



BY MICHAEL J. WILLIAMS

Helping Illegal Immigrants: What Is the Law?

In the article, “The Stranger Among Us: Ministering Health to Migrants” (<http://journals.lww.com/journalofchristiannursing>), authors Jean C. Bokinskie and Tracy A. Evanson have made a compelling case to support the obligation of faith communities to help migrant farm-working families, particularly through Parish Nursing Ministries. The activities encouraged by the authors envision the parish nurse as an integrator of faith and health, developer of support groups, volunteer coordinator, community liaison/referral agent, personal health counselor, health advocate, and health educator with these families and the larger church. These activities are a natural application of the Christian obligation to help those in need, as directed by Jesus in Matthew 25:35-40, and in the Old Testament (Exodus 22:21, 23:9; Leviticus 19:10, 33-35; Numbers 15:15-16; Deuteronomy 10:18-19).

The authors recognize, however, that the majority of migrant farm-working families are *not* U.S. citizens or legal residents. While the activities

suggested by Bokinskie and Evanson are appropriate and needed, immigrants may require a vast array of other programs, services, and supports in order to survive in a new country. Immigrants often require assistance in securing basic needs beyond healthcare. Food, housing, transportation, and jobs are often des-

changing political, social, and economic dynamics involved in providing for the needs of the large number of people seeking admission to the United States, legally and illegally. Nonetheless, this commentary is intended to provide general guidance on some legal issues involved in providing services to illegal aliens. The

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perately needed by strangers in our country. Individuals and faith communities may see the desperate need, and with good intentions seek to provide assistance to immigrants based upon the recognized need and without regard to whether the people in need of assistance previously migrated to the United States legally or illegally. Before doing so, however, the legal ramifications of the activity should be thoroughly examined.

Unfortunately, immigration law is complex, and the ability to provide black-and-white guidelines for nurses and others seeking clarity is difficult in this evolving area of law. The issues are further complicated by the

commentary is not intended to substitute for actual legal advice based upon the facts of any individual case.

WHAT IS THE LAW

Before undertaking any activity potentially involving undocumented immigrants (illegal aliens under the Act), faith communities should first examine the Immigration and Nationality Act (INA), along with any relevant state law. The complete INA is a lengthy and multifaceted piece of legislation that addresses myriad aspects of immigration (U.S. Citizenship and Immigration Services [USCIS], 2009a). The specific section of the INA outlining general penalty



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provisions for assisting illegal immigrants, INA § 274, makes it a felony to:

1. bring an illegal alien into the United States anywhere besides a port of entry;
2. transport an illegal alien within the United States, in furtherance of such violation of the alien's status;
3. conceal, harbor, or shield from detection an illegal alien;
4. encourage or induce an alien to enter or remain in the United States (USCIS, 2009b).

In order to be criminally liable for a violation of INA § 274, the act must have been committed in "know-

statute requires that the transportation be "in-furtherance of" the aliens' illegal entry or stay. Certainly, transporting known illegal aliens between cities for the purpose of employment is a violation of this section because it is "in-furtherance" of the illegal stay (United States v. Varajas-Chavez, 1999; United States v. Hernandez-Guardado, 2000). But innocently transporting workers from one local jobsite to another as a part of normal job duties may not violate the statute (United States v. Moreno, 1977).

This distinction appears to be that transportation which is only "inciden-

1982). In United States v. Lopez (1975), a conviction was obtained for harboring where the defendant helped obtain employment, transport (get them to their jobs) applied for applications for immigration status, and arranged sham marriages. In United States v. Acosta de Evans (1976) a defendant was convicted for harboring because he allowed several illegal aliens to live with him.

The term "shield from detection" is not necessarily limited to hiding illegal aliens. Instead, simply warning an illegal alien of the presence of an immigration officer so that the alien might escape may be sufficient (United States v. Rubio-Gonzalez, 1982; United States v. Cantu, 1977).

The terms "encouraging" and "inducing" could also be construed very broadly. Activities such as helping an illegal alien obtain a false Social Security card or other fraudulent immigration papers constitute "encouraging or inducing" under this section (United States v. Oloyede, 1992; United States v. Ndiaye, 2006).

The activities described by INA § 274 are criminal if the defendant knew or should have known that activities benefited an illegal alien. Courts generally rely upon circumstantial evidence to prove actual or constructive knowledge, and have considered factors such as the defendant's familiarity with the immigration system, the alien's lack of English abilities, and the defendant's discussions about the home country with the alien (United States v. Rubio-Gonzalez, 1982). In United States v. Aguilar (1989), the court held that knowledge of alienage was sufficient circumstantial evidence to prove knowledge that someone does not have legal status.

Transporting known illegal aliens to different homes or job sites in order to avoid detection would violate the statute.

ing or reckless disregard of the fact that an alien has come to, entered or remains in the United States in violation of law" (USCIS, 2009b, (a) Criminal Penalties, 1, A, iii).

INTERPRETING THE LAW

The terms in INA § 274 are not models of clarity, and have therefore required some judicial interpretation. Even with that interpretation, however, it may sometimes be difficult to define a "bright line" that would separate illegal activity from acceptable and legal humanitarian support.

