

# WNY REGIONAL IMMIGRATION ASSISTANCE CENTER

MONTHLY NEWSLETTER

ISSUE 53 | APRIL 2025

## Everything You Need to Know for Your Noncitizen Clients

**If your noncitizen client is facing criminal charges or adverse findings in Family Court, please contact the WNY Regional Immigration Assistance Center.**

We are funded by the New York State Office of Indigent Legal Services (ILS) to assist mandated representatives in the 7th and 8<sup>th</sup> Judicial Districts in their representation of noncitizens accused of crimes or facing findings in Family Court following the Supreme Court ruling in *Padilla v. Kentucky*, 559 U.S. 356 (2010), which requires criminal defense attorneys to specifically advise noncitizen clients as to the potential immigration consequences of a criminal conviction before taking a plea. There is no fee for our service. Please consider contacting us, whether you are a criminal defense, appellate or family defense attorney, for any of the following services:

- To receive advisals on plea offers and other dispositions to reduce and alleviate the immigration consequences on a noncitizen's status
- To join you in communicating to your client the aforementioned advisal we have provided
- To assist you by providing language access to communicate with a client who does not speak English when your office does not have such capacity, or provide you with a list of referrals to interpretation/translation services
- To assist you in determining the status of a noncitizen who does not have documentation of that status available
- To communicate our advisal concerning your noncitizen client in writing or orally to opposing counsel or to a court
- To provide CLEs on the immigration consequences of crimes to your defender community
- To participate in case conferences with you and others in your office to discuss noncitizen cases in the criminal justice system
- To refer you to deportation defense services and counsel

**Sophie Feal**

716.853.9555 ext. 269  
sfeal@labbuffalo.org  
290 Main Street  
Buffalo, NY 14202

**Wedade Abdallah**

716.416.7561  
wabdallah@labbuffalo.org  
20 Ontario Street  
Canandaigua, NY 14424

### LAST-MINUTE REGISTRANTS & WALK-INS WELCOME

#### Basic Crimmigration Law & Policy Under the Current Administration

Presented by Sophie Feal, Esq.

Genesee County Grand Jury Room  
1 West Main Street  
Batavia, NY 14020  
12:30PM - 3:00PM

#### [PLEASE REGISTER HERE](#)

2 CLE credits will be provided in the Professional Practice Category and .5 CLE credit in the Ethics category. This program is appropriate for both newly admitted and experienced attorneys.

Please feel free to bring lunch.



#### The WNY Regional Immigration Assistance Center

A partnership between  
the Ontario County Public Defender's  
Office and the Legal Aid Bureau of  
Buffalo, Inc.

## **WHAT IS HARBORING AND CAN IT AFFECT DEFENSE LAWYERS REPRESENTING CLIENTS?**

**By Sophie Feal, Managing Attorney, WNYRIAC, Legal Aid Bureau of Buffalo, Inc.**

Given the possible tension created by a federal immigration policy calling for immigration enforcement in courthouses, and New York State's Protect our Courts Act (POCA) (See March and February newsletters), we caution attorneys from interfering with any arrest or enforcement action by Immigration and Customs Enforcement (ICE) should that ever happen in court or elsewhere. The new administration's executive orders are heavy on enforcement, as well as criminal and civil penalties for immigration law violations.

Some may recall that during the first Trump Administration, a Massachusetts judge allowed an undocumented person to leave the courtroom through the back door when she noted that ICE was present to enforce a civil administrative detainer. (While the judge was not charged with harboring, but with federal obstruction statutes, the case serves as an illustration of the current landscape with respect to immigration enforcement). She was not successful in dismissing the indictment against her through the judicial system, though the Biden Administration ultimately dismissed the prosecution.

We understand that it is a lawyer's instinct to protect clients from arrest, but interfering will not prevent the arrest and could result in federal criminal charges filed pursuant to the harboring provisions of federal law. Instead, it is important to advise clients of their right to counsel, their right to remain silent, and their right against unreasonable searches and seizures. Clients should understand the difference between a judicial warrant and an administrative one. As well, if one witnesses an arrest, you can take down the officers' names, agency, and other relevant details of the arrest. This may be helpful later.

