AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

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Dear College or University Office of the General Counsel:

In recent months, the Trump Administration has subjected more than one thousand international students across the country to revocation of their visas, cancellation of their student records in the Student and Exchange Visitor Information System (SEVIS) database, or some other involuntary change affecting their legal status.[1] In some cases, visa revocations appear to have been prompted by nothing more than students' lawful political expression, such as the publication of an op-ed in a student newspaper.[2] In other cases, minor infractions have apparently triggered the revocations, such as traffic violations or incidents concluding in the dismissal of all charges.[3] While the Trump Administration has, for now, reinstated some of these student records, it has also announced that it will create a new policy that can be expected to result in new, systematic terminations.[4] These measures threaten international students on campuses across the country with the end of their education and stay in this country. Meanwhile, undocumented students at colleges and universities who have lived nearly their entire lives in the United States, without a criminal record of any kind, also live in fear of detention and deportation.

In response to these threats, many colleges and universities have sought to support their noncitizen students. Some AAUP chapters advocating on behalf of these students, however, report that administrators have hesitated to offer or continue assistance because they fear liability from criminal law prohibitions on "harboring" individuals who are unlawfully present. This memo[5] addresses two forms of such support and concludes that these concerns are legally unfounded: 1) the provision of immigration legal services to noncitizen students; and 2) the provision of housing to noncitizen students—including those who are undocumented or who have experienced a visa revocation or SEVIS record termination—on terms that apply to all students. Targeting colleges and universities with criminal liability for providing either form of support would not only be unprecedented but would exceed the government's statutory authority and, in the case of legal advice, likely violate the First Amendment.

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[1] Sara Chernikoff & Jennifer Borresen, *How Many International Students Had Their Legal Status Changed? Maps Show Trump's Impact*, USA TODAY, May 3, 2025.
[2] Adrian Florido, *Tufts Student Rümeysa Öztürk Freed from Immigration Detention*, NAT'L PUB. RADIO, May 9, 2025 ("At a bail hearing . . . Judge William K. Sessions of the U.S. District Court for Vermont said that Öztürk's arrest and detention appeared likely to have been carried out solely in retaliation for an op-ed she wrote in a campus newspaper criticizing her school leaders' response to the Israel-Hamas war in Gaza.").
[3] Joel Rose, *Minor Infractions Lead to Big Problems for International Students*, NAT'L PUB. RADIO, May 5, 2025.
[4] Exhibit 1, Zheng v. Lyons, 1:25-cv-10893 (D. Mass. Apr. 25, 2025) ECF No. 21, https://www.courtlistener.com/docket/69878266/21/zheng-v-lyons/.
[5] This memo addresses the state of the law as of May 18, 2025, for informational purposes and should not be construed as legal advice with regard to particular factual scenarios.

## I. A college or university does not violate the federal "harboring" statute, 8 U.S.C. § 1324, when it provides immigration-related legal services to students, whether in the form of legal advice from university-employed lawyers OR referrals and financial support for students to access external legal services.

The federal harboring statute, 8 U.S.C. § 1324, makes it unlawful to conceal, harbor, or shield from detection a noncitizen (the "Harboring Provision"),[6] or encourage or induce a noncitizen to enter or reside in the United States (the "Solicitation Provision"),[7] when a person knows or acts in reckless disregard of the fact that the noncitizen's entry or remaining in the country violates the law. Neither of these two provisions prohibits a higher education institution from providing bona fide legal services to students, either directly or indirectly. In fact, a prosecution on such grounds would be so unprecedented that it is difficult to find any published case involving the provision of legal services or legal advice in the absence of fraud, misrepresentation, or other independently improper conduct. Beginning with the Solicitation Provision—which the Supreme Court has recently interpreted—the analysis below discusses each of these provisions.

### A. Section 1324(a)(1)(A)(iv) [Solicitation Provision]

In *United States v. Hansen*, the U.S. Supreme Court interpreted Congress's use of "encourages or induces" in § 1324(a)(1)(A)(iv) narrowly to save the provision from a First Amendment overbreadth challenge. Rejecting the defendant's argument that the provision reached a large amount of protected speech, the Court ruled that the offense "incorporat[ed] common-law liability for solicitation and facilitation."[8] As the Court stated, "[c]riminal solicitation is the intentional encouragement of an unlawful act," while facilitation "is the provision of assistance to a wrongdoer with the intent to further an offense's commission."[9] Importantly, as the Court emphasized, both solicitation and facilitation "require an intent to bring about a particular unlawful act."[10] The provision therefore "reaches no further than the purposeful solicitation and facilitation of specific acts known to violate federal law."[11]

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[6] "(A) Any person who . . . (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 . . . shall be punished as provided in subparagraph (B)." 8 U.S.C. § 1324(a)(1)(A)(iii) ["Harboring Provision"].

