
ON HOLY GROUND: CHURCH SANCTUARY IN THE TRUMP ERA

Valerie J. Munson*

“Then he said, ‘Come no closer! Remove the sandals from your feet, for the place on which you are standing is holy ground.’”
Exodus 3:5¹

I. INTRODUCTION

The number of deportations of unauthorized immigrants has increased dramatically since the election of Donald Trump.² In keeping with long-standing tradition, religious communities across the United States have responded by providing sanctuary to unauthorized immigrants in the form of housing and social services.³ Thus far, immigration authorities have refrained from entering sacred spaces to apprehend unauthorized immigrants. But, is it legal for religious communities to provide such sanctuary under the current law criminalizing the “harboring” of unauthorized immigrants? Can immigration authorities enter sacred spaces to apprehend unauthorized immigrants if they wish? This article addresses those questions.

The article is divided into three parts. First, it provides background on the history of sanctuary from ancient times to the present-day in the United States. Next, it surveys current law on the legality of church sanctuary in the United States under the federal immigration law prohibiting the “harboring”

* Clinical Associate Professor, Southern Illinois University School of Law, B.A. 1976, Augustana College; Graduate Diploma 1975, Université de Paris IV (Sorbonne); J.D. 1982 Rutgers School of Law; former partner and chair of Religion and Law Practice Group, Eckert Seamans Cherin & Mellot, Philadelphia.

1. Exodus 3:5 (THE NEW OXFORD ANNOTATED BIBLE (3d ed. 2001)).

2. See *infra* note 50.

3. See Marta Caminero-Santangelo, *The Voice of the Voiceless: Religious Rhetoric, Undocumented Immigrants, and the New Sanctuary Movement in the United States*, in SANCTUARY PRACTICES IN INTERNATIONAL PERSPECTIVES: MIGRATION, CITIZENSHIP AND SOCIAL MOVEMENTS 92, 99 (Randy K. Lippert & Sean Rehaag eds., 2013).

of unauthorized immigrants. Finally, it provides recommendations for the continued evolution of federal law and policy concerning sanctuary in sacred spaces.⁴

II. BACKGROUND

The tradition of affording sanctuary in sacred space dates back to ancient times and spans cultures.⁵ For example, in ancient Greece, religious shrines were considered safe spaces for those who were persecuted, mistreated slaves, debtors, and political offenders.⁶ Temples were sanctuaries; nobody could be removed from a temple by force.⁷ The ancient Romans likewise considered particular sacred spaces as sanctuaries where fugitives could be safe from apprehension.⁸ The Hebrew Bible also references ancient traditions of alter sanctuary.⁹

In 392, the Theodosian Law Code codified the custom of Christian church sanctuary, although it limited it according to type of crime and excluded certain individuals such as Jews, heretics and apostates from its protections.¹⁰ Some fifty years later, Justinian's Law Code recognized church sanctuary but excluded public debtors, adulterers, tax officials, murderers and rapists.¹¹ Church authorities promulgated rules for sanctuary in churches.¹² The Church viewed itself as having a God-given power to grant sanctuary that superseded state power.¹³ Therefore, pursuit of

4. Sanctuary in sacred spaces such as churches, mosques, and synagogues is often referred to as simply "church sanctuary." This article uses the terms "sanctuary in sacred spaces" and "church sanctuary" interchangeably.

5. In fact, reciprocal altruism, including affording sanctuary to strangers, is believed to be a trait of the earliest homo sapiens. LINDA RABBEN, *SANCTUARY AND ASYLUM: A SOCIAL AND POLITICAL HISTORY* 28 (2016).

6. *Id.* at 32. Indeed, the term "asylum" comes from the ancient Greek word *asylos*, meaning "inviolable." *Id.*

7. *Id.* at 33.

8. *Id.* at 33-34.

9. See IGNATIUS BAU, *THIS GROUND IS HOLY: CHURCH SANCTUARY AND CENTRAL AMERICAN REFUGEES* 127-29 (1985). Alter sanctuary was an augmentation to the cities of refuge referenced in the Hebrew Bible. *Id.* at 125, 127-28; KARL SHOEMAKER, *SANCTUARY AND CRIME IN THE MIDDLE AGES, 400-1500*, at 53-56 (2011).

