

IMMIGRATION-RELATED CAMPUS CONCERNS

International Students, Faculty and Staff Students with Discretionary Status Dreamers and Other Undocumented Students

Enforcement, Sanctuary Campuses, and Sensitive Locations

Introduction

Promises to bring changes to the U.S. immigration system were central to President-elect Donald Trump's 2024 campaign. Most prominently, Trump expressed his intention to take swift executive action and carry out "mass deportations" of undocumented immigrants.¹ Other immigration-related issues of particular significance to the higher education community include the administration's approach to [high-skilled immigration](#), the [possible chilling effect](#) that increased scrutiny of visa applications may have on applicants and international student enrollments, and concerns of campus community members with a fragile immigration situation.

In December 2016, ACE produced a [similar memo](#) focused on immigration enforcement and undocumented students on campus on the eve of the first Trump administration. Below, we draw on lessons from that administration to address current and potential issues facing international students, scholars, and staff. We also share legal and non-legal resources to guide campuses as immigration policies and trends develop.

This is a time of [uncertainty](#), and it is impossible to predict the future.² During the first Trump administration, immigration attorneys prepared for actions that ultimately did not occur and were surprised by others that did. Even simple questions such as "can I plan international travel next summer?" do not have simple answers. This uncertainty is a challenge when addressing the effect of immigration policy on higher education.³

Given the inherent ability of the executive branch of the federal government to implement policy through presidential proclamations, appointments, and agency guidance,⁴ the new Trump administration will possess the tools to make significant changes to immigration processing, even without action by Congress or going through the often lengthy process of issuing or revising regulations.⁵ These developments will impact international populations already on campus—documented or undocumented—as well as those seeking to enter the United States to pursue research, employment or study.

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DISCLAIMER: This issue brief does not constitute legal advice. It incorporates and reflects high-level observations based on non-exhaustive research and does not analyze any specific factual scenarios. Institutions should examine issues addressed here based on the context and facts of each situation, institutional policies, geographical and political context, and on their own counsel's interpretation of relevant law. This is a fluid environment and topic, including the potential for changes in current law or current enforcement practices.

The Big Picture

What are the major categories of immigration in the U.S. system impacting higher education?

It is helpful to have a working understanding of the different [immigration categories](#) that may impact campus communities when considering issues that may arise. “Status” is a key word in U.S. immigration law. It includes temporary visa categories (i.e., nonimmigrant) often seen on campuses such as H-1B, F-1, and J-1, as well as immigrant visa categories—such as employment-based first, second, or third preference categories (EB-1, EB-2 and EB-3)—that lead to U.S. permanent residence (commonly referred to as a “green card”). Status is particularly important because it can serve as the foundation for individuals to change or extend their status to another temporary category or adjust their status to permanent residence.⁶

Here is a breakdown of categories of non-U.S. citizens who may be part of a campus community, and concerned about possible changes to U.S. immigration policy:

U.S. Lawful Permanent Residents: Individuals who have acquired U.S. lawful permanent residence (known as a green card) should feel the most secure. Prior travel bans and other adverse actions have exempted green card holders, with additional substantive and procedural [due process rights](#) afforded to U.S. Lawful Permanent Residents. Though possible, it is quite difficult for the government to [revoke](#) a U.S. Lawful Permanent Resident’s green card once it has been issued. Nonetheless, green card holders may have concerns about immigration issues, particularly related to travel and applying for citizenship.

Non-Immigrant Visa Holders: There are many types of non-immigrant visa⁷ holders on campuses. “Non-immigrant” essentially means “temporary” categories of status, such as those for students, exchange scholars, employees, and others. Most international students are on F-1 or M-1 non-immigrant visas, while other students, visiting scholars, and post-docs/fellows may hold J-1 status. Higher education faculty tend to hold H-1B or O-1 visas, which also allows them to work in the United States.

There are also non-student or non-faculty family members whose visa status is based on a spouse or parent (such as an F-2 visa which is issued to a spouse or minor child who may accompany an F-1 visa holder).

Some non-immigrant visa categories (such as F-2) do not grant employment authorization to the spouse or dependent child. The main exceptions are J-1, E, or L visa holders, or those on diplomatic visas (A, NATO or G). Under limited circumstances, the H-4 spouses of H-1B visa holders may also obtain employment authorization. Non-immigrant visa holders have “status” which may allow them to apply for permanent residence within the United States via an adjustment of status, assuming they have a legal basis for such permanent residence process.

Discretionary Categories: There has been a paradigm shift in the composition of international populations on campuses. A decade ago, most international students and scholars were in the first two categories above (lawful permanent resident and non-immigrant visa holder). As such, international offices and campuses services primarily focused on those groups.

However, campus communities have come to include individuals drawn from the millions of people now in the United States with fragile immigration situations—discretionary temporary grants of work permission or the ability to work while waiting (usually in a long, slow line) for humanitarian relief. Although these individuals may be permitted to remain in the United States and obtain employment authorization, they have not received formal “admission” to the United States but instead are recipients of discretionary grants that can be revoked. They have no actual status. These categories include:

- *Temporary Protected Status (TPS):* Short-term (usually 18-24 months) and not technically a status, TPS offers work permission and protection from deportation for those from countries in crisis. Each of the [17 TPS countries](#) (as of January 2025) has a separate designation with specific residence requirements. The

first Trump administration tried to end TPS for certain countries but was [stopped in court](#). This may be attempted again.

- *Applicants for Humanitarian Relief*: Includes asylum seekers (fear of return to home country) and U visa applicants (victims of crime in the United States).
- *Deferred Action for Childhood Arrival (DACA)*: Provides temporary work permission and relief from deportation. While the number of DACA recipients is dwindling, they remain a significant population on campuses. The fate of DACA is uncertain due to [ongoing litigation](#) and previous attempts by the first Trump administration to rescind DACA.
- *Parole*: Discretionary entry to the United States with work permission, used more recently for a variety of policy goals, including in an attempt to ease tension at the southern border, evacuate nearly 100,000 Afghans after the Taliban takeover, and [provide an option](#) for hundreds of thousands of Ukrainians since the war began in 2022. Over one million people in the United States now hold parole, but there is no guarantee of renewal or a [long-term plan](#) for status.

Individuals in discretionary categories may have temporary work cards⁸ and might not be on the radar of campus administrators. Yet they are an important group to be aware of, as their ability to remain in the United States, travel internationally, and work will depend on the future of these discretionary immigration categories.

Undocumented: An estimated [400,000 undocumented students](#) are enrolled in U.S. higher education today. Nationwide requirements to verify employment authorization through the timely-completion of the I-9 process make it very unlikely that a higher education institution directly employs undocumented individuals. However, they may be physically present on campuses as “off the books” workers employed by contractors engaged by a college. In addition, many U.S. Citizen or Lawful Permanent Resident students or faculty in “mixed status” families have close relatives without permission to be in the United States, meaning that the support network (financial and emotional) for these students may be fragile.

What is going on regarding DACA?

Hundreds of thousands of [Dreamers](#), individuals brought to this country as children without status, have grown up to become college students, members of the military, and contributors to the workforce. The fate of Dreamers has garnered significant attention on campuses, from both students and higher education leaders. A subset of Dreamers are DACA recipients.

