Assessing Risks in Supporting Immigrants at Points of Intervention

Understanding the "Harboring" Non-U.S. Citizens Federal Crime

8 U.S.C. § 1324(a)(1)(A)

This general educational material does not constitute legal advice or encouragement to take action. Contact a local attorney for additional questions.

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- Between 2016 and 2020, the Trump administration targeted and criminalized people supporting immigrants at different points of intervention.
- The new Trump administration has already stated its intent to use 8 U.S.C. § 1324 and other laws to prosecute "immigration-related violations."
    - **These threats apply to non-U.S. citizens themselves, as well as local and state officials in "sanctuary jurisdictions," and can extend to individuals supporting immigrants!**

- The federal government has utilized a federal crime against immigrant advocates: 8 U.S.C. § 1324, "Bringing In and Harboring Certain" Non-U.S. Citizens.
    - Subsection (a)(1)(A) is most often applied to prosecute "human smugglers," commonly known as "coyoteros."

Understanding this very broad law can help assess risks at different points of intervention!

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8 U.S.C. § 1324(a)(1)(A) could apply to actions at various points:

Supporting During Entry -> Transporting After Entry -> Sheltering -> Alerting -> Advocating After Detention -> Intervening in Removal

In Action:

2018: No Más Muertes/No More Deaths

- In January 2018, the government arrested a humanitarian volunteer distributing water and food to people in the Arizona desert close to the U.S.-Mexico border.
- The U.S. federally prosecuted him for allegedly illegally "harboring" two migrants, alleging that he had concealed and conspired to transport and conceal non-U.S. citizens to prevent detection from immigration agents.
- In 2019, a jury was unable to reach a verdict; at a retrial, a second jury found him not guilty.

How does the "Harboring" non-U.S. citizens crime work?

To convict under subsection (a)(1)(A), the government must show that an individual:

(1) Knew or recklessly disregarded that the person entered or remained in the U.S. unlawfully ;
AND

(2) Brought the person into the U.S.; transported the person within the U.S. to violate immigration law; hid the person from detection; OR encouraged the person to enter or stay in the U.S. to violate immigration law.

- (Or conspired to or aided in bringing, transporting, hiding, encouraging)

Note: There are more subsections under 8 U.S.C. § 1324(a), including **exceptions for religious organizations and liability for employers of non-U.S. citizens.** This guide is limited to subsection (a)(1)(A).

8 U.S.C. § 1324(a)(1)(A)

General Risk Assessment

Important:

Certain activities can carry greater risk of successful prosecution, but under this current administration, **many immigrant advocacy actions will always risk** harassment, arrest, and/or indictment, even if securing a conviction is less likely.

Status-agnostic initiatives have less risk

- **Status-agnostic:** Support or advocacy does not differentiate or is based on the person's immigration status.
- Because the law requires knowledge or reckless disregard that someone entered or remained in the U.S. unlawfully, not making advocacy dependent on status significantly reduces the risks.

8 U.S.C. § 1324(a)(1)(A)

General Risk Assessment

Actions taken for non-immigration purposes have less risk

- Giving assistance for *the purpose of helping someone violate immigration law* is criminalized. Providing someone humanitarian assistance without regard to their immigration status is less likely to carry criminal liability.
- Protesting for immigrant rights is NOT criminalized!
- Note that other provisions of this law have been subject to unsuccessful Free Speech challenges.

Know your risks when dealing with law enforcement

- They are all cops: Immigration and Customs Enforcement (ICE), Customs and Border Protection (CBP), Transportation Security Administration (TSA).
- Behave accordingly! Ask for a warrant. Do not talk more than necessary.

8 U.S.C. § 1324(a)(1)(A)

Specific Risk Assessment at Points of Intervention

Supporting During Entry into the U.S.->

- **Unlawful to help people avoid immigration agents.**
- **High risk** to engage with immigration agents (don't talk to cops!).
- Status-agnostic mutual aid initiatives should have **less risk.**
  - E.g.: Pointing out dangerous parts of the desert to anyone lost.
- **The farther away from entry, the less risk exists.**

->Transporting After Entry->

- **Unlawful to transport *for the purpose of violating immigration law.***
- **High risk** to be in communication with people facilitating border crossings.
- **The more neutral the ride, the less risk exists.**
  - E.g.: Free inter-city bus ticket for family reunification.
- Status-agnostic free rides should have **less risk.**

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Specific Risk Assessment at Points of Intervention

->Sheltering->

- **Unlawful to shelter *known* undocumented individuals *to conceal them from the government.***
- **High risk** to take affirmative conduct that helps people avoid detection while housed.
- The more clandestine the housing, **the more risk.**
- **Status-agnostic housing offers should have less risk.**
  - E.g.: Free overnight housing to all families in a town.

->Alerting->

- **Unlawful to take action that *conceals* non-U.S. citizens from immigration agents.**
- **High risk** to assist fleeing or dodging immigration agents.
  - E.g. Warning someone known to be undocumented that immigration is present.
- **Low risk** to neutrally share information about officer sightings.
  - E.g.: Sharing general information publicly regarding ICE sightings.

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Specific Risk Assessment at Points of Intervention

For more resources on these points, go to: nlg.org/kyr

->Advocating After Detention->

- **Low risk** to support detained immigrant like any imprisoned person: letter-writing, public campaigns, media outreach.
- Generally, **there is little risk to support immigration litigation, as with other legal proceedings.**
  - E.g.: Posting bond, jail support, court support, attorney coordination.

->Intervening in Removal

- **Unlawful to directly prevent or attempt to intervene with immigration agents seeking to arrest or detain, as with any other law enforcement.**
- Protected by regular constitutional rights when interacting with cops ("Am I free to go? Am I under arrest? I do not consent to a search. I want a lawyer").
- **Low risk** to provide legal information to immigrants facing removal.
  - E.g.: Workshops on facing ICE agent visit or interaction.

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Understanding your risks can help you make informed decisions.

We will continue advocating with and supporting non-U.S. citizens and immigrants!

Resources for non-U.S. citizens when protesting:

- **National Immigration Project Resources:**
  - **bit.ly/nipresources**

- **National Immigration Law Center's KYR:**
  - **bit.ly/nilckyrimmigrants**

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