment to an unauthorized alien would be sufficient to constitute harboring in violation of the [statute].").
[28] 666 F.3d at 1044-45; *cf. United States v. Alabama*, 691 F.3d 1269, 1288 (11th Cir. 2012) (finding that a state law prohibition on "harbor[ing] an alien unlawfully present in the United States by entering into a rental agreement ... to provide accommodations,"' H.B. 658, § 6, effectuates an untenable expansion of the federal harboring provision" and was therefore preempted).

States v. Domingeuz, the court found insufficient evidence to support a harboring conviction where defendant "took the [aliens] to experienced immigration counsel shortly after they arrived to process them through immigration."[29] In *United States v. Ozcelik*, the court found that "general advice to, in effect, keep a low profile[,] …not do anything illegal[, and] … stay out of trouble" did not constitute harboring.[30] "Telling an illegal alien to stay out of trouble does not tend substantially to facilitate the alien remaining in the country; rather, it simply states an obvious proposition that anyone would know or could easily ascertain from almost any source."[31]

What does it mean to act in "knowing" or "reckless disregard" of the fact that an alien has come to, entered, or remains in the country in violation of law?

"Knowing" means that you have direct knowledge that a person you are harboring entered or remained in the United States in violation of law. "Reckless disregard" means that you were deliberately indifferent to, or acted in willful ignorance of, facts that indicated a high probability that persons entered or remained in the United States in violation of law.[32] Either can be shown by direct or circumstantial evidence. Broadcasting an intent to shelter undocumented immigrants from immigration enforcement and to safeguard them from authorities attempting to remove them could constitute circumstantial evidence of reckless disregard.[33]

What proof of intent is required under the harboring statute?

The Courts of Appeals are divided on this question.[34] The majority view is that the statute incorporates two intent requirements, first, the one apparent on the face of the statute, *i.e.*, that the defendant act "knowing" or in "reckless disregard" of the fact that the alien entered or remained in the United States in violation of law; and, second, that the defendant intended his conduct "both to substantially help an unlawfully present alien remain in the United States ... and also … to help prevent the detection of the alien by the authorities."[35]

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[29] 661 F.3d at 1063.

[30] 527 F.3d 88, 101 (3d Cir. 2008).

[31] *Id.*; *see also id.* ("Holding [defendant] criminally responsible for passing along general information to an illegal alien would effectively write the word "substantially" out of the test we have undertaken to apply."); *but see United States v. Rubio-Gonzalez*, 674 F.2d 1067, 1072 (5th Cir. 1982) (finding that "merely warning illegal aliens of the presence of immigration officers" was sufficient to warrant conviction under § 1324's "shield from detection" prong because it "prevent[ed] their being detected as illegal aliens by alerting them to flee so they would not be apprehended and their identity and illegal status would hence not be determined"); *see also United States v. Costello*, 666 F.3d 1040, 1044 (7th Cir. 2012) (noting, in dicta, that "the emergency staff at the hospital may not be "harboring" an alien when it renders emergency treatment even if he stays in the emergency room overnight, that giving a lift to a gas station to an alien with a flat tire may not be harboring, that driving an alien to the local office of the Department of Homeland Security to apply for an adjustment of status to that of lawful resident may not be harboring, that inviting an alien for a "one night stand" may not be attempted harboring, that placing an illegal alien in a school may not be harboring, [and] … that allowing your boyfriend to live with you may not be harboring, even if you know he shouldn't be in the United States.").

[32] *See, e.g., United States v. Melchor*, 360 F. App'x 8, 13 (11th Cir. 2010) ("A person acts with reckless disregard if he is 'aware of, but consciously and carelessly ignore[s], facts and circumstances clearly indicating that the person transported was an alien who had entered or remained in the United States in violation of law.' … Additionally, reckless disregard includes 'deliberate indifference to facts which, if considered and weighed in a reasonable manner, indicate the highest probability that the alleged aliens were in fact aliens and were in the United States unlawfully." (cleaned up); *cf. United States v. Kalu*, 791 F.3d 1194, 1208-1210 (10th Cir. 2015) (finding error in a "should have known" jury instruction because that was akin to negligence and not supported by the statutory text).