10. RABBEN, *supra* note 5, at 39.

11. *Id.*

12. *Id.* at 39-41.

13. *Id.* at 41.

sanctuary seekers into a church by state actors was viewed as sacrilege.¹⁴ Violating sanctuary could result in ex-communication¹⁵ or even death.¹⁶

In the early medieval era in the West, the rule of law was weak and crime ubiquitous.¹⁷ Violent blood feuds were not uncommon, including among the upper classes.¹⁸ Both the guilty and the innocent sought sanctuary in churches.¹⁹ Generally, they were allowed to stay a limited period of time²⁰ during which negotiations could take place between ecclesial authorities and secular authorities or the offended party in an effort to avoid private vengeance killing.²¹

Throughout the medieval period in the West, church sanctuary was consolidated through various royal edicts, secular laws, and clerical traditions.²² However, during most periods, every consecrated church in England and throughout Christendom was understood to have an inherent right to provide sanctuary.²³ Sanctuary was a powerful institution used to resolve conflict and work justice.²⁴ However, during the late medieval period, due to abuses in the use of sanctuary and in light of an evolving secular justice system,²⁵ church sanctuary became disfavored and restricted.²⁶ Nonetheless, churches in England continued to give legally-recognized sanctuary to fugitives until the sixteenth century²⁷ until it was virtually abolished by reforms under Henry VIII²⁸ and finally abolished under James I.²⁹

14. *Id.*

15. *Id.* at 40; SHOEMAKER, *supra* note 9, at 67; HILARY CUNNINGHAM, GOD AND CAESAR AT THE RIO GRANDE: SANCTUARY AND THE POLITICS OF RELIGION 81 (1995).

16. SHOEMAKER, *supra* note 9, at 61.

17. RABBEN, *supra* note 5, at 41.

18. *Id.*; *see* SHOEMAKER, *supra* note 9, at 78-80, 84.

19. RABBEN, *supra* note 5, at 41.

20. The length of time varied from a few days to forty days based on the place and the period of time. *Id.*

21. *Id.* at 41, 44; SHOEMAKER, *supra* note 9, at 64-71; CUNNINGHAM, *supra* note 15, at 71.

22. RABBEN, *supra* note 5, at 43-46.

23. Karl Shoemaker, *Sanctuary for Crime in the Early Common Law*, in SANCTUARY PRACTICES IN INTERNATIONAL PERSPECTIVES: MIGRATION, CITIZENSHIP AND SOCIAL MOVEMENTS 15, 15 (Randy K. Lippert & Sean Rehaag eds., 2013).

24. RABBEN, *supra* note 5, at 48; SHOEMAKER, *supra* note 9, at 50.

25. *See* Shoemaker, *supra* note 23, at 18.

26. RABBEN, *supra* note 5, at 49. It should be noted that the concept of sanctuary itself survived in the new secular principle of asylum which became an important principle of international law under the Treaty of Westphalia in 1648. *Id.* at 53.

27. RABBEN, *supra* note 5, at 49.

28. Shoemaker, *supra* note 23, at 25; CUNNINGHAM, *supra* note 15, at 81.

29. Shoemaker, *supra* note 23, at 25; *see* CUNNINGHAM, *supra* note 15, at 81.

Colonists brought the principle of sanctuary with them to America. Although the early colonies did not have sanctuary laws, colonists did provide refuge to those fleeing other colonies due to religious or political persecution.³⁰ They also are known to have shielded fugitives from British law.³¹

The opposition of some religious groups to the institution of slavery in America led to many incidents of church sanctuary for fugitive slaves. Churches were a key part of what came to be known as the Underground Railroad, ferrying fugitive slaves northward.³² Unlike their medieval predecessors, however, those participating in affording such sanctuary knew they were operating outside and in contravention of the law.³³ Passage of the Fugitive Slave Act in 1793 made helping slaves escape a federal crime.³⁴ Nonetheless, many churches did give sanctuary to runaway slaves. They cited higher authority pointing to scriptural passages enjoining Christians to aid the oppressed and extend hospitality to the stranger.³⁵

Following in the footsteps of their nineteenth century countrymen, churches in the 1960s and early 1970s gave sanctuary to those opposed to the Vietnam War, sheltering conscientious objectors seeking to avoid military engagement.³⁶ Like those before them, they cited scripture as authority for their civil disobedience.³⁷