[7] "(A) Any person who . . . (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 . . . shall be punished as provided in subparagraph (B)." 8 U.S.C. § 1324(a)(1)(A)(iv) ["Solicitation Provision"].

[8] United States v. Hansen, 599 U.S. 762, 774 (2023). A First Amendment overbreadth claim argues that a statute is facially unconstitutional because it reaches a disproportionate number of unconstitutional applications, even though its application to the person raising the challenge is not alleged to be unconstitutional. For that reason, the Court notes that it is "'strong medicine' that is not to be 'casually employed.'" *Id.* at 770 (citation omitted).

[9] *Id.* at 771 (citation omitted).

[10] *Id.*

[11] *Id.* at 781.

Accordingly, under *Hansen*, a university could not be liable for encouraging or inducing a noncitizen student to stay in the United States by providing legal services unless it *intended* for those services to be used to assist the student to remain in the United States in violation of the law. Legal advice intended to enable the noncitizen to stay legally, or to help the student understand the consequences of various choices, would quite obviously not satisfy that intent requirement.

As applied to the provision of legal services, this interpretation of the Solicitation Provision is also consistent with basic understandings of the professional role and obligations of lawyers in our legal system, which distinguish between providing good faith legal advice and assisting illegal conduct. As ABA Model Rule of Professional Conduct 1.2(d) provides:

> A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.[12]

As such, immigration lawyers may legitimately counsel clients on such issues as the interpretation and application of the law, strategies for contesting the government's position on the law, or adjusting or maintaining their legal status. Indeed, the sound and proper functioning of the legal system depends upon lawyers being able to provide such advice and to contest the government's legal positions when appropriate.[13]

The provision of good faith legal advice is not only essential to the basic functioning of the legal system, but it is also very likely constitutionally protected expression. The Supreme Court has held that "collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment."[14] Accordingly, laws may not prevent lawyers from advising clients when no obvious harms result—particularly in contexts, such as this one, where the ability of legal work to "advance[] the cause of civil liberties . . . depends on the ability to make legal assistance available to suitable litigants."[15]

Given the serious legal infirmities in any hypothetical use of the Solicitation Provision to target the provision of legal advice, it is hardly surprising that any such prosecution under the Solicitation Provision would be unprecedented. In *Hansen*, the Court noted that the defendant had failed to

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[12] MODEL RULES OF PRO. CONDUCT r. 1.2 (AM. BAR ASS'N 1983).
[13] *See* Legal Services Corp. v. Velazquez, 531 U.S. 533, 545-46 (2001) (noting that legal analysis, presentation, and arguments by lawyers constitute "speech and expression upon which courts must depend for the proper exercise of the judicial power"). *Velazquez* invalidated under the First Amendment a restriction prohibiting recipients of Legal Services Corporation (LSC) funding from challenging welfare laws as violating federal statutory or constitutional law. Id. at 536-37.
[14] *United Transp. Union v. State Bar of Mich.,* 401 U.S. 576, 585 (1971); *see also Velazquez*, 531 U.S. at 544 ("Restricting LSC attorneys in advising their clients and in presenting arguments and analyses to the courts distorts the legal system by altering the traditional role of the attorneys . . . .").
[15] *In re* Primus, 436 U.S. 412, 431 (1978). *See also* NAACP v. Button, 371 U.S. 415, 437 (1963) (holding that the NAACP's activities supporting and financing litigation to challenge racial discrimination were protected by the First and Fourteenth Amendments).

"identify a single prosecution for ostensibly protected expression in the 70 years since Congress enacted" the "immediate predecessor" of the provision.[16] Consistent with the Court's observation, published cases prior to *Hansen* in which lawyers were charged or convicted under Section 1324(a)(1)(A)(iv) for providing legal advice were exceedingly rare and appear to be limited to scenarios in which the lawyer assisted clients in committing fraud.[17] Similarly, cases in which nonlawyers were charged or convicted under the Solicitation Provision for providing immigration-related services almost always involved independently improper actions, such as misrepresentation or fraud.[18] For instance, a college official was convicted for fraudulently issuing immigration forms that allowed noncitizens to obtain student visas even though they were not going to be studying at the college.[19] In addition, an appellate court sustained the conviction of a non-lawyer immigration consultant who knowingly misrepresented to noncitizens that they could obtain green cards through an expired labor certification program and misled them about their ability to work during the pendency of the application process.[20]

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[16] Hansen, 599 U.S. at 782.

[17] *See, e.g.*, United States v. Oloyede, 982 F.2d 133, 136-37, 141 (4th Cir. 1992) (affirming conviction of an immigration lawyer under an earlier version of the provision where the lawyer filed fraudulent citizenship applications on behalf of clients and instructed clients to testify to false information).

