1-1-2010

The New Sanctuary Movement: When Moral Mission Means Breaking the Law, and the Consequences for Churches and Illegal Immigrants

Kara L. Wild

Follow this and additional works at: http://digitalcommons.law.scu.edu/lawreview

Part of the Law Commons

Recommended Citation

Available at: http://digitalcommons.law.scu.edu/lawreview/vol50/iss3/7

This Comment is brought to you for free and open access by the Journals at Santa Clara Law Digital Commons. It has been accepted for inclusion in Santa Clara Law Review by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact sculawlibrarian@gmail.com.
THE NEW SANCTUARY MOVEMENT: WHEN MORAL MISSION MEANS BREAKING THE LAW, AND THE CONSEQUENCES FOR CHURCHES AND ILLEGAL IMMIGRANTS

Kara L. Wild*

I. INTRODUCTION

Churches enjoy tax-exempt status under the Internal Revenue Code (I.R.C.) section 501(c)(3) because the spiritual comfort, services, and advocacy for social causes that they provide are not considered overly political. Religious leaders are not supposed to preach certain types of politics from the pulpit. But sometimes a social issue takes on a political dimension as it grows and impacts national law, government services, and society at large. When a church’s moral mission is tangled with a tense political issue, what happens to the

*Senior Technical Editor, Santa Clara Law Review, Volume 50; J.D. Candidate, Santa Clara University School of Law; B.A. in English and History from the University of California, Berkeley. I would like to thank the Volume 50 editors for their help in getting this ready for publication, and for their hard work in general this year. I also want to thank Dean Donald J. Polden for bringing the New Sanctuary Movement to my attention when I expressed an interest in writing about immigration, and for supervising the writing during his Nonprofit Organizations class. Finally, I would like to thank my family for their patience and support, and (hopefully) their willingness to read and savor every word of this comment.

1. See discussion infra Part IV.A; see also I.R.C. § 501(c)(3) (2006). In this comment, “church” will be shorthand for any religious house of worship. For an example of the types of services churches provide, see Beth Am Mission Statement, http://www.betham.org/mission.html (last visited Dec. 14, 2008), which describes the Jewish reform temple’s commitment to individual and communal acts of “lovingkindness,” and communal support and pastoral guidance. See also The Episcopal Church Welcomes You, http://www.episcopalchurch.org/ (last visited Dec. 12, 2008) (listing several services, including Advocacy); The United Methodist Church, http://unitedmethodist.org/heart5.htm (last visited Dec. 12, 2008) (stating that the church is willing to take a stand and “actually make[] a difference”).

2. See discussion infra Part IV.A.
church?

As a political issue, illegal immigration has grown in importance, and that importance seems unlikely to abate.\(^3\) Currently, nearly twelve million illegal immigrants live in the United States.\(^4\) These individuals have formed a "shadow immigrant economy."\(^5\) They maintain forged documents to appear legal to work,\(^6\) but often pay a significant price in the form of employer exploitation against which they have little legal redress.\(^7\) Regardless, many have been settled in this country for several years and have raised American-born children.\(^8\) But due to tightening security and heightened immigration enforcement, illegal immigrants now face a situation in which they may be discovered and deported, leaving their children behind.\(^9\)

Churches across the country took up the immigrants' cause after the Republican-controlled House of Representatives passed House Bill 4437 (H.R. 4437) in late 2005.\(^10\) H.R. 4437 would have made it a felony to reside in the country illegally or provide aid to those in the country illegally.\(^11\) Though H.R. 4437 never became law, it frightened...


4. Villazor, supra note 3, at 134–35. In part due to the tough economic climate, illegal immigration has declined compared to previous years. Thomas Frank, Illegal Immigrant Population Declines, USA TODAY, Feb. 24, 2009, at 3A, available at http://www.usatoday.com/news/nation/2009-02-23-immigration-N.htm. Even so, the Homeland Security Department noted that the decline only brought the total number down to 11.6 million, from 11.8 million. Id. Nothing suggests that the number of people attempting to cross the border illegally will remain low once the economy improves.


