

General Comments on Legal Questions – Not to be Considered Legal Advice

- 1. Is there a difference in hosting an individual or family whose status changes during hosting, for example, their visa is no longer valid, their asylum case is denied, from a country under the “travel ban,” etc.?**

Legally, it might be better to have individuals who have some claim to possible relief even if the chances of success are remote. However, there may be some individual cases that are so compelling that the public opinion may be a stronger defense.

- 2. What difference does it make if an immigrant is “known to ICE” (may have a case number) and ICE is notified that such and such a person is housed by the congregation, vs. not notifying ICE about a person whether they have a profile of him/her or not?**

It is not certain in the 9th Circuit [this region] if a necessary element of the offense is to “seeking to avoid detection”. Older cases suggest it is not; newer cases put this into doubt. It is reasonable to assume that being open about it might give some additional defenses although it is not clear if they would be successful.

- 3. What are the rights that congregations can exercise to protect the integrity of their property and the people therein?**

The 4th amendment protects that property from warrantless searches in any place with Reasonable Expectation of Privacy. However, a judicial warrant could be issued for searches or arrests within a house of worship. Also areas that are open to the public may not have a Reasonable Expectation of Privacy. Possible ways of dealing with that should be discussed including prior notification to ICE of the congregation’s property being not open to non-worshippers and those invited guests, or posting signs for non-public areas. Whether this would be valuable is an open question.

- 4. Is there a difference between hosting a family in a church basement or housing them elsewhere on the congregation’s property? Or, off-site, though under the congregation’s auspices?**

There is no difference in the application of criminal liability, but it may impact who is put into the spotlight if it is a congregant’s home.

Current ICE sensitive locations policy cautions against enforcement actions at places of worship, schools and hospitals. Enforcement actions in these locations require approval from supervisory officials or might take place under exigent circumstances. Policies could change and are not ironclad. Typically ICE

officers wait for the target to leave the sensitive location and make the arrest. Officers generally do not have judicial warrants authorizing entrance to homes or private areas without permission. So in either place, it is unlikely that ICE officers would intrude without permission.

5. Are there risks to a congregation in welcoming community members in without regard to legal status?

The safest course is hosting a program to serve a broader group than only people who may be undocumented. Even this is not guaranteed to be safe. The standard is knowing or reckless disregard to the foreign national's unlawful status in order to subject an individual to possible liability for harboring or transporting that individual.

6. Are there any recent cases of accusations of "harboring or transporting" involving service providers of people suspected of being undocumented? If so, what were the results?

We are still researching however we are not currently aware of recent cases against service providers.

7. What potential defenses do congregations have which are charged with "harboring", "transport", "conspiracy", and/or willful violation of federal immigration law? Does public transparency help or hinder? Does being a "sanctuary city, county or state" make a difference?

There are limited legal defenses. If there is a requirement for harboring or preventing detection, then openness would be a defense. State and local policy do not have a legal impact on federal prosecution. However, the willingness of an US Attorney to bring charges and willingness of any local jury to convict will be based on a multitude of factors including public opinion, how sympathetic the hosted undocumented family or individuals are, the direction from DC, how brazen the congregation is among others.