

## **Albany UU as a Sanctuary Congregation – potential legal issues**

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### **What is Sanctuary?**

While the word “sanctuary” most often is associated with providing lodging to undocumented individuals, more broadly it can also include providing moral, spiritual, psychological, financial, and legal support for people who are about to be detained or deported. Notably, while physical sanctuary often garners publicity in an attempt to raise larger issues around immigration, it generally only benefits the person(s) being sheltered.

### **What criminal laws come into play when a congregation offers physical sanctuary?**

The federal criminal **harboring** law prohibits concealing, harboring, or shielding an undocumented immigrant from detection by the authorities. The federal criminal **transporting** law prohibits transporting an undocumented immigrant from one place to another where the transportation helps the immigrant remain in the U.S. unlawfully. Congregations can't claim that either activity is an expression of the First Amendment's guarantee of freedom of religion.

Harboring. Places of worship have been designated “sensitive locations” by U.S. Immigration Customs and Enforcement (ICE). This reflects the hesitancy of ICE to enter a place of worship and the ill will such an act would likely create in the community and in the media. However, this is a *discretionary policy*, not a law, and it could be changed at any time. Some courts have concluded that harboring means simply offering shelter to undocumented individuals. Other courts, including the U.S. Court of Appeals for the Second Circuit, *which governs New York*, have found that harboring requires an intent to conceal the location of the individual, i.e. - trying to hide him or her. See U.S v Vargas-Cordon, 733 F.3d 366, 382 (2013). As a result, most congregations have informed ICE, or otherwise been open about the fact that they are sheltering undocumented people. Notably, while this approach may avoid liability for the congregation, it may create a greater risk to the individual immigrant, so the individual should be told the congregation intends to do this.

Transporting. The act of transporting someone while attempting to conceal their presence (e.g. hiding them in the trunk) would likely be found to be a violation of

law. Transporting someone to a location or activity where the purpose of moving the person is not to further his or her remaining in the U.S (e.g. to the store, or to a doctor's appointment) is generally not a violation. Since individual members, not Albany UU as an institution, will presumably be transporting undocumented individuals, any potential liability rests with the member, not the congregation.

### **A few UU congregations currently offering physical sanctuary**

- Fourth Universalist Church, NYC <https://www.nytimes.com/2018/03/28/nyregion/guatemala-deportation-church-sanctuary.html>
- Unitarian Universalist Church in Meriden CT <https://www.uuworld.org/articles/you-cannot-go-out>
- Unitarian Society of Northampton and Florence MA  
<http://www.gazettenet.com/Editorial-Three-area-churches-show-commitment-to-faith-and-humanity-in-sheltering-undocumented-immigrants-16809858>
- Austin TX Fall 2017 UU World <https://www.uuworld.org/articles/3-congregations-offer-sanctuary>

### **Legal Resources**

3/17 ACLU outline entitled "Sanctuary Congregations and Harboring FAQ"  
<https://www.nwirp.org/wp-content/uploads/2017/03/ACLU-Sanctuary-FAQ-March-2017.pdf>

ACLU Know Your Rights if Stopped by Immigration Agents  
<https://www.aclu.org/files/kyr/MKG17-KYR-PoliceImmigrationFBI-OnePager-English-v01.pdf>

2015 Columbia Law Review article entitled "Hemming in 'Harboring': The Limits of Liability Under 8 USC section 1324 and State Harboring Statutes"  
<https://www.columbialawreview.org/wp-content/uploads/2016/04/Dohrmann-Mary.pdf>

### **Local Immigration/civil rights attorneys**

- Prof. Sarah Rogerson, who heads the Immigration Law Clinic at Albany Law School  
<http://www.albanylaw.edu/faculty/pages/faculty-listing.aspx?ind=Rogerson,%20Sarah%20F>.
- immigration attorneys at The Legal Project <http://www.legalproject.org/index.php?page=163>
- Mark Mishler, Esq. <http://www.markmishlerlaw.com/background.html>
- Nicholas Tishler, Esq. <http://www.nicktishler.com/>

**Bottom line- if the resolution is adopted and our congregation offers physical sanctuary (and it is by no means certain we will do this), there may be some legal risk- we cannot guarantee otherwise. But of course our FUUSA ancestors (some of who are still members) recognized and took this risk in the 1980s when they sheltered refugees fleeing oppressive Central American regimes. . .**

