



**Evangelical Lutheran Church in America**

God's work. Our hands.

August 12, 2019

Greetings Brothers and Sisters in Christ,

Our ELCA Churchwide Assemblies are known for taking action on significant topics...and this past week was filled with a number of major decisions made on behalf of our whole church body. Publicly stating that the ELCA is a sanctuary denomination was one of those actions. But clarification to what that means is needed, and I hope that the following resources will help.

First are talking points related to the ELCA being a sanctuary denomination. These talking points were prepared by AMMPARO and Bishop Paul Erickson of the Greater Milwaukee Synod, and have been reviewed by the Office of the Presiding Bishop. Following those talking points is a helpful pastoral letter shared by the Rev. Andrew Lewis, pastor of Redeemer Lutheran Church in Macon, GA. This pastoral letter has been widely shared on social media. Next are a few notes from our legal department, followed by a document from the American Civil Liberties Union that shares the different meanings of the word "sanctuary." I hope these resources will help answer any questions that you or members of your congregation may be asking.

I will add that, while there was a great deal of conversation during the consideration of this action, the conversation was more about the language being used in the memorial than it was about the focus of the memorial itself. When the question was called, the memorial was adopted with an overwhelming majority.

Please feel free to use this information to help folks understand what being a sanctuary denomination is and what it is not.

Shalom...

Bishop Collins

### **What does becoming a sanctuary denomination mean for the ELCA?**

- In its simplest form, becoming a sanctuary denomination means that the ELCA is **publicly declaring** that walking alongside immigrants and refugees is a matter of faith. The ELCA Churchwide Assembly, the highest legislative authority of the ELCA, declared that when we preach on Sunday that Jesus told us to welcome, we will use our hands and voices on Monday to make sure it happens.
- We have a broken system regarding immigration, refugees and asylum-seekers. To declare ourselves a sanctuary church body is to say that we seek to provide concrete resources to assist the most vulnerable who are feeling the sharp edges of this broken system.
- Being a sanctuary denomination is about loving our neighbors. While we may have different ideas about how to fix this broken system and may have different ways of loving our neighbors, our call to love our neighbor is central to our faith.

- Being a sanctuary denomination will look different in different contexts. It may mean providing space for people to live; providing financial and legal support to those who are working through the immigration system; or supporting other congregations and service providers. We cannot mandate or direct our congregations and ministries to respond in specific ways. Each must work out what this means for them in their context.
- While we don't yet know the full scope of the work that this declaration will open for the church, we do know that our faith communities are already doing sanctuary work. Sanctuary for a congregation may mean hosting English as a second Language (ESL) classes, marching as people of faith against the detention of children and families, providing housing for a community member facing deportation, or, in some of our congregations, having thoughtful conversations about what our faith says about immigration. All of these are a step closer to sanctuary in our faith communities and sanctuary in our world for people who must leave their homes.
- Except for our members whose ancestors were here before European settlement or others who were forced to come to the U.S. against their will, the ELCA is an immigrant church. Our decades-long work with immigrants and refugee *is* how we practice our faith in the world. Lutherans started Lutheran Immigration and Refugee Service, one of the nine refugee resettlement agencies in the U.S.
- At our last assembly, we also committed to walking alongside Central American children and families fleeing their communities by passing the AMMPARO strategy (Accompanying Migrant Minors with Protection, Advocacy, Representation and Opportunities).
- Through the AMMPARO strategy, we are also working through our global partners in Central America to alleviate the conditions that cause people to migrate. We support organizations and faith communities that work with deported migrants in Central America and advocate for the humane treatment of immigrants in Mexico. In the U.S., we have a network of 151 welcoming and sanctuary congregations that are committed to working on migration issues and a welcome for immigrant communities. The church also has five sanctuary synods (our regional structures), all of which do work with immigrants, refugees and asylum-seekers.
- In baptism, we are brought into a covenantal relationship with Jesus Christ that commits us to strive for justice and peace in all the earth. Following the example of Martin Luther, we believe that advocacy is a crucial expression of baptismal identity. As a church, we have advocated for stopping the detention of children and families for decades. We have spoken out against family separation, sought a pathway to citizenship for community members that have lived in the U.S. for many years, and have taken steps to address the root causes of migration in a way that honors the humanity in people who must flee.
- Being a sanctuary denomination means that we, as church together, want to be public and vocal about this work. At the same time, we will have conversations about what sanctuary means with many of our members and discern future action and direction. Welcoming people is not a political issue for us, it is a matter of faith.