DACA was established in 2012 during the Obama administration. It is not a law or regulation; it is an executive order regarding prosecutorial discretion. DACA does not confer legal status or a pathway to citizenship, and it is relevant to only a small portion of the undocumented individuals in the United States.

DACA provides administrative relief from deportation, permitting approved individuals to stay for two years at a time. Those granted DACA also may receive a Social Security number and are eligible for two-year employment authorization documents. They may also apply for renewals of their DACA registration in 2-year increments. DACA was only made available to undocumented young people who had no lawful status on or before June 15, 2012.⁹

American higher education institutions have enrolled students in the following three categories: (i) individuals who have DACA; (ii) individuals who had filed DACA applications which were not processed due to the injunction (described below); and (iii) individuals who would have been eligible for DACA but cannot apply for it due to the injunction.

DACA has been the subject of ongoing legal challenges. Currently, a Texas federal court injunction¹⁰ prohibits the Department of Homeland Security (DHS) from processing new DACA applications but allows 2-year renewals for people already in the program. This prohibition, together with age restrictions for the DACA program, has led to the [number of recipients](#) falling in recent years to approximately 530,000 from a peak of roughly 700,000 in 2019.

Two key issues regarding the legality of the DACA program are whether the president has the authority to exercise prosecutorial discretion on such a broad scale, and if so, the appropriate mechanism for doing so. In an attempt to fortify the program, the Biden administration [reissued](#) the 2012 DACA executive order in the form of a regulation in 2022, following the notice and comment process set out in the Administrative Procedure Act.¹¹ However, the Texas federal court injunction still stands, and there is [no new access](#) to the program.

An additional complex legal issue is standing—does the state of Texas have the legal basis to challenge the DACA program? A [federal court in 2024 found](#) that Texas did not have standing to challenge a discretionary program, but some reports predict that the Fifth Circuit will find that Texas does have standing in the DACA case.¹²

The fate of DACA will depend on the outcome of [litigation](#) and whether President Trump chooses to rescind the regulation. A decision by the Fifth Circuit Court of Appeals is expected sometime in 2025. While it is uncertain if and when the Supreme Court might review that ruling, such a review is [quite possible and perhaps even likely](#).

Note that DACA is one of the few types of employment authorization that is not automatically extended by filing a renewal application, so there can be gaps if a renewal is delayed. This has happened in waves as backlogs ebb and flow at the U.S. Citizenship and Immigration Services (USCIS), raising concerns that slower processing times during the next administration may lead to DACA employees unable to work while waiting for their new work authorization cards.

Issues Applicable to International Students, Faculty, and Staff

Trump 1.0 Travel Bans: Implications for Trump 2.0's Travel Bans and Executive Orders

Within one week of entering office in January 2017, President Trump announced the administration's first ban on foreign nationals from several Muslim-majority countries. This ban, and subsequent versions (collectively, "travel bans"), met resistance in federal courts, with the administration [adjusting its legal strategy](#) in response to successive court orders. Ultimately, a third iteration of a travel ban— [Presidential Proclamation 9645](#)—was upheld in the courts on the basis that the president possesses broad latitude to limit who may enter the United States.

According to Chief Justice John Roberts' majority opinion, Section 212(f) of the Immigration and Nationality Act (INA) grants the president the authority to "suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate."¹³ Roberts noted that this provision "exudes deference to the President in every clause," thereby granting the president the unilateral power to determine that the entry of certain individuals "would be detrimental to the interests of the United States."¹⁴ The Biden administration [rescinded](#) Presidential Proclamation 9645 through its own executive orders in early 2021.

As expansive as the executive branch's prerogatives may be in the immigration context—particularly in limiting who may enter the United States—the incoming administration will not be able to accomplish all its goals through executive order alone. Any regulatory changes or rules must abide by the Administrative Procedures Act (APA), which requires a period of public comment and engagement with stakeholders.¹⁵ Moreover, passing legislation through Congress will be challenging even with one party in control of both the Senate and the House of Representatives given the slim majorities in both chambers. New regulations and laws undoubtedly face court challenges, with new opportunities for the higher education community to weigh in with amicus briefs explaining the potential impact on campus constituencies, similar to early challenges to the Travel Bans 1.0.¹⁶

Guidelines, Policy Updates, and Other Methods for Affecting Agency Behavior

In addition to direct attempts at rulemaking or legislation, the new administration will again have the immediate capability to influence agency behavior, through personnel appointments, internal guidelines, and policy

memoranda. For example, with respect to non-immigrant visa petition approval by the USCIS, Trump's April 2017 "Buy American, Hire American" Executive Order set an agency-wide policy shift toward stricter adjudications that is credited with higher rates of audits, requests for evidence, and denials.¹⁷ As was the case with other initiatives, federal litigation and/or legal settlements restricted the Trump administration's capacity to implement these changes outside of the normal APA rulemaking process. For example, rulings and post-judgement settlements stemming from *ITSERVE Alliance, Inc. v. Cissna and Serenity Info Tech et al. v. Kenneth T. Cuccinelli* pulled back enhanced requirements for H-1B petitioners seeking to station employees at third-party worksites.¹⁸

Other government agencies involved in the immigration process, including the State Department (DOS),¹⁹ which issues passport visas to enter the United States, and Customs and Border Protection (CBP), which inspects individuals at U.S. borders or airports, may also apply additional scrutiny, leading to denials or extended security delays.²⁰ Specifically, by statute²¹, visas for citizens of state sponsors of terrorism (mostly commonly Iran) cannot be issued unless DOS makes a determination. Such determinations require DOS to exercise its "exemption authority" rather than its "waiver authority."²²

DOS has discussed improving its administrative processing protocols, but security delays still occur, especially for individuals from certain countries. Higher education organizations will closely monitor how these broad discretionary authorities are used to limit or delay foreign nationals from obtaining visas to the United States and entering the country. Engaging with government agencies may provide colleges and universities an opportunity to share the impact of these trends on campuses.

Issues Facing Students, Faculty, Staff, and Family Members with Discretionary Immigration Situations or No Status

Can President Trump end DACA on his own?

Since DACA is now a regulation rather than an executive order, the president would have to issue a new regulation to wind down the program. This formal process could not be completed overnight. Higher education organizations and institutions will be closely watching the DACA litigation and any attempt to initiate rulemaking. If DACA ends, the most likely scenario is that DACA recipients would keep their current 2-year work cards, but renewals would cease. Revoking a work card requires written notice and an opportunity to respond, making this a challenging process to apply to over half a million people.

Given the threats to DACA, it may be prudent for individuals with DACA to seek other immigration options such as employer-sponsored temporary visas or green cards.²³ Campus career and alumni offices may also be able to assist DACA recipients in finding employer sponsorship. Individuals in fragile immigration situations such as DACA may benefit from networking or internships, which can increase their chances of securing immigration sponsorship.

Can President Trump end TPS by Executive Order?

