

Drawing the Line: What Constitutes Harboring Under the Alien Harboring Statute?

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The harboring provision of the Immigration and Nationality Act criminalizes the act of “concealing, harboring, or shielding from detection” any alien who is unlawfully present in the United States. This article examines a few federal cases to illustrate the doctrinal contours of harboring — drawing a clear distinction between active concealment and passive accommodation.

The harboring provision of the Immigration and Nationality Act, 8 U.S.C. §1324(a)(1)(A)(iii), criminalizes the act of “concealing, harboring, or shielding from detection” any alien who is unlawfully present in the United States. This statute has recently received increased public attention following statements by Tom Homan, who was appointed to oversee immigration policy by the current administration. Mr. Homan has noted in public remarks that it is “a felony to knowingly harbor and conceal an illegal alien from immigration authorities” and that he intends to push for enforcement of this law. *See*, Alec Hernández, “[Tom Homan takes to conservative media to outline Trump's plan for mass deportations](#),” NBC News (Dec. 11, 2024).

These are matters of serious concern. But what actually is prohibited by the federal harboring statute? While the statute’s language may appear expansive upon first read, judicial interpretations have imposed meaningful limits to avoid criminalizing benign or constitutionally protected conduct. This article examines a few federal cases to illustrate the doctrinal contours of harboring — drawing a clear distinction between active concealment and passive accommodation. Through comparative analysis, it becomes evident that courts require affirmative acts designed to thwart immigration enforcement for a conviction under §1324(a)(1)(A)(iii). In particular, comparing decisions in which courts have found sufficient evidence for harboring with those decisions in which courts came to the opposite conclusion sheds light on the crucial distinction between what is legal and illegal. Given the apparent prioritization of immigration by the new administration, it is important for white-collar defense counsel to become more familiar with these legal issues, as employees and individuals may face prosecution for harboring.

When Courts Found Harboring: *Kim, George and Zheng*

The Second Circuit’s decision in *United States v. Kim*, 193 F.3d 567 (2d Cir. 1999), remains a cornerstone in the interpretation of the harboring statute. Kim, who operated a garment factory, was convicted for harboring an undocumented worker by orchestrating a scheme to conceal her identity. After immigration agents raised concerns about false documentation, Kim instructed the employee to procure new papers under different names, helped prepare I-9 forms with the aliases, and warned his manager never to disclose these instructions. The court held that Kim’s conduct went far beyond passive employment — it constituted deliberate acts to shield the worker from detection, thus meeting the threshold of harboring. Notably, the court found that the

harboring statute could be applied to employers, establishing that they could be held accountable for knowingly harboring unauthorized workers. *Kim* serves as an important reminder for employers in the U.S. that actively helping employees avoid detection can lead to criminal liability.

Similarly, in *United States v. George*, 779 F.3d 113 (2d Cir. 2015), the defendant employed an undocumented domestic worker for over five years. Beyond employing her unlawfully, George instructed the worker to lie about her identity, discouraged her from traveling to avoid exposure, and delayed federal agents attempting to remove her from the premises. She also admitted on recorded calls that she told the worker to present herself as a family friend to avoid detection. The Second Circuit found that these extensive actions amounted to more than mere cohabitation or unauthorized employment; they were calculated efforts to obstruct detection, and thus constituted harboring. Importantly, the court clarified that the conviction did not necessitate showing that the defendant acted secretly or that the harboring was clandestine. The domestic worker appears to have been living and working openly; this fact did not prevent a harboring conviction.

The Sixth Circuit's ruling in *United States v. Zheng*, 87 F.4th 336 (6th Cir. 2023), also highlights the statute's application in a commercial context. Zheng and Wu employed undocumented noncitizens at their restaurant and housed them in their private basement. They concealed the workers' presence by paying them in cash, excluding them from tax filings, and instructing them to stay out of public view. One employee testified they were told not to go outside or make noise for fear of deportation. The court held that these actions — combined with the benefit of commercial gain — reflected deliberate concealment and isolation, satisfying the harboring provision even in the absence of specific intent to break the law.

These cases collectively underscore that harboring cases typically involved more than employment with knowledge of an alien's status or passive assistance to the employee. What tips the scale toward criminal liability is purposeful, affirmative conduct aimed at shielding individuals from immigration enforcement.

When Courts Rejected Harboring: *DelRio-Mocci*, *Costello* and *Moreno-Duque*

In contrast, courts have been equally clear in delineating the outer limits of the statute to prevent overreach. In *United States v. Moreno-Duque*, 718 F. Supp. 254 (D. Vt. 1989), the court rejected a charge under §1324(a)(1)(B), which penalizes transportation “in furtherance” of unlawful presence. The defendant, a contractor, had driven undocumented workers between job sites. The court found this to be a routine employment practice and not an act designed to evade immigration enforcement. Transportation, in and of itself, was not sufficient unless tied to a specific intent to assist in concealment or continued unlawful residence.