*A Pastoral Letter Regarding the Churchwide Assembly Vote to Become a Sanctuary Churchbody*

Dear friends in Christ,

In the middle of last week, the Churchwide Assembly voted to designate the ELCA a "sanctuary churchbody." Over the next several days, news organizations picked up the story; the coverage was mostly vague.

When I returned home from worship this afternoon, I learned that Fox News aired a short panel discussion on the Churchwide Assembly's decision. I assume that this piece will make the usual social media rounds over the coming days, and I write to you today in hopes of addressing any concerns that might be raised by the segment.

After repeated viewings of the panel, I can state definitively that Fox News misreported the facts both about the ELCA's position and about undocumented immigrants. Fox News did not have a representative from the ELCA on the panel and implied that ELCA congregations would simply ignore US law. This is not true. One of their guests also implied that undocumented migrants carry disease and pose a public health risk. This is also not true.

The ELCA's designation as a "sanctuary churchbody" means that our denomination will continue to support refugees as they are resettled in the US through our partnership with Lutheran Immigration and Refugee Services, provide legal assistance to immigrants pursuing their legally-protected right to seek asylum, and ensuring that undocumented immigrants are aware of their rights under US law. Moreover, it means that the ELCA will continue to advocate for just and humane treatment of detained immigrants, such as calling for adequate housing at detention centers and accompanying minors through immigration court as part of [the ELCA's AMMPARO program](#). Congregations that have the resources to do so may provide food, shelter, and financial assistance to migrants in need. Finally, it also means that the ELCA will speak out against xenophobia, racism, and fear-mongering against all people.

You may notice that these are long-standing ELCA practices. As I have mentioned many times before, ours is an immigrant faith: transplanted from Europe into the US and Caribbean by wandering Germans, Swedes, Norwegians, and Danes. These immigrant communities maintained their customs in this new country and shaped the ELCA as it is today. After World War II, one in six Lutherans was either displaced or a refugee. And over the years, our faith has become more diverse, made up of Lutherans from Central and South America, Africa, India, the Middle East, and every corner of the map. On a typical Sunday, Lutherans in the ELCA worship in more than thirty different languages. Because we are the spiritual heirs to a wandering Aramean, roving Germans and Danes, and displaced Christians from across the globe, our denomination has long been committed to welcoming the stranger. We do so in the belief that what we do unto the least of these, our sisters and brothers, we do unto Christ himself.

The Churchwide Assembly's actions, then, re-commit us to this long tradition.

Grace and Peace,  
Pr. Andrew+

***And finally, a few notes from legal:***

Thank you for the invitation to comment on this from the legal perspective. (If you have not already done so, please review the talking points prepared by the AMMPARO team and Bp. Erickson.)

First, from a polity standpoint: Nothing in this action binds synods, congregations, or any other organizations affiliated with the church; it binds only Churchwide. So, it does not require congregations to do anything. This should be made clear not only to congregations, but also to partners in other countries, where people may have the mistaken idea that if they get here and show up at an ELCA congregation, they have to be taken in.

Second, I am reposting the excellent attached ACLU resource on sanctuary (*document follows these comments*). It is an excellent explainer of the difference between legal and illegal actions that often fall under the name “sanctuary,” and the gray areas around those.

Third, there is no call in the action for civil disobedience or any illegal actions. The specific actions mentioned are all legal. Whether any person or organization chooses to engage in civil disobedience (and therefore accept the consequences) is up to them. Churchwide does not understand this action as calling for any illegal actions.

Fourth, the action does not attempt to answer the question, “Was ist das?” Instead, the action specifically kicks the question of how we live into this to the Church Council. As a result, we have to expect that people will interpret our declaration of “sanctuary” in many different ways.