[18] The only published case that arguably could be read to support a prosecution under the Solicitation Provision for non-fraudulent, non-misleading legal advice involved a non-lawyer and rested on an interpretation of the provision that *Hansen* later expressly rejected. In *United States v. Henderson*, a high-ranking official within U.S. Customs and Border Protection hired a person to clean her home, learned she was undocumented, and then provided advice including telling her that if she left the country, she would be unable to return. 857 F. Supp. 2d 191, 195-97 (D. Mass. 2012). The government took the position in court that even an immigration attorney could be prosecuted under the Solicitation Provision for advising a client to remain in the country in order to adjust their status. *Id.* at 203-04. Although the district court concluded that "an unadorned plain meaning reading of the words 'encourages or induces'" in the statute could support the government's interpretation, *id.* at 204, this decision predates *Hansen*— which expressly rejected an ordinary meaning approach to that language in favor of the specialized meaning of those terms derived from common law solicitation and facilitation. Indeed, in its arguments to the Court in *Hansen*, the government *itself* cast doubt on the hypothetical discussed in *Henderson*, describing it as a "decade-old colloquy before a single district court" and emphasizing that the Solicitation Provision "does not apply to good-faith legal advice." As the government stated:

> Section 1324(a)(1)(A)(iv)'s potential application to attorneys is both limited and consistent with the criminal law's potential application to lawyers more generally . . . Section 1324(a)(1)(A)(iv), like other facilitation and solicitation laws, does not apply to good-faith legal advice . . . a noncitizen's continued residence in the United States is not 'in violation of law' within the meaning of the statute if the noncitizen is in removal proceedings or pursuing other bona fide efforts to obtain relief from the government.

Reply Brief for the United States, United States v. Hansen, 599 U.S. 762 (2023) (No. 22-179), 2023 WL 2587284, at *12, *14-15.

[19] *See* United States v. Evans, 188 F. App'x 878, 880, 884 (11th Cir. 2006) (affirming conviction of a Designated School Official for fraudulent applications).

[20] United States v. Sineneng-Smith, 982 F.3d 766, 773 (9th Cir. 2020). In *Sineneng-Smith*, the Ninth Circuit affirmed the conviction of an immigration consultant under the Encouragement Provision for providing misleading immigration advice, rejecting the defendant's contention that the provision only applied where the encouragement or inducement was "accomplished by unlawful means, entails fraud against the government or the use of false documents, or bribery, or provides no legitimate benefit to an alien." *Id.* at 774. The Court emphasized that "the gravamen of the encouragement offense was that Sineneng-Smith encouraged [her clients] to stay in the United States in violation of the law by misleading them about the

After *Hansen*, any broader potential application of the Solicitation Provision to the good faith provision of legal services seems foreclosed. Notably, the defendant in *Hansen* had offered a number of hypothetical scenarios that he argued could be criminalized under the ordinary meaning of the provision—including a "college counselor advising an undocumented student that they can obtain a private scholarship to pay for dormitory fees and other expenses to fund their life as a college student in the United States" and a "lawyer providing advice to a client that overstaying his visa is not a bar to adjusting his status to that of a lawful permanent resident if he marries a U.S. citizen."[21] Although the Court did not specifically address these two scenarios in its opinion, it did expressly note that the provision would not apply to the "string of hypotheticals" that the defendant offered in his brief.[22] Because "none of Hansen's examples are filtered through the elements of solicitation or facilitation," the Court emphasized, the Solicitation Provision "does not produce the horribles he parades."[23] At the same time, while the Court rejected Hansen's overbreadth challenge to the provision's constitutionality on its face, it noted that as-applied challenges would remain available under the First Amendment and other constitutional provisions if the government were to impermissibly use the Solicitation Provision to target protected speech in the future.[24]

Thus, for the reasons stated, bona fide legal advice offered directly or indirectly by a college or university would not violate the Solicitation Provision.[25] The strong protection offered by the First Amendment for an attorney's speech to a client—considered foundational to our legal system—could support no other conclusion.[26] A court that would hold an attorney liable for the provision of bona fide legal services not only would break with established precedent but also would impinge on fundamental constitutional rights, unacceptably chill protected expression, and undermine the integrity and sound functioning of the legal system.

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full extent of the benefits they might realistically expect from engaging in the § 245i Labor Certification process." *Id.* Thus, the Ninth Circuit deemed the misleading nature of the advice the defendant provided to be relevant to the scope of the offense.

[21] Brief for Respondent, United States v. Hansen, 599 U.S. 762 (2023) (No. 22-179), 2023 WL 2186451, at *16-19.

[22] *Hansen*, 599 U.S. at 782.

[23] Id.

[24] Id. at 783, n. 5.