[33] *See Tydingco*, 909 F.3d at 304 ("For example, a defendant who chooses to publicize her harboring of an illegal alien in order to call attention to what she considers an unjust immigration law intends to violate the law, even though she does not intend to prevent detection." (citing *United States v. Dann*, 652 F.3d 1160, 1174 (9th Cir. 2011)); *see also United States v. George*, 779 F.3d 113, 121 (2d Cir. 2015) ("George may not have hid Mathai from the outside world, but by counseling Mathai to lie about her status to anyone who asked, George plainly diminished the likelihood of government authorities' discovering that she had an alien illegally working in her home.").

[34] *See United States v. McClellan*, 794 F.3d 743, 755 (7th Cir. 2015) (noting that the "operative legal question"—whether § 1324(a)(1)(A)(iii) contains a specific intent requirement—was "unsettled").

[35] *Vargas-Cordon*, 733 F.2d at 382; *accord Reyes*, 91 F.4th at 277 ("the statute only applies to those who intend in some way to aid an undocumented immigrant in hiding from the authorities."); *McClellan*, 794 F.3d at 751 ("[W]hen the basis for the defendant's conviction under [the anti-harboring statute] is providing housing to a known illegal alien, there must be evidence from which a jury could conclude, beyond a reasonable doubt, that the defendant intended to safeguard that alien from the authorities."); *see also United States v. Kalu*, 791 F.3d 1194, 1208 & n.18 (10th Cir. 2015) (finding "instructive" in a harboring case, the court's prior finding in a case involving the transportation prohibition of 18 U.S.C. § 1324 that "[t]he statute requires that a defendant know or act in reckless disregard of the fact that an individual is

Other courts, however, disagree, holding that the jury need not find that the defendant had the specific intent to help an alien remain in the United States and avoid detection. Rather, it is enough that the jury find that the defendant's conduct, while knowing or in reckless disregard of the alien's unlawful status, had the result of substantially facilitating the alien to remain in this country unlawfully and preventing authorities from detecting them."[36]

Could states or localities that adopt "sanctuary city" policies be successfully prosecuted for "harboring"?

Simply refraining from providing information to federal immigration authorities that is not required by law to be provided should not meet the test for "harboring."[37] Neither should refusing to hold immigrants in detention when there is no judicial warrant or independent finding of probable cause to support their continued detention. Policies that extend beyond these, however, would need to be carefully assessed.[38] Policies that both assist an alien with remaining in the country unlawfully and also shield aliens from detection by federal immigration authorities may create exposure to criminal liability.

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an illegal alien, and that defendant's transportation or movement of the alien will help, advance, or promote the alien's illegal entry or continued illegal presence in the United States." (citation omitted)).

[36] *Zheng*, 87 F.4th at 345. *See, e.g., United States v. De Jesus–Batres*, 410 F.3d 154, 162 (5th Cir.2005) (specific intent to violate the immigration laws is not required to prove alien harboring); *United States v. Deguzman*, 133 Fed. Appx. 501, 506 (10th Cir. 2005) (noting that specific intent is not necessary to prove illegal harboring charge).

[37] *See, e.g., Kearns v. Cuomo*, 981 F.3d 200, 211 (2d Cir. 2020) ("Nothing in the text or history of § 1324 suggests that it imposes any requirement regarding the maintenance of local government records.").

[38] *See, e.g., City of Chicago v. Barr*, 961 F.3d 882, 932 n.1 (7th Cir. 2020) ("Although Chicago's ordinance places the city among other so-called 'sanctuary' jurisdictions, Chicago creatively labels itself a 'welcoming city,' perhaps to avoid prosecutorial suspicion over whether its elected officials are committing a federal harboring offense. … With the right facts, a policy like Chicago's could very well facilitate harboring or at least encourage and induce aliens to enter and reside unlawfully in the United States." (Manion, J., concurring)).