# AMERICAN CIVIL LIBERTIES UNION

## **SANCTUARY CONGREGATIONS AND HARBORING FAQNOTE: THIS IS NOT LEGAL ADVICE AND DOES NOT SUBSTITUTE FOR CONSULTATION WITH AN ATTORNEY.**

### **What does it mean for a faith group to provide “sanctuary” to immigrants?**

Traditionally, “sanctuary” is a term that has been used to describe the protection of individuals in a place of worship. With respect to immigrants, different faith groups may use this term in different ways, but sanctuary is generally considered to involve providing comfort and assistance to immigrants and their family members at risk of apprehension by federal immigration authorities or mistreatment by others. Exactly what type of assistance a faith group or its members may choose to provide to immigrants is for each congregation or member to decide. In recent years, many sanctuary congregations have focused on assisting immigrants who are facing deportation who are in the process of pursuing alternative legal avenues for which they may be eligible, to stop or suspend their removal. In these cases, sanctuary is provided while the immigrant, supported by the congregation and broad community, fights for relief through avenues such as asylum or other humanitarian relief, cancellation of removal, a U or T visa application, or a request for the exercise of prosecutorial discretion.

### **What criminal laws should sanctuary congregations be aware of?**

The federal criminal harboring law prohibits concealing, harboring, or shielding from detection (or attempting to conceal, harbor, or shield) an undocumented immigrant, when done with knowledge or reckless regard of the immigrant’s unlawful status. The federal criminal transporting law prohibits transporting or moving (or attempting to transport or move) an undocumented immigrant from one place to another, with knowledge or reckless disregard of the fact of the immigrant’s unlawful status, where the transportation helps the immigrant remain in the United States unlawfully. Federal courts across the country have approached convicting a person of harboring in different ways, and have applied different standards. Whether or not a certain action places you at risk for a criminal conviction depends somewhat on where you are in the country. Any faith group, faith leader, or congregation member who is considering engaging in “sanctuary” activities should consult a lawyer.

### **What are some examples of activities that my faith group can participate in to support immigrants’ rights that steer clear of potential criminal liability?**

- Adopting a policy of nondiscrimination at your place of worship and of welcoming and helping persons in need, regardless of immigration or citizenship status, race, ethnicity, gender identity, or sexual orientation, etc.; making a public statement regarding such a policy.
- Adopting a policy that respects privacy by not asking members of the congregation, or members of the public who interact with the congregation, about their immigration status, and adhering to a policy of not recording any information about any individual’s immigration status.
- Providing shelter, food, or other services to a broad set of people, including citizens and noncitizens, regardless of immigration status.
- Speaking out on behalf of immigrants’ rights, and expressing support for keeping families together and reforming the immigration laws to make it possible for undocumented immigrants to adjust to a lawful status. Supporting or working with local and state governmental authorities to adopt legislation and regulations that protect immigrants and refugees.

- Referring undocumented immigrants (or all persons your congregation is serving) to legal assistance resources, including pro bono immigration legal help. Holding legal information (or “know your rights”) sessions, hosting legal clinics, and making referrals for social services.
- Exercising the right to refuse to consent to law enforcement officers coming into or searching non-public areas of the church, and demanding to see a lawful warrant signed by a federal judge.
- Creating a rapid response team to document what happened in a raid, gathering information to support legal or public education efforts.
- Accompanying a person to an ICE check-in or immigration court.

Public Declarations of “Sanctuary” If a faith group publicly declares its place of worship as a “sanctuary” for immigrants, can that provide any additional legal protection to the congregation or to immigrants? No. The concept of “sanctuary” in a place of worship is not recognized by federal law and it provides no protection from prosecution for members of the congregation.

As explained further below, in most jurisdictions, publicly declaring that an identified particular undocumented individual is living at the congregation, or directly informing federal immigration authorities of a particular individual’s presence, may offer protection to church leaders or members from criminal prosecution for harboring, since in that situation –absent other factors –it would be difficult to prove this conduct tended to or was intended to shield the individual from immigration authorities. However, it may place the individual immigrant at greater risk of arrest, especially if efforts to secure relief from deportation ultimately fail. The fact that an undocumented immigrant is seeking sanctuary at a place of worship does not provide legal protection to that individual. Congregations should make that clear to any immigrants seeking shelter with them.