[25] In fact, the *Hansen* decision left open the possibility of yet another defense: that the First Amendment arguably does not allow the criminalization of "speech that solicits or facilitates a civil violation," as opposed to a crime. 599 U.S. at 784. The Court acknowledged that "some immigration violations are only civil," observing that "residing in the United States without lawful status is subject to the hefty penalty of removal, but it generally does not carry a criminal sentence." *Id.* (citing Arizona v. United States, 567 U.S. 387, 407 (2012)). Ultimately, while *Hansen* did not rule on this "novel theory," a defendant charged with violating Section 1324(a)(1)(A)(iv) could raise this objection where a noncitizen's remaining in the country would only amount to a civil violation, not a crime. For more on this "mismatch theory," see Brief of Amicus Curiae Professor Eugene Volokh in Support of Respondent, United States v. Hansen, 599 U.S. 762 (2023) (No. 22-179), 2023 WL 2283202, at *1-7.

[26] *See also* Brief of Immigration Representatives and Organizations as Amici Curiae in Support of Respondent, United States v. Hansen, 599 U.S. 762 (2023) (No. 22-179), 2023 WL 2335831, at *18-19 (citing decades of Supreme Court precedent affirming the significant First Amendment protection that attorneys are afforded in matters of legal representation, and emphasizing that "[a]dvice by attorneys in particular has a special place in our constitutional system" (citation omitted)).

B. Section 1324(a)(1)(A)(iii) [Harboring Provision]

For statutory reasons and for the constitutional reasons outlined above, bona fide legal advice offered directly or indirectly by a college or university also does not violate the Harboring Provision, which prohibits concealing, harboring, or shielding a noncitizen from detection with knowledge or reckless disregard "of the fact that an alien has come to, entered, or remains in the United States in violation of law."

While the Supreme Court has yet to construe the provision, most circuits have interpreted the legal standard for "conceals, harbors, or shields from detection" in such a way as to narrow its applicability, either by (1) interpreting the provision to require intent to facilitate the noncitizen's remaining in the United States unlawfully or (2) requiring a threshold level of "substantiality" for qualifying conduct.

First, several courts of appeals interpret "harboring" as requiring intentional or purposeful action—which thereby requires a mens rea showing distinct from, and additional to, the separate statutory requirement that the defendant know or act in reckless disregard of the fact that the noncitizen entered or remained in the country unlawfully.[27] For instance, the Second Circuit defines harboring as "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."[28] Under this standard, an attorney cannot violate the law by providing advice to a noncitizen client that is intended to enable the client to stay in the United States *lawfully*, and not to evade detection. Nor can a university violate the law by providing legal services when it seeks to maintain students' legal status and opportunity to study lawfully.

Second, while several other courts of appeals do not require specific intent, they still require that a defendant's conduct "tend[] to substantially facilitate noncitizens remaining in the country illegally and prevent authorities from detecting the noncitizens' presence."[29] This requirement likewise precludes liability under the Harboring Provision for those providing legal advice. For instance, in reversing a conviction under the Harboring Provision for a nonlawyer who instructed an acquaintance on how to evade detection, the Third Circuit held that "[t]elling an illegal alien to stay out of trouble does not tend substantially to facilitate the alien remaining in the country; rather, it simply states an obvious proposition that anyone would know or could easily ascertain from almost

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[27] *See, e.g.*, United States v. Vargas-Cordon, 733 F.3d 366, 382 (2d Cir. 2013); United States v. McClellan, 794 F.3d 743, 751 (7th Cir. 2015); United States v. You, 382 F.3d 958, 966 (9th Cir. 2004). *But see* United States v. Zheng, 87 F.4th 336, 343 (6th Cir. 2023) (rejecting specific intent requirement). For further analysis on the various approaches taken by the courts of appeal regarding the elements and requisite mens rea for conviction under the Harboring Provision, see Annie K. Kreikemeier, *From Sheltering to Sentencing: An Examination of Immigrant Harboring Under 8 U.S.C. § 1324*, 89 MO. L. REV. 1319 (2025).
[28] United States v. Vargas-Cordon, 733 F.3d 366, 382 (2d Cir. 2013) (emphasis added).
[29] *See* Zheng, 87 F.4th at 343 ("The Third, Fifth, and Eighth Circuits agree with the district court's instruction that 'harboring' encompasses conduct that tends to substantially facilitate noncitizens remaining in the country illegally and prevent authorities from detecting the noncitizens' presence . . . [w]e join with the approach used by the Third, Fifth, and Eighth Circuits.").

any source."[30] Therefore, even in circuits lacking an enhanced mens rea requirement, a lawyer's bona fide legal advice—and a college or university's provision of legal services—does not "substantially facilitate" unlawful presence or prevent authorities from detecting noncitizens' presence.