In the 1980s, a sanctuary movement developed in the United States in response to refugees fleeing war in Central America.³⁸ Some participants viewed their role as largely humanitarian, aiding those crossing the Mexican border seeking asylum in the United States.³⁹ Others viewed their role, and the role of the sanctuary movement in general, in more political terms.⁴⁰ They sought to publicize the oppressive political conditions in Central America, United States government policies toward those conditions, and immigration policies that denied asylum to the vast majority of refugees from Central America reaching the United States.⁴¹ Whatever their motive,

30. RABBEN, *supra* note 5, at 56.

31. *Id.*; BAU, *supra* note 9, at 159.

32. RABBEN, *supra* note 5, at 69-76, 82.

33. *Id.* at 81.

34. *Id.* at 69.

35. *Id.* at 81-82; BAU, *supra* note 9, at 160.

36. RABBEN, *supra* note 5, at 135, 288 n.11; BAU, *supra* note 9, at 161-64, 167-71.

37. BAU, *supra* note 9, at 161-62; CUNNINGHAM, *supra* note 15, at 94-95.

38. RABBEN, *supra* note 5, at 132-47.

39. *Id.* at 136-37.

40. BAU, *supra* note 9, at 19-21.

41. See RABBEN, *supra* note 5, at 137-38; Hector Perla Jr. & Susan Bibler Coutin, *Legacies and Origins of the 1980s US-Central American Sanctuary Movement*, in PRACTICES IN

sanctuary workers provided lodging to refugees in church buildings and aided them in obtaining medical, legal, and other needed services.⁴² At the height of the movement, in the mid-1980s, 500 churches and synagogues across the country had declared themselves sanctuaries.⁴³

Sanctuary workers in the 1980s, like those before them, viewed their involvement largely in religious terms.⁴⁴ This was true whether they focused primarily on the humanitarian aspects of their work or its political implications.⁴⁵

In 2007, a movement known as the New Sanctuary Movement began in the United States in response to failed efforts at immigration reform.⁴⁶ As before, many participating congregations provide physical sanctuary to those seeking asylum or unauthorized immigrants fleeing deportation.⁴⁷ But, the movement also focuses on providing humanitarian assistance of all kinds.⁴⁸ In addition, it seeks to call attention to the need for immigration reform.⁴⁹

In the first three months after the inauguration of Donald Trump in January of 2017, due to new immigration policies, immigration arrests increased nearly forty percent over what they had been in the same time period the preceding year.⁵⁰ Many of those being deported have been in the United States for many years.⁵¹ They may well have spouses or children who are U.S. citizens. Thus, much of the focus of sanctuary workers is advocating for the preservation of family units.⁵² Providing refuge in church buildings along with a variety of social services is an important component of the New Sanctuary Movement.⁵³ There are currently over 800 congregations offering sanctuary services in the United States.⁵⁴

INTERNATIONAL PERSPECTIVES: MIGRATION, CITIZENSHIP AND SOCIAL MOVEMENTS 73, 78, 80 (Randy K. Lippert & Sean Rehaag eds., 2013).

42. RABBEN, *supra* note 5, at 136-37.

43. *Id.* at 140.

44. See Caminero-Santangelo, *supra* note 3, at 95; BAU, *supra* note 9, at 12-16.

45. See Caminero-Santangelo, *supra* note 3, at 95; BAU, *supra* note 9, at 12-16.

46. RABBEN, *supra* note 5, at 244; see Caminero-Santangelo, *supra* note 3, at 92.

47. RABBEN, *supra* note 5, at 244, 251.

48. *Id.* at 244.

49. *Id.*; see Caminero-Santangelo, *supra* note 3, at 92-94.

50. See Caitlin Dickerson, *Immigration Arrests Rise Sharply as a Trump Mandate Is Carried Out*, N.Y. TIMES: U.S. (May 17, 2017), <https://www.nytimes.com/2017/05/17/us/immigration-enforcement-ice-arrests.html>.

51. See Caminero-Santangelo, *supra* note 3, at 96.

52. RABBEN, *supra* note 5, at 252; see NEW SANCTUARY MOVEMENT, <http://newsanctuarymke.org/en/home/> (last visited Nov. 19, 2017); Caminero-Santangelo, *supra* note 3, at 97.