7. See, e.g., Margaret Ann Miille, Illegal Workers Often Face Exploitation, Workplace Dangers, LAS VEGAS REV.-J., July 8, 2007, at 5J.


9. Id.

10. See discussion infra Part II.E–F.

11. See infra note 112 and accompanying text.
church leaders, who worried that their ability to perform their work for the needy was threatened. Inspired by the 1980s Sanctuary Movement, which sought to help refugees from Central American countries who could not gain asylum, the New Sanctuary Movement took shape in 2007. At that time, churches throughout the United States began sheltering illegal immigrants who faced deportation.

Was this a wise choice for these churches? By adopting this approach, the churches face numerous dangers. First, their activities could be viewed as overly political and their section 501(c)(3) status could be revoked. Second, their activities are not lawful because the defenses asserted in the 1980s by the Sanctuary Movement will not prevail here. Finally, given that even compromise legislation to provide legal status for all illegal immigrants has struggled to pass, the flagrant approach adopted by the New Sanctuary Movement may do more to fray nerves than to garner support for illegal immigrants facing deportation.

This comment will explore the origins of the New Sanctuary Movement, the dangers it faces, and the effectiveness of its approach. Part II discusses the background of the New Sanctuary Movement, from its inception in the 1980s to the political and social events that led to the current movement. Part III identifies the problems facing the movement, including whether its section 501(c)(3) status could be revoked, whether its legal justifications are valid, and whether its goals are out of step with the most recent reform efforts in Congress. Part IV analyzes the language of section 501(c)(3), applies it to the New Sanctuary Movement, and then compares it to other instances where churches have been politically involved.

12. See infra note 118 and accompanying text.
13. See discussion infra Part II.F.
14. See discussion infra Part II.F.
15. See discussion infra Part IV.A.
16. See discussion infra Part IV.B.
18. See infra notes 244–51 and accompanying text.
19. See discussion infra Part II.
20. See discussion infra Part III.
21. See discussion infra Part IV.A.
compares them to those of the original movement, and determines the likelihood of success. Part IV ends with a look at how closely the New Sanctuary Movement's goals match those of compromise legislation that was offered in 2007. Finally, Part V proposes ways in which the New Sanctuary Movement can push for reform of immigration law without running afoul of the law itself, including advocating for a series of specific reforms that could easily be adopted into legislation.

II. BACKGROUND

The concept of sanctuary has a long history in the United States and in the Western world. Its earliest roots can be traced to the early Hebrews, who "established cities of refuge to which people under the threat of law could flee," and continued into Christianity, where fugitives from justice were fed and lodged in the churchyards. Eventually, the English common law began to recognize the concept.

Prior to the New Sanctuary Movement, the most recent sanctuary movement in the United States took place in the 1980s. The cause concerned refugees from Central America. Later, the New Sanctuary Movement sought to draw a connection to this movement.

A. 1980 Refugee Act and the Plight of the Central Americans

The 1980s mass movement formed in response to the

22. *See* discussion *infra* Part IV.B.
23. *See* discussion *infra* Part IV.C.
24. *See* discussion *infra* Part V.A–C.
26. *Id.* at 684.
27. KAREN MUSALO, JENNIFER MOORE & RICHARD A. BOSWELL, REFUGEE LAW AND POLICY: CASES AND MATERIALS 10 (1997). Early Christian sanctuary was first written about in the Theodosian Code of 392 A.D., which said that fugitives could be fed and lodged only in the churchyards and surrounding church precincts, not in the actual churches themselves. *Id.*
30. *Id.*
Refugee Act of 1980\textsuperscript{32} and its harmful effects on Central Americans seeking asylum in the United States.\textsuperscript{33} During this time, violent wars raged in El Salvador and Guatemala: El Salvador had been engulfed by civil war since 1979, while in Guatemala, 11,000 people were killed in 1983 alone.\textsuperscript{34} Thousands of refugees fled these countries in pursuit of asylum in the United States, but were routinely rejected and deported.\textsuperscript{35} The 1980 Refugee Act, which was supposed to be a fairer version of the pre-existing refugee policy in the United States, proved to be quite the opposite.\textsuperscript{36} The Act was intended to establish a non-ideological standard for refugee and asylum determination.\textsuperscript{37} It stated that a refugee was:

\begin{quote}
[\text{Any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself to the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion . . . .}\textsuperscript{38}
\end{quote}