There appear to be exceedingly few cases under the Harboring Provision where the government has even attempted to charge individuals for providing legal representation or connecting noncitizens to legal services. In one case, the Eleventh Circuit held that the evidence was insufficient to support a harboring conviction where a sports agent had taken Cuban baseball players "to experienced immigration counsel shortly after they arrived to process them through immigration, and the players in no way engaged in conduct suggesting that they were hiding from or otherwise avoiding immigration officials."[31] In another case, where a union representative was originally charged on several grounds, including offering to provide legal services to employees in a union recruitment speech, the Eighth Circuit never considered the defendant's First Amendment argument because it reversed the harboring conviction on other grounds.[32]

Were the federal government to attempt to charge lawyers with providing bona fide legal advice to noncitizen clients, the same First Amendment concerns considered in *Hansen* would apply to the Harboring Provision. *Hansen* interpreted the Solicitation Provision narrowly to "require an intent to bring about a particular unlawful act"—which allowed the Court to save the provision from being invalidated on its face as overbroad under the First Amendment. However, as noted above, the Court emphasized that as-applied challenges would remain available if the Solicitation Provision were used in the future to target expression protected under the First Amendment. Speech not integral to unlawful conduct, such as legal advice or the provision of legal services not intended to facilitate immigration violations, is presumptively protected by the First Amendment. If the government charged such speech as "harboring," it would squarely raise the First Amendment concerns that the Supreme Court identified and reserved in *Hansen*.[33]

In conclusion, published caselaw strongly suggests that lawyers cannot be liable under the Solicitation or Harboring Provisions of 8 U.S.C. § 1324 for providing good faith legal advice. A college or university directly or indirectly providing such services is highly unlikely to be subject to liability under the federal harboring statute, especially given the Supreme Court's recent decision in *Hansen*.

## II. A college or university does not violate the federal harboring statute when it provides campus housing in the normal course of its operations to

[30] United States v. Ozcelik, 527 F.3d 88, 101 (3d Cir. 2008). The defendant in *Ozcelik* had told the noncitizen to keep a low profile, to "stay away from everything for 4-5 months," and to only travel from home to work, and had praised the fact that the noncitizen was living at a different address from their legal address, stating, "[d]isappear, don't tell anyone what address you're staying at." *Id.* at 100. Even on those facts, the Third Circuit held that holding the defendant "criminally responsible for passing along general information to an illegal alien would effectively write the word 'substantially' out of the test we have undertaken to apply." *Id.* at 101.

[31] United States v. Dominguez, 661 F.3d 1051, 1063 (11th Cir. 2011) ("The evidence does not support the conclusion that Dominguez substantially facilitated the Cuban players' escaping detection from immigration officials.").

[32] United States v. Pereyra-Gabino, 563 F.3d 322, 329 (8th Cir. 2009).

[33] Hansen, 599 U.S. at 783, n. 5.

**students who are undocumented, to lawful permanent residents (LPRs) charged as removable, or to students who have had their visas revoked or their SEVIS record terminated by the federal government.**

This section addresses whether university officials run afoul of federal criminal harboring prohibitions[34] when they: (A) provide campus housing to students they know to be undocumented; (B) provide campus housing to lawful permanent residents charged with grounds for removal; (C) provide campus housing to students whose visas have been revoked; or (D) provide campus housing to students whose SEVIS records have been terminated by the federal government. We conclude that conviction under the federal harboring statute, 8 U.S.C. § 1324, requires more than renting housing to an individual with knowledge of their immigration status.

As noted above, the Solicitation Provision as interpreted by the Supreme Court "reaches no further than the purposeful solicitation and facilitation of specific acts known to violate federal law."[35] Providing housing to students without an intent to enable unlawful residence in the United States therefore does not qualify as conduct manifesting the requisite mens rea to violate the Solicitation Provision.

Given its use in housing cases and the fact that the Supreme Court has yet to interpret it, the remainder of this section concerns the Harboring Provision. Although federal appellate courts differ in their articulation of the conduct and mental state needed to satisfy the Harboring Provision, courts uniformly require something more than renting housing to a noncitizen unlawfully present in the United States. University officials who provide or rent housing to students in the normal course of their operations and in pursuance of their general mission to support the education of university community members are not engaged in harboring under the federal statute as it has been interpreted to date by federal courts.

