

**COMMUNITY EXPLAINER**

# WHAT IS SECTION 1324? Understanding the Smuggling/Harboring Federal Crime<sup>1</sup>

During its first two weeks in office, the Trump administration has already issued dozens of anti-immigrant [executive orders](#) and policies. One of these policies is the Department of Justice [memo](#) on increasing immigration-related prosecutions, including prosecutions under Section 1324 (generally referred to as the “smuggling law” in this explainer). Section 1324 makes it a crime for people to bring in, transport, conceal, harbor, shield from detection, or encourage or induce people who are not U.S. citizens to come into or stay in the United States without authorization. This community explainer breaks down the different parts of this law.

We do not yet know exactly how this administration will use the smuggling law, but we do know that the first Trump administration [increased prosecutions](#) of people under this federal law. We know that the federal government can use the threat of an investigation and prosecution to [target immigrant families](#) and to chill and retaliate against [humanitarian efforts](#), immigrant organizing, know-your-rights initiatives, and political dissent. This explainer includes general information about Section 1324, including a breakdown of its different parts, and answers some basic questions about how it can be used. The National Immigration Project will be providing more resources on this topic as we learn more about how things are playing out on the ground.

This explainer only discusses the **federal** smuggling crime. A [number](#) of [states](#) also have or are trying to pass state laws criminalizing smuggling. Those laws are not discussed here. Also note that this explainer generally refers to someone who entered or stayed in the United States without authorization as “undocumented.”

## What is Section 1324?

Section 1324 is a law that criminalizes several things someone might do or try to do to help another person come to or stay in the United States without authorization. It also makes it a crime to help someone else in their efforts to help someone come to or stay in the United States without authorization. The criminal penalties for someone found to have violated this law can include fines or imprisonment or both. (We will not be discussing the penalties in this explainer.) The law has been interpreted in different ways by courts in different parts of the country, which means that certain actions carry more risk of successful criminal prosecution in some geographic areas than in others.

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<sup>1</sup> This community explainer contains general educational material and does not constitute legal advice. It is recommended that you consult with an attorney with any specific questions.

## SMUGGLING

### What does it mean to unlawfully “bring in” someone?

There are two different parts in Section 1324 that criminalize bringing people into the United States without authorization (also known as smuggling). In general terms, the law makes it a crime to bring or try to bring someone into the United States with knowledge that that person does not have prior permission to come into the United States. It also makes it a crime for a person to bring in or try to bring in someone who the person should have known did not have authorization to enter. A person can still be found guilty for bringing in someone who did not enter the country legally even if that person later gets lawful status.

### Who could this apply to?

When it comes to the term “smuggling,” most people think of human traffickers or of “coyotes” who help people cross the U.S.-Mexico border. While smuggling is typically understood to be about someone who physically helps another person enter the United States from another country without authorization, what counts as “smuggling” under this law is much broader than that. Courts have said that the law applies to anyone who brings someone across the border into the United States (the initial smugglers) and also to someone who picks people up on the U.S.- side of the border if they are involved or coordinating with the initial smugglers, or otherwise is a part of the process of bringing someone into the United States unlawfully.

### What kinds of actions could risk criminal penalties for “smuggling”?

The law criminalizing “smuggling” is worded very broadly, which means that there are several different activities that could count as smuggling.

People in the United States who help another family member come into the United States without authorization, either directly or indirectly such as by paying a smuggler or coyote, could be found to have committed the crime of “smuggling.” Here are some examples:

- A person who goes to Mexico to physically escort a family member over the border without presenting to Border Patrol could be found guilty of smuggling.
- A person who pays for a coyote to bring a family member into the United States with false paperwork or with no paperwork could be found guilty of smuggling.
- A person who is waiting on the U.S.-side of the border to pick up a friend, family member, or anyone else they know or believe likely did not enter lawfully could be found guilty of smuggling.
- A parent who enters the United States unlawfully with their child, who also does not have permission to enter the United States, could be found guilty of smuggling.