No. TPS is established by statute, so it can only be ended fully by Congress. Attempts to end TPS for individual countries have and would likely be again challenged in federal court.²⁴

However, TPS is designated by the president for certain periods of time, usually 18-24 months. A new president could decline to renew TPS designations for particular countries, as President Trump attempted to do with Haiti during his first administration. This may happen again for certain countries, likely triggering lawsuits and producing continued uncertainty for TPS holders. Previously, litigation has focused on whether the decision not to renew TPS designation for a country is "arbitrary and capricious" under the APA based on changes (or lack thereof) in country conditions.²⁵

What would it take for Congress to protect DACA recipients and other Dreamers?

Because of the creation and attempts to end DACA by the executive branch and ongoing court cases, Congress has considered legislative solutions for DACA recipients and other Dreamers for many years. A legislative solution would put DACA or a similar program into statute, which would make it more difficult for the program to be ended by executive action. Legislative efforts have included stand-alone bills as well as proposals attached to more comprehensive immigration reform.

Protecting DACA recipients and Dreamers has at times received bipartisan support, with a recent effort—the [Dream Act of 2023](#)—sponsored by Senators Dick Durban (D-IL) and Lindsey Graham (R-SC). Different versions vary in specifics, such as eligibility or the wait-time between gaining full lawful permanent residence, but in the end, these [legislative proposals](#) would all permit select individuals to normalize their immigration status. One unresolved question is whether a path to lawful permanent residence or citizenship would be included as part of a compromise package.

How likely is it that the Trump administration will seek changes to the F-1 STEM OPT or the H-1B programs?

It is not clear what policy initiatives the next administration will take regarding work visas and work authorizations. [Recent news reports](#) show a wide variety of viewpoints within the Trump team, as well as [bipartisan interest](#) in examining the impact of the programs on U.S. workers.²⁶ Any proposed changes to OPT or H-1B will meet significant resistance and would likely be difficult to achieve. [Extensive litigation](#) to end OPT and STEM OPT has not, to date, been successful. Similarly, [efforts to scale back](#) the H-1B program have been successfully challenged in court.

For example, the first Trump administration issued an interim rule to update wage data that would have dramatically raised the salary requirements for H-1Bs.²⁷ That change could have significantly limited the ability of recent graduates or trainees such as postdocs to access the H-1B program.²⁸ Within two months of going into effect, a federal court blocked the interim rule on the basis that it violated the APA's requisite notice-comment period. The administration did not pursue the matter further.²⁹

The [discussion](#) over the H-1B program continues today.³⁰ A regulation published in late 2024 on the H-1B program contains a balance of enforcement and clarification of direct relevance to campuses, perhaps adding some stability regarding issues that were raised in the previous Trump administration.³¹

Potential Enforcement Actions and Reactions

If DACA is ended by the Trump administration, is there anything preventing ICE from using an individual's DACA data to facilitate their deportation? What about data held by the U.S. Department of Education or other federal agencies?

The DACA regulation explicitly states that data will not be disclosed to Immigration and Customs Enforcement (ICE) or CBP for the purpose of immigration enforcement proceedings unless certain criteria are met, such as concerns related to national security, fraud or misrepresentation, or specific criminal offenses.³² Similar restrictions exist for other federal agencies that may hold information, such as the U.S. Department of Education (ED) [for the Free Applications for Federal Student Aid \(FAFSA\)](#) for mixed status families.

FAFSA information also [may be protected](#) by Section 483(a)(3)(E) of the Higher Education Act. Federal tax information [is also protected](#). Federal agencies are subject to the Privacy Act of 1974, but, as discussed below, there [are exceptions](#). Moreover, FAFSA data held by ED is protected by the Family Educational Rights and Privacy Act (FERPA) if the applicant becomes a student at the institution.

If federal agency policies were to change, it is likely that attempts to use DACA data for broader enforcement efforts would be challenged in court based on previous guidance. But it is too soon to assess the nature and chances of success of those challenges.

If students with DACA or undocumented students encounter ICE or CBP, will they be placed into removal proceedings?

DACA is intended, in part, to allow ICE and CBP to **focus on priority cases** among the large number of total undocumented individuals in the country. Unless there is a policy change to **current enforcement priorities**, ICE and CBP agents are expected to exercise prosecutorial discretion by refraining from apprehending individuals with DACA status or placing them into removal proceedings. However, there may be more **targeted efforts** to enforce provisions within DACA that could result in the revocation of status, such as the participation of a DACA student in a campus protest or free speech activities that may result in criminal charges.³³

Undocumented students with no legal status or authorization to remain in the United States could fall under deportation orders. In such cases, they would be entered into removal proceedings and would require some form of relief to avoid being forced to leave the United States.

How should institutions consider requests by federal officials for records identifying undocumented students or other community members?

As a general rule, colleges and universities are not obligated to comply with requests by officials for institutional records without a subpoena or warrant. Under FERPA, a valid legal subpoena, warrant, or court order is typically required for nonconsensual access to a student's education records. However, exceptions explicitly allow access to some students' records, including:

- **The Student and Exchange Visitor Program (SEVP)** requires that institutions participating in SEVP are subject to onsite review at any time. An ICE field representative³⁴ visiting such a campus has the authority to ask for information about students on temporary student and training visas (F and J) administered by or present at the institution, but currently not about DACA or undocumented students. While FERPA restricts access to defined "education records" (but not to employee records) without a student's consent, students on temporary F or J visas have largely waived their rights under FERPA through the visa process.³⁵ In addition, institutions agree to grant access to certain employment-related information by signing H-1B, O-1 and other temporary visa petitions.³⁶
- **The USA PATRIOT Act** (post-9/11 legislation) created exceptions to FERPA, allowing nonconsensual disclosure of education records, including personally identifiable information, when a judicial order is issued based on the government's assertion of terrorist activities.³⁷

In addition, ED is authorized to access education records in connection with program reviews related to an institution's administration of federal student financial aid programs. Subject to restrictions, agencies can enter into data-sharing agreements,³⁸ raising the possibility of ED sharing information it obtains in a program review with other federal agencies, like the Department of Homeland Security.

It would be prudent for institutions to review applicable policies and protocols to assess how they may be interpreted and applied in response to future requests for information from government officials, as well as to ensure the protection of campus community members' privacy.

What about calls for institutions to prevent ICE officials and agents from coming on campus?

As a legal and practical matter, an institution may be unable to prevent ICE officials and agents from coming onto campus. Significant portions of virtually every college and university campus are open to the public. While these accessible spaces can be made subject to reasonable time, place, and manner restrictions, it is difficult to imagine a court finding a targeted restriction against federal immigration officials to be reasonable.

By contrast, restricted buildings and other areas (such as dormitories and other living spaces) carry legitimate privacy interests, so it could be appropriate to insist on an immigration warrant for access.³⁹ State and local law, as well as

existing cooperation agreements between campus police and external authorities, should be assessed.⁴⁰ [Previous guidance](#) from ICE sought to limit the implementation of enforcement activity at “focused or sensitive locations” such as schools, churches, and hospitals. The second Trump administration is expected to roll back this guidance.