A. Providing housing to undocumented students

Many universities enroll students who are long-time residents of the United States but lack lawful immigration status in the United States. In some cases, these students may rent rooms in university housing (on or off campus) while they are enrolled. However, federal courts have held uniformly that renting housing to a person in the ordinary course of business does not violate federal harboring law.[36]

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[34] *See supra* notes 66 and 7, and accompanying discussion.
[35] Hansen, 599 U.S. at 781.
[36] Reyes v. Waples Mobile Home Park Ltd. P'ship, 91 F.4th 270, 277 (4th Cir. 2024) (Harboring "only applies to those who intend in some way to aid an undocumented immigrant in hiding from the authorities. It involves an element of deceit that is not present in run-of-the mill leases made in the ordinary course of business."); DelRio-Mocci v. Connolly Props. Inc., 672 F.3d 241, 247 (3d Cir. 2012) ("We do not know of any court of appeals that has held that knowingly renting an apartment to an alien lacking lawful immigration status constitutes harboring."); Cruz v. Abbott, 849 F.3d 594, 599–600 (5th Cir. 2017) (concluding that the federal crime "requires some level of covertness well beyond merely renting or providing a place to live" and reading a parallel state crime to have the same requirements); United States v. McClellan, 794 F.3d 743, 751 (7th Cir. 2015) (concluding that to sustain a harboring conviction

Harboring requires something more than merely providing housing at market rates or in the ordinary course of a relationship.[37] As discussed above, to sustain a harboring conviction, federal courts generally have required the government to establish—at a minimum—that a defendant's conduct "tends to substantially facilitate noncitizens remaining in the country illegally and prevent authorities from detecting the noncitizens' presence."[38] Some appellate courts additionally require that a conviction for harboring requires a showing that the defendant's conduct was "intended . . . to prevent detention" of an unlawfully present individual.[39]

Under any standard currently applied by federal appellate courts, renting housing to a student does not satisfy the elements of the federal harboring statute. Renting housing to a student does not "prevent authorities from detecting" the presence of noncitizen students living in university housing, let alone manifest an intent to prevent the detection of these individuals by federal officials. In addition, the Harboring Provision does not impose any duty to provide unsolicited reports to immigration authorities about the presence of noncitizen students living in university housing.[40]

B. Providing campus housing to lawful permanent residents charged with grounds for removal

In Spring 2025, immigration authorities sought to detain and deport students who are lawful permanent residents (LPRs) after Secretary Rubio purported to revoke their immigrant visas

"there must be evidence from which a jury could conclude, beyond a reasonable doubt, that the defendant intended to safeguard that alien from the authorities" such as "tak[ing] actions to conceal an alien by moving the alien to a hidden location or providing physical protection to the alien" (citation omitted)).

[37] *See, e.g.*, United States v. Vargas-Cordon, 733 F.3d 366, 382 (2d Cir. 2013) (stating that Section 1324 requires that a defendant "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."); United States v. Costello, 666 F.3d 1040, 1043, 1045 (7th Cir. 2012) (holding that "letting your [undocumented] boyfriend live with you" does not constitute harboring, and distinguishing this from a situation where a landlord-employer provides discounted housing to the undocumented employees to make their poorly paid work more attractive).

[38] *See* Zheng, 87 F.4th at 343.

[39] United States v. Vargas-Cordon, 733 F.3d 366, 382 (2d Cir. 2013).

[40] *See* JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW § 9.06[A] (9th ed. 2022) (explaining the general rule that a person is not criminally responsible for an omission absent a specific requirement to act); United States v. Costello, 666 F.3d 1040, 1043, 1050 (7th Cir. 2012) (reversing harboring conviction of woman who knowingly lived with an undocumented boyfriend and did not report him to immigration authorities); *cf.* United States v. Ozcelik, 527 F.3d 88, 99 (3d Cir., 2008) ("Convictions under § 1324 generally involve defendants who provide illegal aliens with affirmative assistance, such as shelter, transportation, direction about how to obtain false documentation, or warnings about impending investigations. In contrast, we have found no cases in which a defendant has been convicted under this statute for merely giving an alien advice to lay low and to stay away from the address on file with the INS, obvious information that any fugitive would know." (citation omitted)).

on foreign policy grounds.[41] For all of the reasons provided in section (A), continuing merely to provide standard campus housing to any student does not constitute harboring under any circumstance.

Moreover, existing agency and appellate court decisions make clear that the status of LPRs does not change until a judge issues a final order of removal.[42] Rescinding a lawful permanent resident's visa and charging them with grounds of removability are not acts that, in themselves, alter the legal status of LPRs.[43] The government cannot argue successfully that an LPR "remains in the United States in violation of law" within the meaning of the harboring statute unless and until that LPR has been ordered removed by an immigration judge.[44]

C. Providing campus housing to students after the federal government revokes their visas

The Secretary of State is authorized to revoke a nonimmigrant visa, including F and J student visas, "at any time, in his discretion."[45] In recent months, the State Department revoked