53. See RABBEN, *supra* note 5, at 252-53.

54. SANCTUARY MOVEMENT, <http://www.sanctuarynotdeportation.org/> (last visited Nov. 19, 2017); Scott Pelley, *Churches, Synagogues Openly Defy Trump's Immigration Crackdown*, CBS

Like their predecessors, participants in the New Sanctuary Movement rely heavily on religious values in explaining their provision of sanctuary and their work for immigration reform.⁵⁵

Immigration authorities have long had a policy of refraining from entering houses of worship in pursuit of those claiming sanctuary there.⁵⁶ However, they maintain that they have the right to do so and that those providing physical sanctuary are in violation of the law.⁵⁷ Sanctuary workers, on the other hand, claim that as long as they are open about their provision of physical sanctuary, they are not in violation of the law.⁵⁸ Both positions have support in current law.

III. THE CURRENT LAW ON SANCTUARY

United States law does not currently recognize a right of sanctuary for unauthorized immigrants in sacred places, despite the deep roots the right of sanctuary for those seeking to escape criminal prosecution has in ancient history. In 1983, at the height of the sanctuary movement involving refugees from Central America, the Justice Department's Office of Legal Counsel issued an opinion stating "The housing of illegal aliens by churches would appear to be a violation of [the federal law forbidding the harboring of illegal aliens]."⁵⁹ That conclusion, however, would appear to be undercut by more recent case law.

The statutory provision in question is part of the federal Immigration and Nationality Act and provides that criminal penalties may be imposed against any person who:

knowing or in reckless disregard of the fact that an 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. . .

8 U.S.C. § 1324(a)(1)(A)(iii) (emphasis added).⁶⁰

NEWS (May 21, 2017), <http://www.cbsnews.com/news/churches-synagogues-openly-defy-trump-immigration-crackdown>.

55. Caminero-Santangelo, *supra* note 3, at 98-99.

56. See Memorandum from John Morton, Director of U.S. Immigration and Customs Enforcement, to Field Office Directors, Special Agents in Charge, Chief Counsel, on Enforcement Actions at or Focused on Sensitive Locations (Oct. 24, 2011), <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>; RABBEN, *supra* note 5, at 132.

57. Caminero-Santangelo, *supra* note 3, at 96.

58. *Id.* at 98.

59. Church Sanctuary for Illegal Aliens, 7 Op. O.L.C. 168, 169 (1983).

60. There is a separate provision that penalizes individuals who "knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation

The majority of federal circuit courts that have recently considered the issue has held that in order to violate the harboring provision, an individual must engage in conduct that is intended to help the unauthorized immigrant avoid detection by immigration authorities.⁶¹ However, only a handful of circuit courts have expressly addressed the issue⁶² and at least one appears to hold the view that intent to help an unauthorized immigrant avoid detection is not required.⁶³ In other words, the mere housing of an unauthorized immigrant violates the provision.⁶⁴ A discussion of recent cases underscores how grey this area of the law remains.

In 2008, the Third Circuit Court of Appeals reviewed the conviction of a defendant who was found to have violated the provision against shielding, harboring and concealing when he advised an unauthorized immigrant to “keep a low profile and not draw attention to himself, and [stated] that it was good that he lived at a different address than that on file with INS.”⁶⁵ The court held that violation of the provision required conduct “tending to substantially facilitate an alien’s remaining in the United States illegally and to prevent government authorities from detecting the alien’s unlawful presence.”⁶⁶ The court concluded that no reasonable juror could find that the defendant’s statements tended to substantially facilitate the unauthorized immigrant’s remaining in the United States illegally and reversed his conviction under 8 U.S.C. § 1324.⁶⁷

In 2011, the Eleventh Circuit Court of Appeals considered the case of a professional sports agent convicted of smuggling five baseball players from Cuba into the United States, transporting them from Miami to Los Angeles,

of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law.” 8 U.S.C. § 1324(a)(1)(A)(ii). This article does not address that provision.

61. See, e.g., *United States v. George*, 779 F.3d 113, 117-18 (2d Cir. 2015); *United States v. Ozcelik*, 527 F.3d 88, 100 (3d Cir. 2008); *Delrio-Mocci v. Connolly Properties, Inc.*, 672 F.3d 241, 246 (3d Cir. 2012); *United States v. Dominguez*, 661 F.3d 1051, 1063 (11th Cir. 2011).

