

A CHURCH SANCTUARY PRIMER

First a caveat. This is not intended to be an exhaustive analysis of the concept of providing sanctuary in a church or the legality or illegality of the same. This should not be relied on for legal advice in dealing with sanctuary or undocumented immigrants as I am not an immigration lawyer and have no expertise in that area. I will try to provide an outline of some of the issues and references to more thorough analyses. If clergy and congregations are in need of more specific advice, I urge you to consult a competent immigration lawyer in your community or one of the resources mentioned below or in the writings listed below.

Introduction.

The primer that follows is largely a distillation of the following writings:

1. Church Sanctuary for Illegal Aliens, a memorandum opinion dated October 31, 1983 by Theodore Olsen, Assistant Attorney General.
2. The Legal Rights and Risks of Sanctuary, an outline prepared by the Linnartz Immigration Law Firm of Raleigh for the 2017 Loving Our Neighbor: Embodying Sanctuary Conference sponsored by the Duke Divinity School.
3. Central Americans and Asylum Policy in the Reagan Era by Susan Gzesh. This April 1, 2006 article at Source@MigrationPolicy.org.
4. Can churches provide legal sanctuary to undocumented immigrants? by Jason Hanna and issued by CNN on February 17, 2017.
5. Harboring: Overview of the Law was issued in March 2013 by the Catholic Legal Immigration Network, Inc.
6. Immigration Raids Rapid Response. I can't tell when this was issued or exactly who is the author or issuer. Credit is given to the New Sanctuary Movement in Philadelphia for putting together the document.

These resources were gathered and sent to me by Prof. Deborah Weissman of the UNC-Chapel Hill School of Law in response to a request for help sent to Martin Brinkley, Dean of the School of Law and Vice-Chancellor for the Diocese. The full text of each writing is available online at <http://bit.ly/SanctuaryDocs>.

Some history.¹

The concept of providing asylum or sanctuary to persons in a church or religious institution arose in the Middle Ages. It varied from place to place but in England it permitted an accused felon to seek sanctuary in a church. However, this did not give the accused felon a freeride. The sanctuary provided time for the felon to determine whether he wanted to submit to trial or confess (risking forfeiture of property) and an escape from the country.

However, sanctuary for criminals in England was finally ended by statute in 1623. This becomes important for the United States because it meant that, at the time of American independence, there was no common (“judge made”) or statutory basis for sanctuary in England and, therefore, it did not become part of the common law of the US states inherited from England. Olson’s research “found no evidence that the colonists revived church sanctuary in America.”

There was a revival of an interest in sanctuary at the time of the Vietnam War. More recently the sanctuary movement took on new life in the early 1980s when Reagan era foreign policy toward the Central American countries of Guatemala, El Salvador and Nicaragua began to create a significant number of illegal immigrants from those countries. The treatment of these immigrants was complicated by the fact that the Reagan administration refused to accept that many of these folks were fleeing repressive governments being supported by the US. In any event, that is the setting for the Olson Memorandum and for many of the cases that are now cited in the area of sanctuary and other support for illegal immigrants.

¹ Much of this section is gleaned from a very concise and helpful Memorandum Opinion written by Theodore Olsen when he was an Assistant Attorney General and dated October 31, 1983. Some additional interesting facts about Olsen. He was the Solicitor General for the US on 9/11/01. His wife was on one of the planes that was hijacked and crashed. After his government service concluded, he was one of the team of attorneys who represented the plaintiffs who brought the lawsuit that ultimately determined the nationwide legalization of same sex marriage. The Olsen Memorandum contains numerous footnotes and citations which will not be reiterated here but are useful and I urge you to review them.

The article by Susan Gzesh entitled Central Americans and Asylum Policy in the Reagan Era has a much more detailed discussion of the immigration issues emanating from Central America in the early 1980s. It is available in the Drop box identified above or from Source@MigrationPolicy.org.

The Law at Issue.

The applicable federal criminal law is 8 USC §1324 (a)(1) (iii) which makes it a crime for any person who

(iii) knowing or in reckless disregard of the fact that the alien has come to, entered, or remains in the United States in violation of law, conceals, harbors or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation.

The harboring prohibition is applicable to any person who knowingly harbors an undocumented immigrant and is not limited to persons who employ such immigrants or who are in the business of smuggling them. There are different interpretations within the federal circuit courts on precisely what “harboring” might mean. Unfortunately, the Fourth Circuit (of which North Carolina is a part) has no opinions on point.

The Memorandum on Harboring: Overview of the Law which is available in the Dropbox or at https://cliniclegal.org/sites/default/files/harboring_memo_6-13-13_karen-edit.pdf is excellent and explores in some detail the different interpretations of “harboring.”

Is there a First Amendment Defense?

No. Olsen’s memo offers these justifications or explanations for that result:

1. Since offering of sanctuary to an accused criminal in a church was abolished by statute in England in 1623, the notion was not incorporated in to the common law of the various states upon independence and there is no apparent record of any of the new states

adopting statutes concerning sanctuary, there is no historical tradition of offering sanctuary that would provide a defense to the federal law.

2. Disagreement with the government's treatment of illegal aliens is not a religious belief that is burdened by enforcement of immigration laws. That is, church members are not compelled by our deportation of aliens to forego a religious practice, such as resting on the Sabbath.
3. Even if granting sanctuary were seen as a legitimate religious practice, the federal government has a compelling countervailing interest in insuring that the law is enforced throughout the country.

So, can or will an ICE agent seize someone in a church or arrest the priest?

They certainly can. An agent with a warrant can arrest undocumented immigrants anywhere they might be; even in a church, synagogue or mosque. Priests harboring such immigrants have also been arrested before. In a sanctuary prosecution arising out of the Central American immigration of the 1980s, Rev. John Fife, a Presbyterian minister in Tucson, Arizona, and some lay people were arrested for harboring undocumented immigrants. They were all convicted but none were sentenced to active jail time. The outcome of the Arizona trial and split decisions in two similar prosecutions in Texas apparently dissuaded the government then from seeking further indictments against sanctuary activists.

ICE has said that its general policy is to avoid arrests in "sensitive locations" which would include churches and schools. The obvious basis for such a policy is the adverse publicity that would accompany any arrests in a church or of clergy harboring an undocumented immigrant. But policies can change and I'm not sure how good of a guide "Conventional Wisdom" is in today's climate.

What can you do?

The writing, Immigration Raids Rapid Response is essentially a toolkit for creating responses to the immigration enforcement practices now being cranked up. It has practical suggestions for organizing to prepare for responses to raids as well as references and links to other resources and organizations working on the issue.

As it turns out, Canon Rhonda Lee is an historian of non-violent social movements and is willing to share her expertise. She can be reached at rhonda.lee@episdionc.org. The North Carolina Council of Churches also has an immigrant rights project which you can learn more about at www.ncchurches.org. Finally you can see what churches in the Episcopal Diocese of Washington are doing at <https://www.edow.org/news-events/news/2017/03/02/congregations-explore-ways-help-those-risk-deportations>.

Peace ,

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Chancellor of the Episcopal Diocese of NC