[41] Ahilan Arulanantham & Adam Cox, *Explainer on First Amendment and Due Process Issues in Deportation of Pro-Palestinian Student Activist(s)*, JUST SECURITY (Mar. 12, 2025), https://www.justsecurity.org/109012/legal-issues-deportation-palestinian-student-activists.
[42] *See* Matter of Gunaydin, 18 I&N Dec. 326, 327 (BIA 1982) ("[A]n act which provides the basis for a lawful permanent resident alien's deportability does not itself terminate his status."); Etuk v. Slattery, 936 F.2d 1433, 1447 (2d Cir. 1991) ("LPRs who are placed in deportation proceedings do not lose the status of lawful residents and its attendant benefits [including work authorization,] until a deportation hearing has been conducted . . . and a final deportation order issued."); 8 C.F.R. § 1.2 (status of "permanent residence" only "terminates upon entry of a final administrative order of exclusion, deportation, or removal").
[43] 8 U.S.C. § 1229a sets forth the "sole and exclusive" procedures by which a noncitizen, including a lawful permanent resident, can be removed from the country.
[44] The government recently obtained warrants to enter the residences of lawful permanent residents based on the allegations that the university was harboring those students. Shawn Musgrave*, ICE Duped a Federal Judge into Allowing a Raid on Columbia Student Dorms*, THE INTERCEPT (May 14, 2025), https://theintercept.com/2025/05/14/yunseo-chung-ice-search-warrant-columbia-immigrants/. These warrants appear to have been issued in error, in part due to ICE's misrepresenting the federal law as prohibiting the "concealing, harboring, or shielding from detection removable aliens." Id. That, of course, is not what the harboring statute prohibits. It says nothing about "removable aliens," and only pertains to individuals in the United States "in violation of law." And an LPR is not present in violation of law until ordered removed. See supra note 42. *See also* Ahilan Arulananthan & Adam Cox, *Explainer on First Amendment and Due Process Issues in Deportation of Pro-Palestinian Student Activist(s)*, JUST SECURITY (March 12, 2025), https://www.justsecurity.org/109012/legal-issues-deportation-palestinian-student-activists/.
[45] 8 U.S.C. § 1201(i). While a visa terminated by the Secretary (or a consular official) could no longer be used for entry, this section does not indicate that the visa rescission terminates nonimmigrant status. *See* PENN STATE DICKINSON LAW: CENTER FOR IMMIGRANTS' RIGHTS CLINIC, UNDERSTANDING RECENT INTERNATIONAL STUDENT VISA REVOCATIONS AND SEVIS RECORD TERMINATIONS: GUIDANCE FOR COLLEGES & UNIVERSITIES 2 (2025) ("Notably, a student may continue to be in lawful status even if their visa expires or is revoked, as long as they maintain the terms of their immigration status.").

thousands of student visas,[46] before reversing course and reinstating most of those visas in the face of numerous legal challenges and public pressure.[47] As noted above, the Administration has stated it plans to adopt a new policy enabling future visa revocations.[48]

For the reasons set forth in section (A), providing housing to all students on the same terms regardless of immigration status does not violate the harboring provision. This logic extends to students whose visas are revoked. Indeed, in the case of students whose visas are revoked, immigration authorities already are not only aware of the presence of these student visa holders in the United States but also have specific information about the universities at which they have enrolled. By continuing a preexisting rental agreement with a student whose nonimmigrant visa is abruptly revoked, the university is not concealing those students or preventing their detection by immigration officials. Such conduct therefore does not satisfy the elements of harboring as defined by any appellate court to date.[49]

D. Providing campus housing to students after the federal government terminates their SEVIS record

SEVIS (the Student and Exchange Visitor Information System) is a web-based system used by ICE's Student and Exchange Visitor Program (SEVP) to track nonimmigrant students and exchange visitors. Between April 8 and April 24, 2025, the Department of Homeland Security terminated thousands of international students' SEVIS records, generally without providing an explanation, and often without providing notice to either the affected students or to university officials.[50] Beginning April 25, 2025, the government changed course, and

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[46] More than 1,800 students have lost their F-1 or J-1 student status as part of the Trump Administration's crackdown on immigration and alleged antisemitism, according to news reports and college statements. Chernikoff & Borresen, *supra* note 1.

[47] Kyle Cheney & Josh Gerstein, *Trump Administration Reverses Abrupt Terminations of Foreign Students' US Visa Registrations*, POLITICO (Apr. 25, 2025), https://www.politico.com/news/2025/04/25/trump-admin-reverses-termination-foreign-student-visa-registrations-00309407.

[48] Exhibit 1, Zheng v. Lyons, 1:25-cv-10893 (D. Mass. Apr. 25, 2025) ECF No. 21, https://www.courtlistener.com/docket/69878266/21/zheng-v-lyons/.