62. *Cruz v. Abbott*, 849 F.3d 594, 599-600 (5th Cir. 2017); *George*, 779 F.3d at 117-18; *United States v. McClellan*, 794 F.3d 743, 751 (7th Cir. 2015); *Villas at Parkside Partners v. City of Farmers Branch*, 726 F.3d 524, 529 (5th Cir. 2013) (en banc), *cert. denied*, 134 S. Ct. 1491 (2014); *Ozcelik*, 527 F.3d at 100.

63. See *United States v. Acosta de Evans*, 531 F.2d 428, 430 (9th Cir. 1976) (construing “harbor” to mean “afford shelter”); see also *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1017 (9th Cir. 2013) (suggesting that merely housing an unauthorized immigrant in a church would violate the harboring provision).

64. See *Acosta de Evans*, 531 F.2d at 430; *Valle del Sol Inc.*, 732 F.3d at 1017.

65. *Ozcelik*, 527 F.3d at 97.

66. *Id.* at 99 (citing *United States v. Rubio-Gonzalez*, 674 F.2d 1067, 1073 (5th Cir. 1982)).

67. *Accord DelRio-Mocci v. Connolly Props., Inc.*, 672 F.3d 241, 247 (3d Cir. 2012) (holding that knowingly renting an apartment to an unauthorized immigrant does not constitute harboring because it is not the type of “substantial facilitation” required by *Ozcelik*).

and harboring them in Los Angeles until they applied for asylum.⁶⁸ The facts relevant to the harboring indictment were that the agent had provided housing in an apartment complex for the baseball players, who he accompanied to see an immigration lawyer.⁶⁹ During the relevant time period, the baseball players were free to come and go from the apartment complex and did so, training for and playing ball games, socializing in public places, and even participating in the making of a documentary.⁷⁰ The court held that the evidence did not support the conclusion that the agent substantially facilitated the players escaping detection by immigration officials.⁷¹ To the contrary, the evidence in no way suggested that the players were trying to avoid immigration officials.⁷²

In 2013, the Fifth Circuit Court of Appeals permanently enjoined enforcement of a city ordinance which required adults living in tenant housing to obtain an occupancy license which was conditioned upon the occupant being a citizen or having lawful immigration status.⁷³ The court held that the ordinance was preempted by federal immigration law.⁷⁴ In so doing, the court noted that it had previously held that the statutory language in 8 U.S.C. § 1324(a)(1)(A)(iii) required something more than mere housing of an unauthorized immigrant.⁷⁵ It had interpreted the language “‘harbor, shield, or conceal’ to imply that ‘something is being hidden from detection.’”⁷⁶

In 2015, the Seventh Circuit Court of Appeals affirmed the conviction of an individual who had provided employment, housing, utilities and food to unauthorized immigrant kitchen workers.⁷⁷ The court held “when the basis for the defendant’s conviction under § 1324(a)(1)(A)(iii) is providing housing to a known illegal alien, there must be evidence from which a jury could conclude, beyond a reasonable doubt, that the defendant intended to safeguard that alien from the authorities.”⁷⁸ The court concluded that the

68. *United States v. Dominguez*, 661 F.3d 1051, 1056-59 (11th Cir. 2011).

69. *Id.* at 1058.

70. *Id.*

71. *Id.* at 1063.

72. *Id.*

73. *Villas at Parkside Partners v. City of Farmers Branch*, 726 F.3d 524, 526 (5th Cir. 2013) (en banc), *cert. denied*, 134 S. Ct. 1491 (2014).

74. *Id.*

75. *Id.* at 529 (quoting *United States v. Rubio-Gonzalez*, 674 F.2d 1067, 1073 n.5 (5th Cir. 1982)).

76. *Id.* (quoting *United States v. Varkonyi*, 645 F.2d 453, 459 (5th Cir. 1981)); *see also Cruz v. Abbott*, 849 F.3d 594, 600 (5th Cir. 2017).

77. *United States v. McClellan*, 794 F.3d 743, 751 (7th Cir. 2015).

