



KING & SPALDING

# **Serving Undocumented Populations: Basics for Nonprofits**

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**Tuesday, March 27, 2018**



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To maximize the impact of pro bono engagement by connecting a network of attorneys with nonprofits in need of free business legal services.

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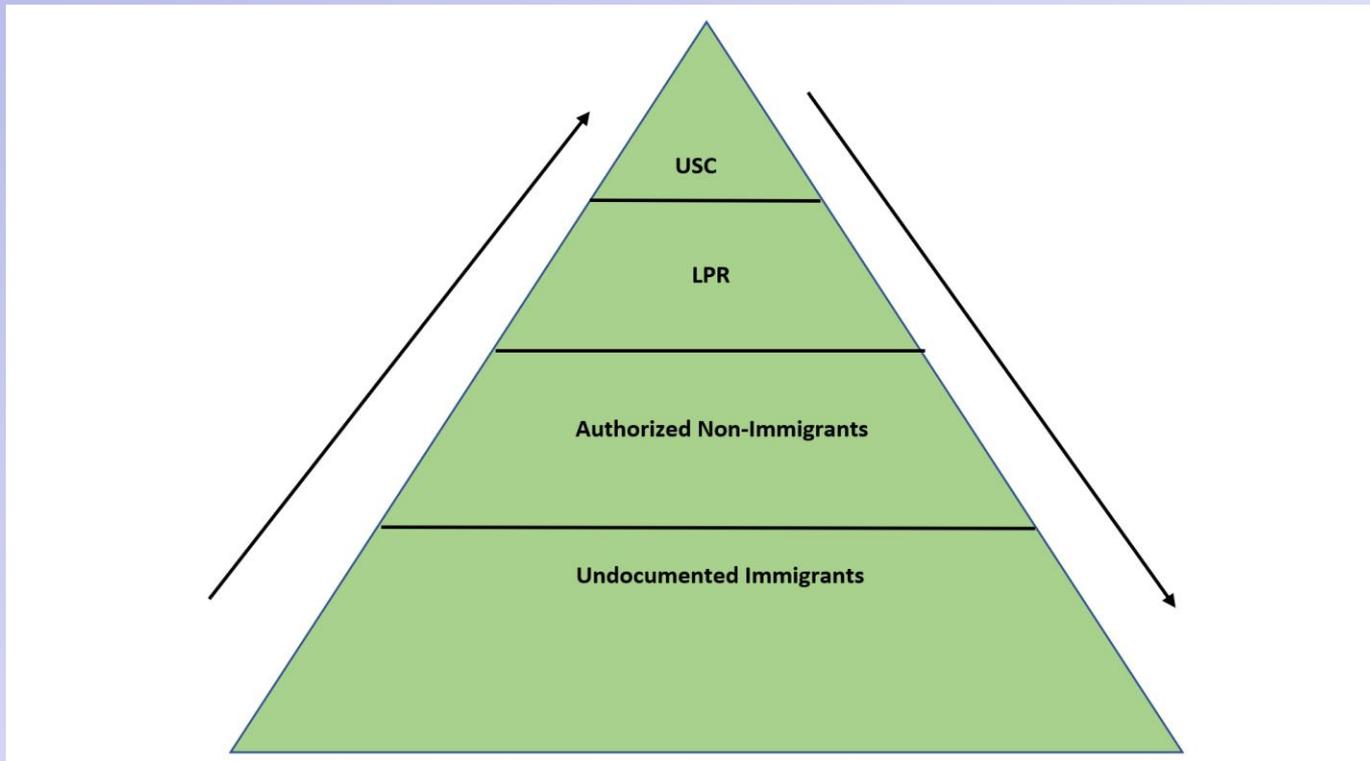
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## Legal Information:

✓ This webinar presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.

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# Understanding Immigration Categories



## Federal Crime of Harboring

It is a criminal offense to:

- INA § 274(a)(1)(A)(iii); 8 U.S.C. § 1324(a)(1)(A)(iii)

“knowing or in reckless disregard of the fact than 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.”