Even where there may be a good-faith basis to insist on a warrant for access (or, in certain cases, a subpoena for access to records), such a request should not be seen as a license to obstruct law enforcement’s purpose. For instance, if an institution were to hide an undocumented person or destroy records while awaiting service of the warrant, a law enforcement authority or court might reasonably determine that the institution had run afoul of the “harboring” provision discussed below. Such steps could also trigger exposure for liability for obstruction of justice.⁴¹

Might campus police departments have less discretion to minimize or avoid cooperation?

Many mid-size and larger campuses have their [own police departments](#). As distinct and scope-limited operations, these departments differ in many ways from their surrounding municipal, county, and state law enforcement agencies. Yet, they are charged with a fundamentally similar set of protection duties, and they work within a law enforcement environment which presumes some levels of cooperation with other law enforcement agencies.

Federal law does not obligate local law enforcement—including sworn campus police officers—to devote resources to enforcing federal immigration laws. The Immigration and Nationality Act provides that state or local police may enter into cooperative agreements with immigration enforcement officials and agents, though they are not compulsory.⁴² Some college and university police departments have pledged not to participate in a voluntary program if one is offered.⁴³

However, state laws often establish and inform campus police officers’ authority and activities at public as well as some private institutions. A review and understanding of the source of campus police officers’ authority and applicable state law is prudent. For example, a campus police department that is asked to consider adopting practices to implement or support sanctuary campus practices may be unable to do so due to applicable state law.

A campus police department’s obligation’s arising from its relationship with other law enforcement authorities are also worthy of consideration. These obligations are often detailed in the increasingly common memoranda of understanding between institutions or their campus police departments and local police departments, as well as potentially state or federal law enforcement agencies.

Lack of cooperation by campus police could also impact unwritten—but significant—cooperative expectations among federal, state, and local law enforcement. Institutions and their campus police office may want to assess whether resulting tensions could lead to negative consequences.

How could participation in a student protest impact a student’s immigration status?

Protests on U.S. college campuses over the past 15 months have brought the intersection of international students and local law enforcement into sharper focus as municipal police departments have been tasked with dispersing encampments on school grounds and even arresting international student protestors.

As covered in [The Washington Post](#) in May 2024, some international students fear they may face immigration-related consequences if they are suspended for violating university protocols or arrested for refusing to vacate a given space. A suspension or a criminal conviction could lead to [loss of F-1 student status](#). F-1 students in general must maintain a full course load and do so primarily on campus. Criminal immigration law is complicated, so any arrest or criminal charge should be reviewed with an attorney for possible immigration consequences.

In addition, [some lawmakers have pushed DOS and DHS to terminate student visas](#) based on existing requirements under the INA that aliens who “endorse or espouse terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization” is “ineligible to receive [a] visa and ineligible to be admitted to

the United States.” Additionally, anyone who “knowingly provides material support or resources to a foreign terrorist organization or attempts or conspires to do so” has committed a federal crime and therefore is ineligible for a visa.⁴⁴

Could an institution's officials or campus community members violate federal “harboring” law?

The INA provides for the imposition of criminal penalties and fines on individuals and organizations for employing, concealing, harboring, or shielding unauthorized aliens from detection.⁴⁵ The statute also makes it unlawful to “encourage or induce an alien to come to, enter, or reside in the United States,⁴⁶ and penalizes attempts to commit the prohibited acts, as well as aiding or assisting such acts.⁴⁷

In the past, courts interpreted the harboring prohibition broadly, generally considering the term to encompass “conduct tending substantially to facilitate an alien’s remaining in the United States illegally.”⁴⁸ This definition includes conduct which “prevent[s] government authorities from detecting the alien’s unlawful presence.”⁴⁹

However, some courts have narrowed the statutory meaning of “harboring” by requiring the defendant to do more than simply provide shelter to an undocumented alien, suggesting that it involves physically protecting, moving, or keeping an alien in any place with the intent to conceal them from government authorities. For example, when a restaurant owner was convicted under the harboring provision for employing and providing housing for unauthorized aliens, the Seventh Circuit maintained he did more than merely provide housing, but rather had “deliberately safeguard[ed] members of a specified group from the authorities.”⁵⁰ The federal appeals court said that “a defendant is guilty of harboring for purposes of § 1324 [of the INA] by providing a known illegal alien a secure haven, a refuge, a place to stay in which the authorities are unlikely to be seeking him.”⁵¹

There is significant variation among the federal courts as to what must be established regarding the defendant’s intent. Specifically, courts differ on whether the defendant must act with clandestine intent to hide the alien, whether the defendant must “substantially facilitate” the person’s unlawful stay, or whether “simple sheltering”⁵² is sufficient to trigger statutory liability. In addition, some federal courts have held that a person illegally “encourages” an unauthorized alien to “reside” in the United States when the person takes some action “to facilitate the alien’s ability to live in this country indefinitely.”⁵³

Given the fluidity of the national attention to immigration issues, the varying geographic experience, the potential relevance of state law, and the uncertainty surrounding the new administration’s immigration agenda, it would be prudent to remain attentive to future interpretations of “harboring” by government officials, law enforcement, and the courts.

How about electronic devices? Can those be searched at the airport or border?

The simple answer is “yes.”⁵⁴ According to the CBP website, its officers [may search](#) laptops, cell phones, or other electronic devices in connection with inspection during any border crossing, including arrivals by air, sea or land. CBP [may not select](#) someone for a personal search or secondary inspection based on religion, race, national origin, gender, ethnicity, or political beliefs. U.S. citizens [may also be questioned](#) and have their devices searched and/or seized for refusal to provide passwords or unlock devices, but they cannot be prevented from entering the United States.

During the early days of the first Trump administration there was talk about sanctuary cities and campuses. What do the terms “sanctuary city” and “sanctuary campus” mean? What are “sensitive locations”?

While the word sanctuary is commonly associated with either a sacred place or a refuge, the idea of a sanctuary campus has no clear meaning. It is an extension of the sanctuary city concept, another term with no consistent or agreed-upon definition. It is important to note that neither concept involves a legal status that is recognized under federal law.

Sanctuary city policies and practices vary across the country. One motivation is to encourage undocumented immigrants to feel secure seeking help from the police or cooperating if they have information that can aid law enforcement. In a sanctuary city, police and municipal employees may be instructed not to inquire about an individual's immigration status, and city resources are not allocated to enforce federal immigration laws.⁵⁵

Immigration enforcement is discretionary, and by policy, ICE officers now do not generally enter “sensitive locations” such as schools, churches, or hospitals.⁵⁶ That policy could be rescinded or amended, and there are reports that this is being considered. Note that during the previous Trump administration, there was a pattern of operating adjacent to such locations, such as waiting for undocumented parents outside of schools after drop-off time.

ICE officers and agents currently conduct their enforcement actions in accordance with a DHS September 2021 memorandum, which prioritizes threats to national security, border security, and public safety. DHS's updated guidelines on Enforcement Actions in or Near Protected Areas advises against taking such actions at any schools, which includes “vocational or trade school[s]” and “college[s] or universit[ies].” However, the new administration can modify or rescind these policies.

In contrast to the widespread movement on campuses in late 2016 and early 2017 to designate universities as sanctuaries for undocumented individuals⁵⁷ following the election and inauguration of President Trump, similar efforts have yet to be seen. The California Attorney General's office has created a comprehensive guide to immigration enforcement on campuses.⁵⁸ There is also case law relating to the role of public universities in the area.⁵⁹

Is it relevant that an institution is geographically within a sanctuary city?