The terms that have generated the most judicial attention are "transporting" and "harboring or shielding from detection." "Transportation" is easily understood, but a violation of the

tal" is not criminal, while transportation which "directly or substantially" furthers a person's illegal status violates the statute (United States v. Velasquez-Cruz, 1990). Consequently, transporting a patient for a clinic visit or to the grocery store may not be a violation of INA § 274. However, transporting known illegal aliens to different homes or job sites in order to avoid detection would violate the statute.

The terms "harboring" or "shielding from detection" are particularly troublesome because of the uncertainty as to what activities might fall within the language. "Harboring" has been defined as any conduct tending to substantially facilitate an alien remaining in the United States illegally (United States v. Rubio-Gonzalez,



CHURCHES NOT EXEMPT

Faith communities are not exempt and do not get a free pass legally because of good intentions. While some of the terms used in the statute are less than clear, what is clear is that noble or religious motive is not a defense to a violation of INA § 274 (United States v. Aguilar, 1989). In the Aguilar case, a church pastor and several church members organized a church-sponsored humanitarian movement to smuggle hundreds of Central American natives across the Mexican border and into Arizona, and on to Chicago, where the aliens were then disbursed to safe houses across the United States. The defendants were all convicted, even though one of the many defenses raised was that the conduct was motivated by religious and humanitarian concerns. Thus, the fact that a priest, pastor, or faith community is involved in the violation will not excuse the violation. The motive for the violation, whether religious or humanitarian, is irrelevant under the law.

BALANCING ETHICAL AND LEGAL OBLIGATIONS

In addition to helping others in need, Christians are commanded to obey governmental authorities (Romans 13:1-4). Thus, compliance with INA § 274 may be viewed as part of the Christian obligation of general governmental obedience. Respect for the rule of law is essential for the effective operation of any legal system, and disregarding the law is a dangerous precedent. Nonetheless, there are organizations that promote the provision of direct assistance to immigrants, notwithstanding INA § 274. This act of civil disobedience

is typically justified on grounds that Christians must obey God rather than man (Acts 5:29) and that the Christian obligation to help those in need requires disobedience of unfair immigration laws. The New Sanctuary Movement (www.new-sanctuarymovement.org) is one such organization and purports to provide housing, employment, transportation, financial support, and other services to illegal aliens as a matter of civil disobedience. The movement has predictably generated substantial controversy and has become a divisive issue between and even within faith communities.

Other Christian groups balance the humanitarian concerns differently, and conclude that the obligation to help others does not go so far as to require deliberate violation of the law. Most organizations have balanced the competing principles and have concluded that substantial assistance can be provided within the bounds of the law, and encourage others to provide pastoral care, crisis intervention, and other services necessary to uphold human dignity without violating existing law. A common recommendation also supports immigration law reform (Justice for Immigrants, 2005).

The resolution of any Christian ethical debate is a matter of individual conscience after prayerful consideration of all relevant factors, including church directives, applicable law, and God's Word.

CONCLUSION

Certainly, there is substantial assistance that can be provided without violating INA § 274. The health related support services recommended by

Bokinskie and Evanson would likely fall into this category, as would many of the services traditionally provided by faith communities to people in need. It is, however, when those services are provided to *known* illegal aliens that this law is implicated. When services fall into the category of assisting the illegal activities, the provision of those services can be a violation of INA § 274, despite the best of intentions.

It is therefore recommended that faith communities and individual members consult with a reputable attorney before engaging in any activities that are questionable under INA § 274, so they can make well informed decisions on a proper course of action after consultation and deliberation. 

Justice for Immigrants. (2005). *Interfaith statement in support of comprehensive immigration reform*. Retrieved June 9, 2009, from <http://www.justiceforimmigrants.org/files/Interfaith%20Statement.pdf>

United States Citizenship and Immigration Services. (2009a). *Immigration and Nationality Act*. Retrieved June 12, 2009, from <http://www.uscis.gov/propub/ProPub-VAP.jsp?dockey=c9fe57852dc066cfe16a4cb816838a4>

United States Citizenship and Immigration Services. (2009b). *Immigration and Nationality Act, Chapter 8, General penalty provisions, Act 274, Bringing in and harboring certain aliens, Sec. 274, [8 U.S.C. 1324]*. Retrieved June 12, 2009, from <http://www.uscis.gov/propub/ProPub-VAP.jsp?dockey=c9fe57852dc066cfe16a4cb816838a4>

United States v. Acosta de Evans, 5331 F.2d 428 (9th Cir. 1976).

United States v. Aguilar, 883 F.2d 662 (9th Cir. 1989).

United States v. Cantu, 547 F.2d 1173 (5th Cir. 1977).

United States v. Hernandez-Guardado, 228 F.3d 1017 (9th Cir. 2000).

United States v. Lopez, 521 F.2d 437 (2nd Cir. 1975).

United States v. Moreno, 561 F.2d 1321 (9th Cir. 1977).

United States v. Ndiaye, 434 F.3d 1270 (11th Cir. 2006).

United States v. Oloyede, 982 F.2d 133 (4th Cir. 1992).

United States v. Rubio-Gonzalez, 674 F.2d 1067 (5th Cir. 1982).

United States v. Varajas-Chavez, 162 F.3d 1285 (10th Cir. 1999).

United States vs. Velasquez-Cruz, 929 F.2d 420 (8th Cir. 1990).