The harboring law at 8 U.S.C. §1324 reads as follows:

Bringing in and harboring certain aliens

(a) Criminal penalties

(1)(A) Any person who-

- (i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner ...
- (ii) 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, 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;

(iii) 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;

(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; or

(v)(I) engages in any conspiracy to commit any of the preceding acts, or

(II) aids or abets the commission of any of the preceding acts,

The subsections of concern are (a)(1)(A)(iii) and (iv). Those provisions make clear that harboring is more than smuggling, transporting, and furnishing undocumented immigrants with fake papers, yet harboring has been understood by various circuit courts to mean different things. In a troubling case from 1976, the Ninth Circuit Court of Appeals held that the mere provision of shelter, along with knowledge of a person's illegal presence, was sufficient to find unlawful harboring. *United States v Acosta de Evans*, 531 F.2d 428 (9<sup>th</sup> Cir. 1976). Generally, though, to constitute harboring, a defendant's actions 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.

In *United States v. George*, 779 F.3d 113, 117–18 (2d Cir. 2015), where the defendant employed a person as a servant in her home who she knew was undocumented and lacked proper authorization to live and work in the United States, the Court of Appeals for this Circuit specified that to harbor “a defendant must engage in conduct that is intended both to substantially help an unlawfully present alien remain in the United States—such as by providing him with shelter, money, or other material comfort—and also is intended to help prevent the detection of the alien by the authorities. The mere act of providing shelter to an alien, when done without intention to help prevent the alien's detection by immigration authorities or police, is thus not an offense under § 1324(a)(1)(A)(iii).” However, in this case, the defendant had also gone through great lengths to conceal the person's illegal presence and employment from the authorities.

In *U.S. v. Vargas-Cordon*, 733 F.3d 366 (2d Cir. 2013), the Appeals Court held that the correct interpretation of the term “harboring” is “conduct which is intended to facilitate an alien's remaining in the United States illegally **and** to prevent detection by the authorities of the alien's

unlawful presence.” *Id.* at 382 (emphasis added); citing *U.S. v. Kim*, 193 F.3d 567, 574 (2d Cir. 1999). The court in *Vargas-Cordon* makes clear that this is twofold requirement.

Earlier, the Circuit Court had held that the term harbor “was intended to encompass conduct tending substantially to facilitate an alien’s ‘remaining in the United States illegally,’ provided that the person charged has knowledge of the immigrant’s unlawful status.” *United States v Lopez*, 521 F.2d 427, 441 (2d Cir. 1975).

Other Courts of Appeals have also held that harboring means help that is intended to prevent the undocumented person from being found. This would include giving an undocumented person advice that directly interferes with an ongoing or soon to happen enforcement action targeting a specific person or location, such as telling a known undocumented person that ICE will or has arrived at their home or workplace. Specifically, the 5<sup>th</sup> Circuit, for example, found that warning a noncitizen known to be in the country illegally about the presence of immigration officers so that they might escape apprehension, detection and deportation is within the scope of §1324. [\*U.S. v. Rubio-Gonzalez\*, 674 F.2d 1067 \(5<sup>th</sup> Cir., 1982\).](#)

The Third Circuit elaborated on the applicable scope of § 1324(a)(1)(A)(iv) in *DelRio-Mocci v. Connolly Properties, Inc.*, 672 F.3d 241 (3d Cir. 2012). It held that §1324 means not just general advice ... but some affirmative assistance that makes an alien lacking lawful immigration status more likely to enter or remain in the United States than she otherwise might have been.” *Id.* at 248. The Third Circuit held that “induce,” as found in the statutory language, “plainly refers to conduct that causes someone to do something that they might otherwise not do.” *Id.* Looking to dictionaries by Merriam-Webster and Black, the court noted that in the context of § 1324(a)(1)(A)(iv), “‘encourage’ ... also refers to conduct that causes someone to do something that they otherwise might not do.” *Id.* at 248–49.

Therefore, telling an undocumented immigrant not to cooperate with the federal government, not to show up for a check-in with ICE, not appear in court, or to otherwise avoid or leave a location when ICE may be there to detain them, will be considered harboring. However, simply advising someone about their rights and the consequences of noncompliance with ICE, especially as an attorney, should not be deemed harboring.

For greater detail on the harboring law, see [https://nipnlg.org/sites/default/files/2025-01/2025\\_NIPNLG-1324.pdf](https://nipnlg.org/sites/default/files/2025-01/2025_NIPNLG-1324.pdf)