Federal law enforcement authorities could act in a range of ways regarding individuals who are part of higher education communities without involvement by local authorities. In those circumstances, a campus's location within a sanctuary city may not matter.⁶⁰

How did institutions previously respond to calls for sanctuaries on campuses?

Institutional responses typically included reaffirming institutional or community principles or values, underscoring policies of inclusion and free expression, expressing continued support for DACA, and committing to support community members as much as possible, while complying with the law. Some colleges and universities stated that without a court order, they would not assist the federal government in immigration enforcement.⁶¹

Many sanctuary campus petitions incorporated uncontroversial demands for support and counseling to students and other undocumented community members. It is likely that institutions already have resources and practices in place that may align with such demands. Quickly and clearly organizing, cataloging, and publicizing them, as well as basic informational and “know your rights” materials, is one sensible immediate response.⁶²

Anticipating questions—and having clear, consistent, and accurate answers—about policies and practices is important. This can be a challenge on a campus with several schools and distinct student populations (undergraduate schools, Ph.D. candidates, business schools, medical schools, and others).

Understanding campus police department policies and practices—and being transparent about them where appropriate—remains essential. For example, it may be helpful to understand and be able to accurately explain whether, when, and how fingerprints taken by campus or local law enforcement will be added to the national fingerprint file maintained by the Federal Bureau of Investigation, as such fingerprints are likely to be forwarded to the DHS/ICE fingerprint database.⁶³ State law generally determines the circumstances when law enforcement, including campus police departments, may fingerprint individuals; and these laws continue to evolve.⁶⁴

Are campus chapels and other houses of worship sanctuaries?

Again, “sanctuary” has no clear, consistently understood and applied meaning. At some institutions, students have called for establishing campus chapels as sanctuaries from law enforcement officials for those facing deportation. There is no federal statute or judicial recognition of houses of worship, or portions of them, as sanctuaries.

While the notion of sacred places as sanctuaries in this country stems from custom rather than law, and houses of worship enjoy no immunity from prosecution, there is a general tradition in law enforcement to avoid entering churches to arrest non-violent criminals.⁶⁵ As a result, some congregations have historically publicized their houses of worship as sanctuaries for individuals who fear deportation.⁶⁶

What if an institution is asked to pledge non-cooperation?

As a general proposition, the law imposes no affirmative duty on individuals or organizations to inform law enforcement authorities of illegal activity.⁶⁷ Furthermore, in many circumstances, it is reasonable and appropriate for institutions to establish and abide by policies that require an individual’s consent or receipt of a subpoena or warrant before complying with requests from authorities for non-public information about campus community members. Indeed, federal and state privacy laws (such as those relating to education and medical records) may compel such a response.

However, some sanctuary campus petitions during the previous Trump administration asked institutions to categorically refuse to cooperate with federal law enforcement. Some proposed not allowing officials to enter campus property unless they had a warrant, court order, or other lawful process. Such requests may run counter to applicable aspects of current and evolving federal or state laws, which is a particular challenge for public institutions. Also, these actions could risk termination of federal and state aid to institutions. They also may conflict with campus law enforcement obligations, including on private campuses with sworn officers.

The INA says that “a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS, ICE, or CBP] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”⁶⁸ Whether this prohibition would apply to a particular institution, just its campus police department, or not apply at all would depend on certain criteria, such as whether the institution is public or private, and the legal status and authority of its campus police.⁶⁹ In terms of consequences for violating this federal prohibition, **to date the focus has been** on revoking a state or local entity’s entitlement to certain federal funds, such as the Edward Byrne Justice Assistance Grant (JAG) Program.

In addition to ICE attempts to identify or arrest individuals, there are other situations where government officials may come onto campus, such as routine unannounced site visits for oversight of the F-1 student program,⁷⁰ the J-1 exchange visitor program⁷¹ or the H-1B working visa program.⁷² By participating in these programs, universities agree to such oversight.

Best practice for any kind of government visit is first to have a clear policy that if any government official arrives on campus, then a designated individual or office should be contacted. It takes training to understand the different kinds of government agencies and the documents they present. That office would be trained to understand the **difference between** administrative and judicial warrants. This office is often the public safety department, serving as the first point of contact.

How worried should an institution be about losing federal funding if it is perceived as non-cooperative in deportation orders?

Colleges and universities that receive federal funds certify or represent generally that they will comply with all applicable laws in connection with the receipt of a federal grant or other federal funding.⁷³ At this time, no federal

grant documents or guidance have been identified indicating that the primary federal agencies providing financial assistance to institutions—such as ED, National Institutes of Health (NIH), and National Science Foundation (NSF)—have adopted policies compelling or requesting federal fund recipients to cooperate with ICE. Additionally, no policies have been identified that would provide a basis for withholding federal funding due to noncooperation with ICE investigations or requests.⁷⁴ Of course, this could change through future legislative action, agency guidance, or executive action, which would likely result in court challenges.

What are the concerns for students who are documented but may have undocumented family?

Individual students may rely financially on a family member who is undocumented. Even though this information may not be revealed when completing requests for financial aid, a family member's undocumented status may have a chilling effect on their willingness and ability to engage with the federal government.⁷⁵ To apply for federal financial aid, students need to provide information about their parents and, if relevant, their spouses (known as “contributors”). Contributors' immigration status does not impact a student's eligibility for aid. All U.S. citizens and some [eligible non-citizens](#) are able to apply for federal financial aid, even if their contributors do not have a Social Security number. ED collects certain personally identifiable information (PII) to assess their eligibility for aid. This includes the name, email address, and mailing address of both the student and their contributors. While contributors do not need to disclose their immigration status, there is a question on the FAFSA asking if the contributor has a Social Security number.

The Privacy Act of 1974 governs ED's collection, maintenance, use, and disclosure of FAFSA information.⁷⁶ The Privacy Act clarifies that PII cannot be disclosed without written consent, though there are 12 exceptions to the consent requirement.⁷⁷ Of these 12 exceptions, two are especially relevant when it comes to FAFSA information and undocumented status:

1. “Routine use”: This exception allows agencies to share information for a designated set of purposes.⁷⁸
2. Law enforcement request: This exception allows agencies to request information for civil or criminal law enforcement purposes.⁷⁹ The agency head or officials at or above the “section chief” level must make the request in writing to the agency that maintains the record and must specify the specific information desired and the law enforcement activity for which the record is sought.⁸⁰

Data-sharing agreements between ED and other agencies, such as the IRS, are governed by computer matching agreements and Memoranda of Understanding.⁸¹ To date, information included on the FAFSA has not been used for immigration enforcement.⁸² The National Association of Student Financial Aid Administrators (NASFAA) and student financial aid administrators are aware of concerns around government use of FAFSA information. NASFAA has helpful information on current data protections for FAFSA information.⁸³

CONCLUSION

Overall, campuses should review their privacy and compliance policies, along with updates from higher education organizations, as immigration policy evolves during the second Trump administration.