[49] It is also not entirely clear that a student whose visa has been rescinded but who has not been ordered removed "remains in the United States in violation of the law" as required by the harboring statute. Some guidance documents from federal officials indicate that a visa revocation does not terminate lawful status, suggesting that the individual is not remaining in violation of the law until an immigration judge issues a removal order. *See* U.S. Dep't of State, Bureau of Educ. and Cultural Affs., Guidance Directive 2016-03 9 FAM 403.11-3 – VISA REVOCATION (Sept. 2, 2016), https://j1visa.state.gov/wp-content/uploads/2016/09/2016-03-GD-Visa-Revocation-FINAL-Sept-2016.pdf; *see also* U.S. Immigr. and Customs Enf't, Student and Exchange Visitor Program and Designated School Officials of SEVP-Certified Schools with F-1 Students Eligible for or Pursuing Post-Completion Optional Practical Training (Apr. 23, 2010), https://www.ice.gov/doclib/sevis/pdf/opt_policy_guidance_042010.pdf. However, there is at least one case where a defendant was successfully prosecuted for harboring where he engaged in conduct that prevented the government from detecting the presence of women who had overstayed their visas but had not been ordered removed, although the question regarding the legal status of those women was not litigated. United States v. Campbell, 770 F.3d 556 (7th Cir. 2014).

[50] Ashley Mowreader, *Where Students Have Had Their Visas Revoked*, INSIDE HIGHER EDUCATION (Apr. 25, 2025), https://www.insidehighered.com/news/global/international-students-us/2025/04/07/where-students-have-had-their-visas-revoked ("More than 1,800 students have lost their F-1 or J-1 student status

reinstated those records, but indicated that government officials were in the process of "developing a policy that will provide a framework for [future] SEVIS revocations."[51] More recently, during litigation, the government revealed a new guidance document for SEVP personnel, who operate SEVIS. The new guidance authorizes SEVP officials to terminate a nonimmigrant student's SEVIS record only after the Secretary has revoked that student's visa.[52] The new guidance also instructs ICE to take steps to initiate removal proceedings in such cases.[53]

For the reasons set forth in section (A), merely continuing to rent housing to students, in the absence of conduct tending to prevent immigration authorities from detecting those students, does not violate the harboring provision.[54] The government's termination of a student's SEVIS record does not change that analysis. Immigration authorities are already aware of the presence of these students, and they have specific information about the campuses at which they are enrolled. By continuing a preexisting rental agreement with a student whose SEVIS record is terminated, the university is not doing anything that could be said to conceal those students or prevent their detection by immigration officials. Continuing to provide housing to a student after the government changes or terminates their SEVIS record therefore does not constitute harboring.[55]

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For these reasons, we conclude that when colleges and universities provide, facilitate, or pay for immigration legal services for noncitizen students and/or continue to provide housing to noncitizen students, they are not violating federal harboring law. We urge you to continue

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as part of the Trump administration's crackdown on immigration and alleged antisemitism, according to news reports and college statements.")

[51] Exhibit 1, Zheng v. Lyons, 1:25-cv-10893 (D. Mass. Apr. 25, 2025) ECF No. 21, https://www.courtlistener.com/docket/69878266/21/zheng-v-lyons/.

[52] *See* Exhibit 1, Defendants Response to Plaintiff's Motion to Transfer, Arizona Student Doe #2 v. Trump, 4:25-cv-00175 (D. Ariz. Apr. 28, 2025) ECF No. 13, https://storage.courtlistener.com/recap/gov.uscourts.azd.1435568/gov.uscourts.azd.1435568.13.1.pdf.

[53] *Id.*

[54] *See* note 36, *supra*, and accompanying discussion.

[55] Here again, it is not entirely clear that a student whose SEVIS record has been terminated "remains in violation of the law" within the meaning of the harboring statute. Indeed, the Department of Homeland Security recently took the position in federal court that the termination of a student's SEVIS record does not alter that student's legal status in the United States. *See* Declaration of Andre Watson, Senior Official within the National Security Division (NSD) for Homeland Security Investigations (HSI), Deore v. Sec'y U.S. Dep't Homeland Sec., No. 2:25-CV-11038-SJM-DRG (E.D. Mich. Apr. 14, 2025) ECF No. 14, https://storage.courtlistener.com/recap/gov.uscourts.mied.384231/gov.uscourts.mied.384231.14.3.pdf ("The statute and regulations do not provide SEVP the authority to terminate nonimmigrant status by terminating a SEVIS record . . . Terminating a record within SEVIS does not effectuate a visa revocation."). Other DHS guidance states, however, that SEVIS termination "could indicate that the nonimmigrant no longer maintains F or M status." DHS, *Terminate a Student*, STUDY IN THE STATES (Nov. 7, 2024), https://studyinthestates.dhs.gov/sevis-help-hub/student-records/completions-and-terminations/terminate-a-student.

supporting all of your students, including international and undocumented students, as they cope with the extreme anxiety and uncertainty of the present moment.

Sincerely,

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