### **Are there any risks that could result if a faith group makes a public declaration as a “sanctuary” for immigrants?**

It depends. A declaration itself probably would not justify a prosecution, but it may put the congregation on the government’s radar. Importantly, most courts have found the federal harboring and transporting statutes have an “intent” requirement, which means that to convict someone, the prosecutor must prove that the person or organization providing shelter to or transporting an undocumented immigrant intended to help the immigrant to remain unlawfully in the United States. If members of the congregation then take additional steps, such as engaging in activities that constitute harboring or transporting (as explained elsewhere in this FAQ), the public sanctuary declaration could potentially be argued by the government to prove that members of the congregation intended to help an immigrant unlawfully remain in the country and avoid detection.

### **My congregation has decided to publicly declare itself a “Sanctuary Congregation” –what actions are more risky for us now?**

- Highest Risk: Providing housing exclusively to undocumented immigrants and actively concealing their whereabouts from the government. Transporting undocumented immigrants in an attempt to hide them from federal authorities.
- Minimal Risk: Providing housing to individuals without regard to their immigration status, or only to immigrants whose deportation proceedings are still underway, or who have submitted an application to immigration authorities, and who are in compliance with all requirements in their proceedings and therefore not in the United States “unlawfully” under the statute. Providing rides

for ordinary errands to individuals with a personal connection to the congregation (e.g., congregation members, friends, family) without regard to their immigration status.

## **Harboring**

### **What is criminal harboring?**

Under the federal immigration laws, harboring is sheltering an undocumented immigrant and assisting him or her to remain unlawfully in the United States. Importantly, in order to be found guilty of harboring, it must be proven that the defendant harbored the immigrant with knowledge or reckless disregard of the immigrant's unlawful status.

### **Our congregation is providing food and shelter to an undocumented immigrant –can we be found guilty of harboring?**

Not without something more. For example, a congregation that operates a shelter is under no obligation to ascertain or monitor the immigration status of those whom it serves. To constitute harboring, knowledge or reckless disregard of an individual's unlawful presence would be required. Case law also requires evidence of substantial facilitation or intent to violate the immigration laws. In most jurisdictions, such evidence could include activities such as concealing the undocumented immigrant from the authorities or providing advice on how to evade immigration authorities. Evidence suggesting that food and shelter is being provided to the individual because of, rather than without regard to, his or her immigration status could be argued by a prosecutor as evidence that members of a congregation intended to help an immigrant remain unlawfully in the United States, or that their conduct substantially facilitated his or her unlawful presence. As previously explained, a prosecutor might attempt to use a public sanctuary declaration as such evidence.

### **Does the harboring law and risk of prosecution vary across the country?**

Yes. Federal courts across the country, which are divided into various judicial "circuits," have looked at the harboring law and arrived at different interpretations of the law. In addition, the closer a congregation is located to the international borders, including ports, the greater the risk of liability for transporting undocumented immigrants, for any purpose. (Transporting is discussed further below.) As a result, the risk that particular activities would be found to violate the law may depend on where in the country the activities take place. Because these differences can be subtle, yet important, it is urged that faith groups considering sanctuary activities seek advice from legal counsel.

### **Is it unlawful for members of my congregation to live with an undocumented immigrant, rent to an undocumented immigrant, or allow an undocumented immigrant to visit their houses as an overnight guest?**

In most circuits, providing housing to (or rooming with) a friend or loved one who happens to be undocumented is not considered unlawful under the federal harboring law. Similarly, renting a room or apartment to a tenant who happens to be undocumented is unlikely to be considered unlawful.

### **Does it still constitute harboring if my congregation provides sanctuary to an undocumented immigrant whose location is known by immigration authorities?**

No, in most jurisdictions. In most jurisdictions, in order to secure a conviction under the federal immigration laws, the prosecution must prove that an action taken in aid of an undocumented

immigrant has been done with the intent to evade detection by the authorities. If the government knows of that person's location, it would be difficult to say that they are shielding the person from the authorities or that they are intending to violate the law. Some congregations have adopted the approach of informing federal immigration authorities about specific undocumented immigrants offered sanctuary at their place of worship. While this approach may mitigate potential criminal liability for members of the congregation, it may create a greater risk of arrest for the individual immigrant. The individual immigrant and his or her attorney should be part of the decision-making process regarding communication with ICE.