During the first Trump administration, campus responses varied but were generally supportive of international education and diversity. As institutions navigate developments in 2025 and beyond, their approaches will vary based on their unique circumstances and priorities. Regardless of these differences, it will be essential to share accurate, up-to-date information promptly to empower informed decision-making, address the concerns of international campus community members with empathy, and connect them with on- or off-campus counseling and legal services whenever feasible.

NOTES

- 1 See, e.g., [Mass deportation: Devastating costs to America, its budget and economy](#). (2024, October 2). *American Immigration Council*. Note that current immigration law uses the term “removal,” but the term “deportation” is still used commonly and will be used in this issue brief.
- 2 See Burns, H. (2024, November 26). [UMass and Northeastern warn students: Return to campus in case of Trump travel bans](#). *The Boston Globe*; Fisher, K. (2024, November 13). [What Trump 2.0 means for international education](#). *The Chronicle of Higher Education*. See also Berger, D. & Yale-Loehr, S. (2017, March 3). [Tips for surviving in a time of immigration uncertainty](#). *Miller Mayer Attorneys at Law*.
- 3 Mental health experts underscore to campus audiences that with bad news one can at least make a clear plan. See [these NAFSA resources](#) on mental health and crisis management on campus.
- 4 Agency guidance, sometimes called adjudicatory guidelines or policy memoranda, are clarifications to interpretations of existing federal statutes and/or regulations that themselves do not create new benefits and therefore are not subject to the Administrative Procedure Act’s customary notice-and-comment process. One example: U.S. Citizenship and Immigration Services’ [Policy Alert](#) published on Jan. 21, 2022, which explicated the “special considerations” paid to foreign nationals who have earned an advanced degree in a STEM subject—particularly one the government has deemed to be a [critical and/or emerging technology](#)—when evaluating whether they qualify for an employment-based green card in the National Interest Waiver designation.
- 5 For a review of immigration actions during the first Trump administration, see Bolter, J. Israel, E. and Pierce, S. (2022 February). [Four years of profound change: Immigration policy during the Trump presidency](#). *Migration Policy Institute*.
- 6 See this [general information](#) on categories of status. See also pages 3-6 of this Congressional Budget Office report that summarizes the variety of immigration categories: [Effects of the immigration surge on the federal budget and the economy](#). (2024 July). *Congressional Budget Office*.
- 7 Sec. 101(a)(15) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15) (2024); [Nonimmigrant classes of admission](#). *U.S. Department of Homeland Security*.
- 8 In some ways, individuals with an unrestricted work card have an advantage over international students on F-1 visas, since the F-1 category strictly limits the type of employment while in school. However, the temporary work card may be based on a fragile immigration category.
- 9 To qualify, applicants had to be physically present in the United States on June 15, 2012; be under the age of 31 as of June 15, 2012; have come to the United States before reaching their 16th birthday; have continuously resided in the United States since June 15, 2007; be in school, or have graduated or obtained a certificate of completion from high school, or have obtained a general education development (GED) certificate, or have been honorably discharged from the Coast Guard or the Armed Forces of the United States; and have not been convicted of a felony, significant misdemeanor, or three or more other misdemeanors, and not otherwise pose a threat to national security or public safety. See further details at the [USCIS website](#).
- 10 DACA Decision in *State of Texas, et al., v. United States of America, et al.*, 1:18-CV-00068, (S.D. Texas July 16, 2021).
- 11 See [comments](#) by ACE on the proposed DACA regulation.
- 12 See Chatterjee, M. (2022, July 6). [Appeals court panel casts doubt on DACA legality](#). *Politico*.
- 13 8 U.S. Code § 1182(f).
- 14 *Trump v Hawaii*, 138 S. Ct. 2392, at 2408, (2018).
- 15 [Immigration lawsuits and the APA: The basics of a district court action](#). (2021, October 4). *American Immigration Council*. The boundaries of the APA in the immigration context are often the subject of litigation, including with the ongoing DACA case. See [In major immigration case, both sides look to academia to untangle three knotty questions](#). (2022, November 23). *SCOTUSblog*. Interpretation of the 2024 *Loper Bright* decision will be watched carefully. See [Think Immigration: Chevron Is Dead! Thoughts on the Immigration Impact of Loper Bright Enterprises](#). (2024, July 2). *American Immigration Lawyers Association*.

- 16 See, e.g., [March 2018 amicus brief to Supreme Court on behalf of ACE and 32 higher education associations re: *Trump v. Hawaii*](#). Note that in the first Trump administration, some executive orders, including the first travel ban, were issued without advance notice to government officers who would be implementing them, thereby leaving a period of uncertainty while details are clarified and training is done.
- 17 See for example re: H-1B petitions, Anderson, S. (2023, February 7). [New USCIS data show H-1B denial rates remain low](#). *Forbes*.
- 18 See [Recission of policy memoranda](#). (2020, June 17). *U.S. Citizenship and Immigration Services*. Rescinding itinerary requirements and enhanced, totality-of-the-circumstances-analysis of employer-employee relationship in the wake of *ITServe and Serenity Info Tech* cases. See also Anderson, S. (2020, May 21). [USCIS-ITServe settlement overturns 10 years Of H-1B visa policies](#). *Forbes*.
- 19 See Cornell's [Office of Global Learning](#) for more on DOS security checks leading to delays in visa issuance.
- 20 See this [recent example](#) of Customs and Border Protection denying reentry of students with visas.
- 21 8 USC 1735.
- 22 See 9 FAM 302.6-2(B)(5).
- 23 See for example two newer programs to evaluate employer-sponsored options: [Cornell Law School's Path2Papers](#) and NAFSA and Presidents' Alliance's [Legal Pathways that Work](#) initiative.
- 24 [Termination of temporary protected status for certain countries: Recent litigation developments](#). (2023, March 8). *Congressional Research Service*. See, e.g., *Saget v. Trump*, 345 F. Supp. at 362-365 (holding that even though the determination to not extend a country's TPS designation must comply with the TPS statute, this decision is not subject to the notice-and-comment process as required under the APA. See also 5 U.S.C. § 706(2)(A) regarding changing a federal regulation under the Administrative Procedure Act.
- 25 For example, numerous plaintiffs successfully filed suit in federal courts across the country following Trump 1.0's final decision to terminate TPS designation for Haiti, Sudan, Nicaragua, El Salvador, Nepal, and Honduras. See, e.g., *Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1098 (N.D. Cal. 2018) (affirming that TPS plaintiffs plausibly stated claim that terminations were motivated by racial animus); see also *Saget v. Trump*, 345 F. Supp. 3d 287, 303 (E.D.N.Y. 2018); *Centro Presente v. U.S. Dep't of Homeland Sec.*, 332 F. Supp. 3d 393, 413 (D. Mass. 2018); *CASA de Maryland, Inc. v. Trump*, 355 F. Supp. 3d 307, 326 (D. Md. 2018); *Nat'l Ass'n for the Advancement of Colored People v. U.S. Dep't of Homeland Sec.*, 364 F. Supp. 3d 568, 578 (D. Md. 2019).
- 26 See also this recent op-ed by Senator Bernie Sanders on H-1B visas: [H-1B visas hurt one type of worker and exploit another. This mess must be fixed](#). (2025, January 8). *Fox News*.
- 27 The elevated qualifying wages would also have applied to E-3 visas (for Australian professionals) and H-1B1 visas (for Singaporean and Chilean professionals), as well as to employers seeking to sponsor foreign national workers for employment-based green cards that involved a test of the labor market.
- 28 [CUPA-HR files comments on behalf of higher education to inform DOL RFI on prevailing wage levels for foreign workers](#). (2021, June 3). *The Higher Ed Workforce Blog*, CUPA-HR.
- 29 *Chamber of Commerce of U.S. v. U.S. Department of Homeland Security*. 504 F. Supp. 3d 1077 (N.D. Cal. 2020).
- 30 See also Kelly, J. (2024, December 30). [The heated debate over H-1B visas](#). *Forbes*.
- 31 [DHS strengthens H-1B program, allowing U.S. employers to more quickly fill critical jobs](#). (2024, December 17). *Department of Homeland Security*. The rule builds on 2023 USCIS guidance at [Electronic Reading Room](#) of a [letter from USCIS Director Ur Jaddou to Jim Baker](#) (associate vice president for research at Michigan Technological University) dated Oct. 18, 2023 answering questions. The 2024 H-1B rule (a) clarifies degree requirements for H-1B workers; (b) inserts the standard of prior deference, i.e., that USCIS should, by default, approve cases that it previously approved if the underlying facts remain the same; and (c) clarifies how an H-1B employer may be categorically exempt from the H-1B cap lottery. In preparation, schools should review their compliance policies for H-1B employees (including making sure there is a feedback loop to the international office if there are any changes in the H-1B employment or location, and being ready for site visits

