



An introduction for churches considering ‘sanctuary’ ministries

“Sanctuary” means “refuge.” Throughout human history, there have been communities willing to provide sanctuary, or physical refuge, to people who were in violation of the law. Whether churches theologically could or should provide sanctuary to undocumented immigrants is a topic being discussed by houses of worship across the country.

Below is an introduction to some common questions churches are asking as they consider the practical and legal implications of providing sanctuary, including how free exercise of religion concerns may be weighed against the federal immigration law. This introduction is not legal advice and does not substitute for consultation with an attorney.

What does a designation of “sanctuary” mean?

A self-designation of “sanctuary” has different meanings depending on the context and type of entity.

- For **churches**, a sanctuary designation means the church is providing intentional ministry to undocumented persons. This may include providing physical shelter to those facing detention or deportation but can involve other forms of intentional ministry.
- For **local governments**, it typically means that the local police department will not ask crime victims or witnesses about their immigration status in an investigation and will not hold suspects for Immigration and Customs Enforcement (ICE) without a warrant signed by a federal judge.
- For **colleges**, it typically means that the school has policies to protect their undocumented students, which could include not permitting ICE agents on campus without a warrant signed by a federal judge and providing financial or other assistance to undocumented students.

What legal protections does a “sanctuary” designation provide?

None. “Sanctuary” is not a legally recognized designation and does not prevent ICE agents or other government officials from entering the church to question, arrest or detain an undocumented person.

Why is it unusual for ICE agents to enter a “sanctuary church”?

Generally speaking, ICE agents, like other law enforcement officers, cannot enter private homes and private spaces of public buildings, such as churches, without a warrant signed by a federal judge. The current Department of Homeland Security guidance provides that ICE agents will not, except in an emergency, enter “sensitive locations,” such as places of worship, schools or hospitals. This guidance could be revoked or modified at any time. The “Protecting Sensitive Locations Act” (H.R. 1815) was filed in Congress on March 30, 2017. If enacted, it would provide more permanent protection for churches and other “sensitive locations” than the guidance currently in effect.

Does the free exercise of religion permit a church to provide sanctuary as one of its ministries?

Maybe. In the 1980s, the federal courts rejected defenses based upon the Free Exercise Clause in several cases where religiously motivated persons were convicted of violating immigration statutes. In 1993, the federal Religious Freedom Restoration Act (RFRA) was enacted but has not yet been asserted as a defense in this context. Some legal scholars have speculated that while a RFRA defense might be successful, it would be an uphill battle.

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What types of laws might a church violate if it offers sanctuary to undocumented immigrants?

Federal law prohibits the concealing, harboring, shielding from detection or transporting of undocumented persons when such action aids their unlawful stay in the country. State or local laws may penalize additional activities related to providing care for undocumented persons. Churches should consult an attorney to explore if their ministry to the undocumented community might violate local, state or federal laws.

Does a church's public announcement about providing sanctuary for an undocumented immigrant prevent a prosecution?

No, but in some jurisdictions it may help with a defense. For example, federal appellate courts have differing interpretations about what "harboring" means in the context of immigration laws. One appellate court has held that harboring includes simply providing shelter, while another has held that harboring necessarily includes an element of intent to hide or evade. Some churches publicly announce when they are providing shelter for an undocumented person to show that they are neither hiding immigrants from nor helping them evade ICE. While a public announcement may provide a defense in some jurisdictions, it may not protect churches from prosecution in other jurisdictions and may make things more difficult for the undocumented immigrant.

Besides sanctuary, how else can a church minister to undocumented persons and their families?

If a church is aware of undocumented persons among its membership or wants to specifically reach out to the community, there are many options short of providing shelter. For example, a church can:

- open membership or participation in church ministries to all regardless of immigration status.
- create opportunities for the church to meet the unique challenges faced by undocumented immigrants and their families (which may include a spouse or children who are U.S. citizens), including a constant fear of forced family separation.
- become a "recognized" organization to help undocumented persons navigate the immigration system (see Immigration Service And Aid Center [ISAAC]: IsaacProject.org/faqs).
- provide financial and volunteer support for other churches or nonprofits who are providing physical or legal assistance to the undocumented community.
- get involved in advocacy efforts to improve our immigration system.

What is most important to keep in mind if my church wants to become a "sanctuary church"?

1. Consult a local attorney familiar with federal immigration law and related state and local laws.
2. Learn what services are needed in your community by reaching out to other community groups.
3. If providing shelter, inform the undocumented immigrant that staying at the church does NOT give any special legal protection against detention or deportation.
4. Ensure that any staff, church members or other volunteers involved in sheltering or transporting undocumented immigrants are properly trained and aware of the potential legal consequences.