## TRANSPORTING

### What does it mean to “transport” or “move” someone within the United States?

In general, the law makes it a crime to transport within the United States someone who is not lawfully present in the United States. To be found guilty, a person needs to know or should have known that the person transported did not have authorization to enter or be in the United States (the law calls this “reckless disregard”). The transportation must have been done to help the person enter or remain in the United States unlawfully.

### What does it mean to have knowledge or “reckless disregard” that a noncitizen entered or remained in the United States in violation of the law?

Many parts of the smuggling law require the government to show that the person accused of having committed the crime knew or was “in reckless disregard of the fact that” someone had come, entered,

or remained in the United States unlawfully. “Knowledge” means the person knew that someone they were transporting or hiding was in the United States unlawfully. For example, the government could try to prove that a person accused of transporting someone actually knew that the person transported was undocumented because the undocumented person had said that they did not have papers.

Generally, “reckless disregard of the fact” means that someone should have known a person was undocumented and instead chose to ignore facts that would indicate that the person was undocumented.

Knowledge can be established by various different pieces of information that together show knowledge or reckless disregard. For example, courts have found that speaking with someone about their lack of work authorization, lack of a valid social security number, or fear of jail time or criminal liability if discovered by immigration officials should signal that the person is undocumented. Similarly, running to warn coworkers right after speaking with immigration officials at a workplace can also be used to show that the person accused knew their coworkers were undocumented.

## **What kind of activities risk criminal penalties under the “transportation” provision?**

What counts as “transporting” someone in order to help them enter or remain in the United States unlawfully can change because different courts have explained this section of the law differently. For example, some courts have found that driving company employees known to be present unlawfully to and from work can make someone guilty of transporting. In one case, a court found that a person driving undocumented workers, paying them in cash, and giving them fake IDs suggested that the person was trying to keep his undocumented workers from being discovered. Other courts have found that helping or “furthering” someone’s unlawful presence requires more than just transporting undocumented workers to the workplace.

Several factors can help determine whether someone violated this part of the smuggling law:

- Whether the “driver” or transporter was paid.
- Whether they made any effort to hide the person they were transporting.
- The relationship between the driver and the noncitizen being transported.
- Whether they are close to the United States border.

There are many routine activities that undocumented or mixed-status families take every day, like driving relatives to the doctor, school, or court. Until now, those activities have not necessarily made someone guilty of “transporting.” But unfortunately, we do not know how this administration will apply this law and whether it will go after people engaging in these kinds of daily life activities. We will continue to monitor and will update this explainer as new information about prosecutions becomes available.

## **HARBORING/CONCEALING/SHIELDING**

### **What are the different types of “harboring”?**

“Harboring” refers to the section of the law that criminalizes “harboring, concealing [i.e. hiding], or shielding [i.e. protecting]” someone from detection by immigration authorities when that person is known or should be known to be undocumented. Each one of these terms is explained further below. In order to be found guilty under this section of the law, the government must prove three things: first, that the person being “concealed” or hidden entered or stayed in the United States unlawfully; second, that the person accused of “concealing” or hiding someone helped the person by harboring, hiding, or shielding them from detection; and third, that the person accused of “concealing” knew or should have known that the person did not have authorization to enter or was in the United States unlawfully.

## What does it mean to “harbor” a noncitizen?

“Harbor” is a broad term and has been understood by courts to mean different things. Some courts have said that harboring means giving help to an undocumented person (like providing shelter, money, or employment). Other courts have said that harboring means that the assistance (like housing) helps the person stay in the country and prevents immigration authorities from finding them. Still other courts have said that harboring means help that is intended to prevent the undocumented person from being found. For example, one court has said that an employer who provided housing for their undocumented workers was guilty of harboring, because the workers’ undocumented status was the main purpose for providing them shelter. That same court also decided that a woman who picked up her undocumented boyfriend from the bus terminal and lived together with him in her house was not guilty of “harboring” because harboring implies some level of avoiding detection.