from DHS Fraud Detection and National Security Directorate or the Department of Labor). The rule will provide clarity in particular for newer types of employers that were not anticipated by the H-1B statute, such as public-private partnerships and entrepreneurial ventures.

32 See [Frequently asked questions](#) (2024, October 10). *U.S. Citizenship and Immigration Services*.

Q21: Will the information I share in my request for consideration of DACA be used for immigration enforcement purposes?

A21: Under 8 CFR 236.23(e)(1), DHS will not use information about a requestor in a request for DACA to initiate immigration enforcement proceedings against that requestor, unless DHS is initiating immigration enforcement proceedings due to a criminal offense, fraud, a threat to national security, or public safety concerns. Individuals whose cases are deferred under DACA will not be referred to ICE. The information may be shared with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of DACA, to identify or prevent fraudulent claims, for national security purposes, or to investigate or prosecute a criminal offense.

Q22: If my case is referred to ICE for immigration enforcement purposes or if I receive a Notice to Appear, will ICE receive information about my family members and guardians for immigration enforcement purposes?

A22: Under 8 CFR § 236.23(e)(2), information contained in your DACA request related to your family members or guardians will not be used for immigration enforcement purposes against them. However, we may share this information with national security and law enforcement agencies, including ICE and CBP, for purposes other than removal, including for assistance in the consideration of DACA, to identify or prevent fraudulent claims, for national security purposes, or for the investigation or prosecution of a criminal offense.

33 This is important to consider since the new Congress is considering a bill that would make even lesser criminal issues more significant for enforcement. See [Laken Riley Act gains steam – with Democrats](#). (2025, January 7). *Politico*.

34 See [FAQs: SEVP Field Representatives](#). *U.S. Immigration and Customs Enforcement*. See also [Designated school officials: What is Campus Sentinel?](#) (2013, March 22). *Department of Homeland Security*. ICE's SEVP has access to the Student and Exchange Visitor Information System (SEVIS) database, so requests would likely be for SEVIS adjacent records, i.e., any documents stored by the international office outside of the SEVIS database. Schools may consider keeping as little educational data in those adjacent records as possible.

35 See 8 C.F.R. §§ 214.3(g); (k); 214.1(h); 22 C.F.R. §§ 62.10(f-g).

36 See 20 C.F.R. § 655.760(a). See also the language [above the petitioner's signature](#) on the form at Part 7 on page 6.

37 See 20 USC 1232g(j); 20 USC 9007(c).

38 Foundations for Evidence-Based Policymaking Act of 2018, Pub. L. No. 115-435, 132 Stat. 5529 (2019). See also [Memoranda 01-05 – Guidance on inter-agency sharing of personal data: Protecting personal privacy](#). (2000, December 20). *Office of Management and Budget*; [FERPA overview](#). (2023, December 20). *Higher Ed Immigration Portal*; [FERPA: What it means and how it works](#). Student Press Law Center. Also, for members of the National Association of College and University Attorneys, there are [legal resources on the NACUA website](#).

39 DHS regulations provide:

An immigration officer may not enter into the non-public areas of a business, a residence including the curtilage of such residence, or a farm or other outdoor agricultural operation, except as provided in section 287(a)(3) of the Act, for the purpose of questioning the occupants or employees concerning their right to be or remain in the United States unless the officer has either a warrant or the consent of the owner or other person in control of the site to be inspected. When consent to enter is given, the immigration officer must note on the officer's report that consent was given and, if possible, by whom consent was given. If the immigration officer is denied access to conduct a site inspection, a warrant may be obtained.

8 C.F.R. § 287.8(f)(2).

This provision recognizes that some areas of a business, much like some areas of a campus, are non-public and therefore would require a warrant or consent to access, while other areas are clearly public, without any expectation of privacy and without a need for warrant for entry.