**What if the undocumented immigrant being offered sanctuary is currently going through and complying with immigration proceedings?**

The congregation is not in violation of harboring laws if the person's present location is known to immigration authorities and he or she is fully complying with his or her hearing dates and any check-in requirements.

**Transporting**

**What is criminal transporting?**

Under the federal immigration laws, a person could be liable for transporting if he or she moves an undocumented immigrant from one place to another, knowing that the immigrant is present in the country unlawfully (or in reckless disregard of that fact), and where the activity helps the immigrant remain unlawfully in the United States.

**Can I take an undocumented immigrant to the doctor? Grocery shopping? To a faith-based function?**

Generally, giving a ride to a friend or congregation member who happens to be an undocumented immigrant to regular everyday activities, to help him or her run errands, attend a doctor's appointment, to see an immigration attorney, or attend church, is unlikely to lead to criminal liability. Transporting an undocumented immigrant to a location or activity where the purpose of moving the person is not to further his or her remaining in the United States, is generally not a violation of the federal immigration laws. On the other hand, the act of transporting someone while attempting to conceal his or her presence would likely to be found to be a violation of the law. For example, in one case, an individual was convicted for transporting an undocumented immigrant behind a fake wall in a van for purposes of hiding the individual.

**Immigration Enforcement Actions**

**Does the ICE "Sensitive Locations" memo protect my place of worship from being the subject of an ICE raid?**

The "Sensitive Locations" memo provides guidance to immigration officers, but it has no binding legal authority and provides no absolute protection. On October 24, 2011, the U.S. Department of Homeland Security circulated an internal memorandum which reaffirmed decades-long policies treating houses of worship as "sensitive locations." The memo, which in 2013 was extended to Customs and Border Protection (CBP) in addition to ICE, directs federal immigration enforcement officers to seek prior approval before executing a planned enforcement action in such locations. The current administration has thus far not rescinded this policy. It is possible that, in the future, the administration could rescind or change the policy.

**Can an ICE agent or law enforcement officer enter my house of worship without a warrant? What about private spaces?**



ICE agents and others may enter the public spaces of a church or other place of worship without a warrant, but not private areas. If an ICE agent or other law enforcement officer wants to enter those private spaces, they must present a hard copy of a warrant signed by a federal judge. If ICE agents or others ask to enter the private space, the occupant or owner may demand to see the warrant. Ask that it is slipped under the door or shown through a window. Only after confirming it is signed by a federal judge should you allow them to enter. If the officer does not have such a warrant (including if he or she only has an ICE warrant), you may instruct the officer to leave.

**Am I required to talk to a police officer or ICE agent if they enter the congregation and ask questions?**

No. You are not required to answer any questions and you should seek advice from a lawyer before answering any questions from law enforcement authorities. You are not required to tell them anything about anyone's immigration status. You should, however, be careful not to provide false information to the authorities regarding an undocumented immigrant, as it could potentially put you at risk.

**Defenses**

**Are there defenses against harboring prosecution?**

There are limited defenses, including housing a person who has been a member of the denomination for at least a year and who is serving as an unpaid minister or missionary. In the past, some individuals have also attempted to rely on their religious beliefs as a defense against harboring prosecution. Some courts have rejected such attempts in the past, but it may still be available as a defense in some circumstances. You should consult with a lawyer if you are considering engaging in sanctuary activities, and your lawyer can help you determine whether any defenses could be available to you.

**Penalties**

**What are the potential penalties under the law for criminally harboring or transporting an undocumented immigrant?**

It is a felony to harbor or transport, or to attempt to harbor or transport, undocumented immigrants. Upon conviction, the penalties include fines and potential imprisonment of five years for simple harboring or transporting, ten years if the harboring was done for the purpose of private financial gain, and up to twenty years if serious bodily injury occurs or a life is placed in jeopardy during or in relation to the offense. Similarly, anyone who conspires with someone who is guilty of harboring or transporting undocumented immigrants may, if convicted of conspiracy, be subject to the same penalties.

**Can my congregation have its property or assets seized for harboring or transporting?**

Yes, vehicles used to transport and, although less likely, real property used to harbor undocumented immigrants may be seized and subject to forfeiture, depending on the circumstances. While this penalty does exist, it is very uncommon—generally only used when the harboring or transporting has been done in connection with exploitation of the undocumented immigrant for personal financial gain.