78. *Id.*

defendant engaged in deliberate conduct aimed to impede the detection of the unauthorized immigrants in question by immigration authorities.⁷⁹ The provision of free housing near their place of employment, payment of utilities, and provision of food prevented them from engaging in the type of commercial transactions which might have exposed their unauthorized status to authorities.⁸⁰

Similarly, and also in 2015, the Second Circuit Court of Appeals upheld the conviction of an individual who employed and housed an unauthorized immigrant as a domestic worker.⁸¹ The court noted that merely providing shelter to an unauthorized immigrant is insufficient to constitute “harboring” under the relevant statutory provision.⁸² It held that “to constitute harboring, a defendant’s action must be intended (1) substantially to facilitate an illegal alien’s remaining in the United States, and (2) to prevent the alien’s detection by immigration authorities.”⁸³ The facts of the case revealed that the defendant failed to file the necessary tax forms with the Internal Revenue Service relative to the alien’s employment, repeatedly instructed the alien not to speak with others about her immigration status and to describe herself as a family friend, and stalled when authorities came to remove the alien from the home.⁸⁴ The court found that evidence “overwhelmingly demonstrated that [the defendant] acted with the requisite intent to conceal [the alien’s] illegal presence in the United States from federal authorities.”⁸⁵

This line of cases supports the proposition that the mere housing of an unauthorized immigrant in a sacred space does not violate federal immigration law unless it is combined with affirmative efforts to assist the alien in avoiding detection by immigration officials. However, at least one federal court of appeals has suggested the contrary. In determining the issue of whether certain individuals and organizations had standing to challenge provisions of an Arizona immigration-related statute, the Ninth Circuit Court of Appeals suggested that a pastor who provided daily shelter and routine transportation to unauthorized immigrants was violating the federal harboring provision.⁸⁶ Hence, whether an individual or organization affording sanctuary to unauthorized immigrants in a sacred space can be

79. *Id.*

80. *Id.* at 747, 751.

81. *United States v. George*, 779 F.3d 113, 114-15 (2d Cir. 2015).

82. *Id.* at 118.

83. *Id.*

84. *Id.* at 120-22.

85. *Id.* at 122.

86. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1014-15 (9th Cir. 2013); *see also United States v. Acosta de Evans*, 531 F.2d 428, 430 (9th Cir. 1976) (“We believe that [§ 1324’s] purpose is best effectuated by construing ‘harbor’ to mean ‘afford shelter’ and so hold.”).

found to be in violation of the federal harboring provision may depend on the jurisdiction in which the sacred space is located.

IV. RECOMMENDED FEDERAL LAW AND POLICY ON SANCTUARY IN SACRED PLACES

The better approach would be for federal courts to follow the majority view and hold that it is not illegal for religious communities to provide housing and social services to unauthorized immigrants as long as they do not engage in conduct intended to shield the aliens from detection by immigration authorities. This is consistent with the history of 8 U.S.C. § 1324(a)(1)(A)(iii) and the context in which the term “harboring” appears in the provision itself.

The statute in question originated with the Immigration Act of 1907, which made the smuggling and transport of aliens into the United States a criminal act.⁸⁷ In 1917, that statute was amended to add prohibitions against concealing and harboring unauthorized immigrants.⁸⁸ In 1948, the Supreme Court ruled that the statute did not provide a penalty for its prohibition against concealing and harboring unauthorized immigrants.⁸⁹ Four years later, Congress responded by adding a penalty for anyone who “willfully or knowingly conceals, harbors, or shields from detection” an unauthorized immigrant.⁹⁰ No definition for the term “harbors” was provided. However, Congress changed the statute in 1986 to its current form, retaining the phrase “conceals, harbors, or shields from detection.”⁹¹ The fact that the “harbors” language was added to a statute addressing smuggling suggests a desire to prohibit clandestine activity aimed at evading immigration authorities.

Dictionaries do not consistently define “harbor;” sometimes it is defined as being synonymous with “shelter” and sometimes it is defined as connoting concealment.⁹² Therefore, it is best to construe the term by its statutory context.⁹³ In 8 U.S.C. § 1324(a)(1)(A)(iii), “harbors” is one of three proscribed types of conduct, the others being “conceals” or “shields from

87. *United States v. Vargas-Cordon*, 733 F.3d 366, 379 (2d Cir. 2013) (citing Immigration Act of February 20, 1907, Pub. L. No. 59-96, 34 Stat. 898, 900-01 (repealed)).