Providing *general* advice about immigration enforcement should not be considered “harboring”: for example, teaching someone about their constitutional rights and what to do if ICE shows up at your door, or [general announcements about ICE sightings](#). On the other hand, giving an undocumented person advice that directly interferes with an ongoing or soon to happen enforcement action targeting a specific person or location can be considered harboring in violation of the law—for example, telling a known undocumented person that ICE has arrived at their workplace.

## What does it mean to “conceal” a noncitizen?

“Conceal” generally means to hide someone to prevent them from being discovered by immigration officials.

## What does it mean to “shield” a noncitizen from detection?

“Shield from detection” has been interpreted more broadly than “concealing” or physically hiding someone. While it includes physically hiding someone, it has also been interpreted to include providing permanent housing, making false statements or falsifying documents (such as immigration, employment, or tax documents), or warning undocumented coworkers about an upcoming raid.

## What kinds of activities could be criminalized under the concealing, harboring, and shielding section?

Several activities could lead to someone being found guilty of harboring, concealing, or shielding. Those can include (but are not limited to):

- Transporting known undocumented employees to or from work.
- Employing a known undocumented person or helping them find employment.
- Providing housing to a known undocumented person in certain situations.
- Warning coworkers that immigration officials are looking for them or are about to carry out an enforcement activity.
- Helping undocumented people obtain false documentation.
- Hiding someone so they avoid detection by immigration officials.

It can be hard to predict how broadly these terms will be interpreted. However, two courts have suggested that an undocumented person living with and supporting their undocumented partner is not harboring or concealing them, especially when immigration authorities already know where they live.

## ENCOURAGE/INDUCE

### What does it mean to “encourage” or “induce”?

The law also makes it a crime for any person to “encourage” or “induce” a person to come to, enter, or reside in the United States if they knew or should have known that it would be unlawful for the person to do so. To encourage or induce, under the smuggling law, means the “intentional encouragement of an

unlawful act” or intentionally helping someone violate the law. “Encouragement” can refer to an action, but in some limited circumstances, including the examples listed below, words can also count as “encouraging” someone to come to or stay in the United States unlawfully.

## **What kinds of activities could be criminalized under the “encourage” or “induce” provision?**

Encouraging or inducing someone to come to or remain in the United States needs to include more than just general advice. It must be something that makes a person come to or continue living in the United States unlawfully when they might not have otherwise. For example, renting apartments to or employing undocumented people, without more, has traditionally not been enough for someone to be found guilty of encouraging or inducing. But knowingly employing an undocumented person and advising them to remain in the United States unlawfully could count as encouragement.

In most cases, words alone are not enough to count as the criminal act of “encouragement,” and something else is required—like producing false documentation that would enable an undocumented person to enter or stay in the country. However, sometimes words alone can count as the criminal act of encouragement if they are intended to get someone to do something illegal. For example, telling someone they should cross the border unlawfully could count as criminal “encouragement.”

Actions or speech that could count as criminal encouragement can include:

- Helping someone enter the United States unlawfully.
- Telling a relative that they should cross the river between the United States and Mexico and enter the United States undetected.
- Giving an undocumented person fake immigration or employment documents and directions on how to enter the United States.
- Helping an undocumented person get into a fake marriage so they can get a green card.

On the other hand, actions or speech that are unlikely to count as “encouragement” can include:

- Protesting for a more humane immigration system
- Publicly advocating for extending lawful status to people
- Accompanying someone to their ICE check-in or their immigration court hearing

There can be some overlap between the different provisions in this law, especially “harboring” and “encouraging.” For example, a court has confirmed both harboring and encouraging convictions when the person accused provided an undocumented person with a place to live, a car, a cell phone, car insurance, and gym membership.

## **How worried should I be about criminal charges under the smuggling law?**

It depends. Knowing what kind of activity has and has not led to successful criminal convictions can be helpful to understanding what could count as unlawful conduct. It’s always best to consult with a lawyer about your specific situation before taking any action. There are certain activities that typically carry greater risk of successful prosecution, but under this current administration, there is generally a higher risk of harassment, arrest, or a criminal charge, even if the government is less likely to ultimately secure a conviction. We will continue to monitor implementation of Section 1324 prosecutions and will share more information as it becomes available.