## Elements of Harboring

In order to be found guilty, the prosecution must show that you know or recklessly disregarded the fact that:

- “the alien entered or remained in the United States in violation of the law,
- the defendant concealed, harbored, or sheltered the alien in the United States
- the defendant knew or recklessly disregarded that the alien entered or remained in the United States in violation of the law,
- and the defendant’s conduct tended to substantially facilitate the alien remaining in the United States illegally.”

## There is no statutory definition for Harboring

- Each federal circuit has their own, expanded, definition.
- “Conduct that clandestinely shelters, succors, and protects improperly admitted immigrants. (U.S. Court of Appeals for the Sixth Circuit)”

## United States v. Lopez (Second Circuit)

“Mr. Lopez owned at least six homes in Nassau County, New York, where he operated safe havens for undocumented individuals. Mr. Lopez knew that the people staying in his homes were undocumented. Each person paid Mr. Lopez \$15 per week to live in his houses. In many cases, people received the address for a particular house before they left their home countries, and, upon crossing the border illegally, they proceeded directly to the house. Mr. Lopez also helped these individuals obtain jobs by completing work applications and transporting them to and from work. He arranged sham marriages for many so that they could appear to be in the U.S. in lawful status. With a warrant, immigration authorities searched six of Lopez’s homes and found twenty-seven undocumented individuals. He was charged with harboring illegal immigrants.”

## Court's Findings:

In finding him guilty, the circuit court pointed out that Mr. Lopez had a large number of undocumented immigrants living at his houses; they obtained the addresses and, upon entering the U.S., proceeded to those houses; Mr. Lopez provided transportation for them to and from work; and, he helped arrange sham marriages. The court did not require him to actively conceal them from immigration authorities.

## What does that mean for my organization or place of worship?

- Consult a private attorney for specific advice in your particular organization.
- Your 501(c)(3) organization is a legal person that enjoys many of the rights guaranteed under the United States Constitution, including the right to free speech, exercise of religion, association, press, due process, counsel, and security from unreasonable searches and seizures.
- This means any law enforcement agency needs a warrant signed by a judge (or a subpoena)--- not just one signed by DHS to access your private spaces, take a look at your private records, or discuss information about those people you serve.

## What does this mean for my organization or place of worship (cont'd)

- You are not obligated to make inquiries regarding a person's immigration status. Constitutionally speaking, discrimination based on nationality must be sanctioned by Congress through legislation.
- However, be very careful if you get federal funding that requires you to serve only a specific population or forbids use of funds to serve undocumented populations. Read through the grant requirements of any government-funded grant.

## Practical Points

- Commit to a policy of nondiscrimination in your space, welcoming and providing services to all persons in need, regardless of immigration or citizenship status, race, country of origin, or English proficiency and publicly state this policy of nondiscrimination.
- Unless required by a federal grant, establish a policy of not recording or inquiring about a person's status. Remember, you are not trained to make legal determinations of an complex area of federal law.

## Practical Points

- Train staff to exercise your 4th Amendment right against unreasonable searches and seizures. Politely decline (never lie) to answer any question or open your private spaces to DHS agents unless they have a judicial warrant or subpoena.
- If they force their way in, obtain the names, badges, and other identification from the officers, and record all the details of their entry. Do not physically block them or otherwise deter them.
- Identify a supervisor at your organization to review any warrant or subpoena. If that person is not available, let the DHS/ICE agents know they will need to return when the supervisor is present. Do not allow entry before the warrant or subpoena is reviewed.

Questions?

## Resources

- American Immigration Lawyers Association (AILA) [www.aila.org](http://www.aila.org)
- Immigration Legal Resource Center (ILRC) [www.ilrc.org](http://www.ilrc.org)
- American Immigration Council (AIC) [www.americanimmigrationcouncil.org](http://www.americanimmigrationcouncil.org)
- Catholic Legal Immigration Network, Inc. (CLINIC) [www.cliniclegal.org](http://www.cliniclegal.org)
- Northwest Immigrant Rights Project: [www.nwirp.org](http://www.nwirp.org) and their advisory to nonprofits: [www.nwirp.org/nonprofit-org-advisory.pdf](http://www.nwirp.org/nonprofit-org-advisory.pdf)
- ICE policy regarding sensitive locations (*A 2011 memo that is still in effect as of this webcast*) <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>



## **For More Information:**

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

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