88. *Id.* (citing Immigration Act of 1917, Pub. L. No. 64-301, 39 Stat. 874, 880 (repealed 1952)).

89. *Id.* (citing *United States v. Evans*, 333 U.S. 483, 495 (1948)).

90. *Id.* (citing Immigration and Nationality Act of 1952, Pub. L. No. 82-414, § 274(a), 66 Stat. 163, 228-29).

91. *Id.* (citing Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, § 112(a), 100 Stat. 3359, 3381-82).

92. *Id.* at 381; *see also* *United States v. Costello*, 666 F.3d 1040, 1043-44 (2012).

93. *Vargas-Cordon*, 733 F.3d at 381.

detection.”⁹⁴ Both of the other terms clearly connote secrecy or hiding.⁹⁵ Thus, as a matter of statutory construction, the term “harbors” should be construed to connote secrecy or hiding as well.⁹⁶

Hence, the courts should construe the term “harbors” in a manner consistent with the history of the statute and the context in which that particular term appears and hold that the mere housing of unauthorized immigrants and provision of routine transportation and social services does not violate 8 U.S.C. § 1324(a)(1)(A)(iii).

The current policy of U.S. Immigration and Customs Enforcement is to refrain from enforcement actions occurring at or focused on houses of worship unless “(a) exigent circumstances exist, (b) other law enforcement actions have led officers to a [house of worship] . . . , or (c) prior approval is obtained.”⁹⁷ The immigration authorities should continue that policy of not entering sacred spaces.⁹⁸ It is consistent with the history of recognizing a right of sanctuary in sacred spaces, the tradition of religious communities in the United States providing sanctuary, and current First Amendment values of religious freedom and separation of church and state. This policy should be embodied in a federal regulation so that it is enforceable and not easily subject to change.⁹⁹

For hundreds of years, societies recognized a right of sanctuary in sacred spaces.¹⁰⁰ In spite of the absence of such a recognized right, religious communities in the United States have a long history of providing sanctuary for humanitarian reasons and for reasons of social justice.¹⁰¹ The motivation of current church sanctuary providers is the same as those that came before them. They seek to provide humanitarian assistance and to publicize the need for immigration reform.¹⁰² Their actions are often based in deeply-held religious beliefs.¹⁰³

94. *Id.* at 381.

95. *Id.* at 381-82.

96. *Id.* at 382.

97. *See* Morton, *supra* note 56.

98. *Id.*

99. It is unlikely that the adoption of such a regulation would induce large numbers of churches to offer sanctuary or large numbers of unauthorized immigrants to seek church sanctuary. Housing unauthorized immigrants presents a church with a host of practical issues and rarely is viewed as feasible on a long-term basis. Similarly, living in a church building presents an unauthorized immigrant with very real practical constraints and is not likely to be viewed as feasible on a long-term basis.

100. *See supra* Part II.

101. *Id.*

102. RABBen, *supra* note 5, at 244; *see* Caminero-Santangelo, *supra* note 3, at 92-94.

103. Caminero-Santangelo, *supra* note 3, at 98-99.

Religious communities enjoy a special status under the First Amendment to the United States Constitution which proscribes the establishment of religion and prescribes its free exercise.¹⁰⁴ Americans have long placed a particular value on the principles of religious freedom and separation of church and state reflected in that amendment.¹⁰⁵

The history and tradition of providing sanctuary in sacred spaces should be recognized by federal regulation and honored by present day immigration officials. Physical intrusion into sacred spaces by government officials to enforce immigration laws offends American First Amendment values. Those charged with enforcing immigration laws should not be authorized to enter sacred spaces for purposes of apprehending unauthorized immigrants seeking sanctuary there.

104. See U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .”). The question of whether the free exercise clause protects church sanctuary providers from prosecution under federal immigration law is beyond the scope of this article.

105. JOHN WITTE, JR. & JOEL A. NICHOLS, RELIGION AND THE AMERICAN CONSTITUTIONAL EXPERIMENT 21-40 (Westview Press 3d ed. 2011); see generally MICHAEL W. MCCONNELL, THOMAS C. BERG & CHRISTOPHER C. LUND, RELIGION AND THE CONSTITUTION (4th ed. 2016) (presenting an overview of the development of these principles in the law).