A similar restraint was evident in *United States v. Costello*, 666 F.3d 1040 (7th Cir. 2012), where the defendant was romantically involved with an undocumented individual who lived with her. Though she picked him up from the bus station and allowed him to reside in her home, the court found no evidence that she concealed him or misled authorities. Judge Posner emphasized that harboring implies “providing refuge” in the sense of shielding from detection — not merely allowing someone to stay in one's home. The court warned against a reading of the statute so

broad that it would criminalize basic human relationships.

Likewise, in *DelRio-Mocci v. Connolly Properties Inc.*, 672 F.3d 241 (3d Cir. 2012), where the plaintiff alleged that property managers violated §1324 by renting apartments to undocumented immigrants while deliberately avoiding standard screenings. Although the complaint described a scheme to avoid detection — such as segregating undocumented tenants and omitting identification requirements — the Third Circuit held that this did not amount to harboring. Mere knowledge of tenants' immigration status and preferential treatment in housing practices did not rise to the level of affirmative concealment or shielding necessary under the statute.

These cases reveal a judicial impulse to limit the statute's application to scenarios where defendants go beyond passive facilitation and engage in deliberate interference with enforcement mechanisms. They safeguard against the criminalization of ordinary social, familial, or economic relationships that may involve undocumented individuals.

Comparative Analysis: The Crucial Line Between Facilitation and Concealment

The comparative arc of these decisions clarifies the essential dividing line in harboring jurisprudence. Courts have consistently required more than mere association, employment, or housing arrangements — there must be a conscious effort to obscure an individual's unlawful presence.

The distinction lies in the nature and purpose of the conduct:

- In *Kim*, the use of aliases, submission of fraudulent documentation, and instructions to mislead authorities reflected a sustained and intentional effort to thwart detection.
- In *George*, the directives to lie, isolation from the public, and interference with federal agents constituted purposeful shielding.
- In *Zheng*, housing undocumented workers in a private basement, suppressing their visibility, and segregating them from lawful employees were all part of a systemic concealment operation.

By contrast, in *Costello*, *DelRio-Mocci* and *Moreno-Duque*, the defendants' actions, though potentially negligent or motivated by self-interest, lacked the affirmative quality necessary to constitute harboring. None of these cases involved overt acts designed to mislead or obstruct immigration authorities. Instead, they reflected a passive tolerance or incidental facilitation of unlawful presence.

This affirms the judiciary's sensitivity to constitutional and policy concerns. If harboring were construed to include routine domestic arrangements or business practices absent intent to conceal, it would sweep in a wide range of conduct that Congress likely never intended to criminalize — and that courts are rightly wary of punishing.

In this way, lower courts interpreting the harboring statute have been following the same legal principle that the Supreme Court has been following for many years, pushing back on overcriminalization. See, *Van Buren v. United States*, 593 U.S. 374, 378, 394 (2021) (rejecting government's preferred interpretation which would "criminalize everything from embellishing an online-dating profile to using a pseudonym on Facebook" while on a work computer); *Marinello v. United States*, 584 U.S. 1, 13 (2018) (rejecting government's interpretation which would

transform misdemeanors under the Internal Revenue Code, such as “pay[ing] a babysitter \$41 per week in cash without withholding taxes” into a federal felony); *see Bond v. United States*, 572 U.S. 844, 852, 862 (2014) (rejecting government’s interpretation which would make “an amateur attempt by a jilted wife to injure her husband’s lover” by putting lab chemicals on a doorknob, into a federal crime under the Chemical Weapons Convention Implementation Act of 1998). As Judge Posner stated in *Costello*, courts should reject an interpretation of the law that converts ordinary human behavior into felonies.

Conclusion: Harboring As Deliberate Obstruction

What emerges from this jurisprudence is that harboring is not synonymous with helping. It is a crime of obstruction, not association. The statute is properly invoked only when a defendant takes affirmative steps to shield an undocumented person from detection — actions that materially interfere with immigration enforcement.

The harboring statute remains a tool for targeting deliberate interference, not a weapon for punishing proximity. As such, it demands not just knowledge of unlawful presence, but an active intent to keep that presence hidden. By preserving a clear distinction between passive presence and active concealment, courts ensure that the statute operates as intended—targeting deliberate efforts to evade enforcement while allowing space for lawful relationships, humanitarian concerns, and everyday interactions to exist without fear of criminal liability. It will be interesting to see how this law develops if harboring cases are brought in circumstances that lack the type of deliberate interference that courts have required thus far.

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