- 40 Some states have proposed additional immigration measures for students in public higher education. See, e.g., [Oklahoma education chief proposes checking students' immigration status](#). (2024, December 18). *Oklahoma Voice*.
- 41 Although an individual is not required to affirmatively assist authorities, various federal statutes prohibit obstruction of civil, administrative, and criminal investigations and proceedings. See, e.g., 18 U.S.C. §§ 1505, 1510, 1512. The U.S. Federal Sentencing Guidelines also provide for sentencing enhancements based upon obstructive conduct. See 8 U.S.S.G. § 3C1.1. See also *United States v. Manzano-Huerta*, 809 F.3d 440, 443 (8th Cir. 2016) (affirming the conviction of a defendant prosecuted for violating the harboring statute with an obstruction enhancement because he provided materially false information to law enforcement about the employment status of an unauthorized employee).
- 42 “Nothing in this subsection shall be construed to require any State or political subdivision of a State to enter into an agreement with the Attorney General.” 8 U.S.C. § 1357(g)(9). See also [Delegation of immigration authority Section 287\(g\) Immigration and Nationality Act](#). *U.S. Immigration and Customs Enforcement* (explaining ICE’s authority “to delegate to state and local law enforcement officers the authority to perform specified immigration officer functions under the agency’s discretion and oversight”).
- 43 See, e.g., [FAQs for California State University employees about federal immigration enforcement actions on university property](#). (2024, December 3). *California State University* (explaining that California State University Police will not work with ICE).
- 44 18 U.S.C. § 2339B.
- 45 See 8 U.S.C. § 1324. A “person” under the statute can be either “an individual or an organization.” See 8 U.S.C. § 1101(b)(3). See also *United States v. Ye*, 588 F.3d 411, 414 (7th Cir. 2009) (noting that “‘conceal,’ ‘harbor,’ and ‘shield from detection’ have independent meanings, and thus a conviction can result from committing (or attempting to commit) any one of the three acts”).
- 46 See 8 U.S.C. § 1324(a)(1)(A)(iv).
- 47 See *id.* at § 1324(a)(1).
- 48 *United States v. Lopez*, 521 F.2d 437, 440-441 (2d Cir. 1975) (internal quotation marks omitted).
- 49 3C Am. Jur. 2d Aliens and Citizens § 2588.
- 50 *United States v. McClellan*, 794 F.3d 743, 751 (7th Cir. 2015).
- 51 *Id.* at 749-50 (quoting *United States v. Costello*, 666 F.3d 1040, 1050 (7th Cir. 2012)); see also *United States v. Vargas-Cordon*, 733 F.3d 366, 381 (2d Cir. 2013) (harboring requires that the defendant intended to facilitate an illegal alien’s remaining in the United States and to prevent the alien’s detection by immigration authorities).
- 52 *United States v. Acosta de Evans*, 531 F.2d 428, 430 (9th Cir. 1976) (“construing harbor to mean afford shelter to”).
- 53 See *U.S. v. Thum*, 749 F.3d 1143, 1148 (9th Cir. 2014). Defendants have been convicted under the harboring statute for doing as little as occasionally employing an alien housekeeper and offering advice on how to avoid deportation. See *U.S. v. Henderson*, 857 F. Supp. 2d 191, 210 (D. Mass. 2012) (encouragement entails “affirmative assistance that makes an alien lacking lawful immigration status more likely to enter or remain in the United States than she otherwise might have been,” quoting *DelRio-Mocci v. Connolly Properties Inc.*, 672 F.3d 241, 248 (3d Cir. 2012)); *Edwards v. Prime*, 602 F.3d 1276 (11th Cir. 2010) (knowingly supplying illegal aliens “with jobs and with social security numbers to facilitate their employment” fulfills the court’s broad interpretation of the phrase “encouraging or inducing,” which includes “helping aliens come to, enter, or remain in the United States”).
- 54 [Border search of electronic devices at ports of entry](#). *U.S. Customs and Border Protection*. See also Cope, S. [EFF to Second Circuit: Electronic device searches at the border require a warrant](#). (2024, November 8). *Electronic Frontier Foundation*.
- 55 See Kotlowitz, A. (2016, November 23). [The limits of sanctuary cities](#). *The New Yorker*.

- 56 Policy No. 10029.2, *supra* note 70; Exec. Order No. 13,768, *Enhancing Public Safety in the Interior of the United States*, 82 Fed. Reg. 8799 (Jan. 30, 2017). See also Kulish, N., Dickerson, C. & Nixon, R. (2017, February 25). [Immigration agents discover new freedom to deport under Trump](#). The New York Times.
- 57 See, e.g., Simón, Y. (2016, November 2016). [28 universities that vow to offer sanctuary to their undocumented students](#). *Remezcla*. See also Délano Alonso, A. (2017, January 20). [Sanctuary campus: Resistance and protection within and beyond the university](#). *The Avery Review*. It is worth noting that the sanctuary campus movement did exist pre-Trump 1.0 but intensified upon President Trump's election and inauguration.
- 58 [Promoting a safe and secure campus for all](#). (2024 December). *California Attorney General*. See also Carolyn Jones, C. (2025, January 3). [Can California keep ICE away from schools? Lawmakers want to try as crackdowns loom](#). *CalMatters*.
- 59 See [Second Circuit rules against cities and states in sanctuary jurisdictions case](#). (2020, March 4). National League of Cities.
- 60 [Sanctuary policies: An overview](#), (2020 December). American Immigration Council.
- 61 See Redden, E. (2016, November 20). [In defense of DACA](#). *Inside Higher Ed*. See also [this guide for schools](#) about providing as safe a space as possible.
- 62 See, e.g., [Supporting undocumented youth](#). (2015, October 20). *U.S. Department of Education*. See, e.g., [here](#) and [here](#) about knowing your rights. See, e.g., information about [immigration news, advocacy and statistics](#), [business migration](#), and resources and about undocumented students [here](#) and [here](#).
- 63 See [Privacy impact assessment for the Fingerprint Identification Records System \(FIRS\) Integrated Automated Fingerprint Identification System \(IAFIS\) outsourcing for noncriminal justice purposes – channeling](#). (2008, May 5). *Federal Bureau of Investigation*; [Fingerprint technology: Making two systems work as one](#). (2010, July 10). *Federal Bureau of Investigation*.
- 64 See, e.g., [Must officers now arrest, rather than cite, for misdemeanor marijuana possession?](#) (2015, October 7). *North Carolina Criminal Law*.
- 65 See Munson, V.J. [On holy ground: Church sanctuary in the Trump era](#). *Southwestern Law School*.
- 66 See Singman, B. (2016, November 23). [Trump's battle against illegal immigrant sanctuary may end at church steps](#). *Fox News*.
- 67 See *United States v. Driscoll*, 449 F.2d 894, 896 (2d Cir. 1971) (defendant aware of alien smuggling had no duty to alert authorities).
- 68 See 8 U.S.C. § 1373(a).
- 69 The prohibition addresses actions by government entities and officials, and no court appears to have considered whether and under what set of facts the prohibition applies to a university or college.
- 70 [8 CFR 103.7\(d\)\(2\)](#).
- 71 [8 CFR 214.3\(h\)\(3\)\(iii\)-\(iv\)](#).
- 72 [Administrative site visit and verification program](#). *U.S. Citizenship and Immigration Services*. In general, to prepare for H-1B site visits, which are recently already seeing an uptick, it is best to be sure that compliance requirements are met for files and that individuals and departments report any change in the job (salary, title, location, duties) in advance to the visa office. See [Fact sheet #62F: What records must an H-1B employer make available to the public?](#) *U.S. Department of Labor*.
- 73 See 2 C.F.R. § 668.14.
- 74 The standard grant documents that relate to these agencies and that identify various obligations of the grantee and assurances that the grantee provides to the government (e.g., [NIH grants policy statement](#) (2024 April). *National Institutes of Health*; [Uniform administrative requirements, cost principles, and audit requirements for federal awards](#). (2024, April 22). *Federal Register*.) were considered.
- 75 [Communicating with students from families with mixed immigration statuses about completing the FAFSA](#), (2025 January). *National Association of Student Financial Aid Administrators*.

76 See 5 U.S.C. § 522a; 34 C.F.R. Part 5b.

77 5 U.S.C. § 522a(b); 34 C.F.R. § 5b.9(b).

78 5 U.S.C. § 522a(b)(3); 34 C.F.R. § 5b.9(b)(3).

79 5 U.S.C. § 522a(b)(7); 34 C.F.R. § 5b.9(b)(7).

80 [Overview of the Privacy Act: 2020 edition](#). *Office of Privacy and Civil Liberties*.

81 [Computer Matching Notices and Agreements](#). (2025, January 14). *U.S. Department of Education*. See, e.g., [Memorandum of Understanding between Department of Defense and Department of Education](#). *U.S. Department of Education*.

82 See NASFAA, *supra* note 117.

83 *Id.*