

Photo credits:

- **“No more deaths” by benkataro,**
<https://flic.kr/p/ekQud>
Attribution (CC BY 2.0):
<https://creativecommons.org/licenses/by/2.0/>
- **“Social Justice” - Bruce Emmerling, CC0, via**
Wikimedia Commons
- **“US-Mexico border death monument” © Tomas**
Castelazo, www.tomascastelazo.com / Wikimedia
Commons
- **Daniel Arauz, CC BY 2.0**
<<https://creativecommons.org/licenses/by/2.0/>>, via
Wikimedia Commons
- **Dugan Meyer, CC BY 4.0**
<<https://creativecommons.org/licenses/by/4.0/>>, via
Wikimedia Commons
- **Noah Wulf, CC BY-SA 4.0**
<<https://creativecommons.org/licenses/by-sa/4.0/>>, via Wikimedia Commons



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.



**SOUTHERN
COALITION**
for SOCIAL JUSTICE

- 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!



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



**SOUTHERN
COALITION**
for SOCIAL JUSTICE

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)

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.

8 U.S.C. § 1324(a)(1)(A)

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.

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.**