In reality, someone who fled a country that was friendly to the United States was less likely to gain asylum than someone fleeing an unfriendly country, such as one from the Soviet bloc, regardless of whether the harms suffered were the same.\textsuperscript{39}

From June 1983 to September 1986, Iranian applicants had a 60.4 percent approval rate, and applicants from Soviet bloc countries had approval rates ranging from fifty-one percent (Romania) to 31.9 percent (Hungary).\textsuperscript{40} Meanwhile, applicants from El Salvador and Guatemala were amongst those with the lowest approval rate, at 2.6 percent and 0.9 percent respectively.\textsuperscript{41} The United States did not accept more
applicants from El Salvador and Guatemala because it had significant foreign policy interests in those countries, supporting their governments with extensive economic and military aid, and therefore had every incentive to characterize their situation as improving. This image would have been undermined if asylum were granted to large numbers of refugees from those countries. Therefore, only refugees with a “textbook case” of persecution had hope of being admitted as political refugees, and oftentimes, even that was not enough.

B. The 1980s Sanctuary Movement

Church leaders were outraged by the federal government’s treatment of Central American refugees and quickly took action. At first, efforts were individual in nature. The movement began in 1981, when John Corbett, a retired cattle rancher in the Southwest, started transporting undocumented Salvadorans across the border into the United States, and Jim Fife, a Presbyterian minister, harbored them in his church. Later that year, six other congregations across the country announced that they would provide advocacy, protection, and support to undocumented refugees from El Salvador and Guatemala. By 1982, churches and private individuals established the Central American Sanctuary Movement, a network of sanctuaries across the United States devoted to offering refuge and assistance to these refugees. In doing so, they invoked past efforts to resist tyranny, such as the Underground Railroad and Jews

42. Altemus, supra note 25, at 699–700.
43. Id.
44. Id. at 700 (referring to a report prepared in 1982 by Immigration and Naturalization Service).
45. See Villazor, supra note 3, at 140–41.
46. Altemus, supra note 25, at 686–87. Corbett first learned of the Salvadorans’ plight in May 1980, when he learned that a coyote (a person paid to smuggle illegal immigrants into the country) had abandoned twenty-five Salvadorans in the desert west of Tucson, Arizona, and thirteen died before they were found. Id. at 686. He began harboring refugees and continued to do so until his house became too crowded, at which time he asked Fife to give them refuge. Id. Fife was concerned about criminality, but soon realized it was the moral choice and his church voted to establish a sanctuary. Id.
47. Id. at 687.
48. See Villazor, supra note 3, at 140.
fleeing Nazi persecution. 49

The Sanctuary Movement (SM) had two main goals: first, the short-term goal of having the immigration status of “extended voluntary departure” granted to Salvadorans and Guatemalans, and second, the long-term goal of bringing peace and economic justice to the region. 50 The latter goal was to be accomplished in large part by a change in U.S. policy. 51 Requiring each church that joined the movement to make a public statement of its intent, 52 the SM’s members declared the current policy “illegal and immoral” and that, while this policy lasted, churches would continue to extend sanctuary. 53

Beyond this, the SM’s aims were amorphous. 54 Some members of the movement sought political change, while others thought theologically inspired humanitarianism should be the chief aim of sanctuary work. 55 They could not agree as to whether sanctuary work was a form of civil disobedience or a just cause that should not be criminalized. 56

Nor were their methods the same, consisting of acts from smuggling to providing food and shelter. 57 While smuggling attracted a great deal of publicity for the SM, it was a small portion of the overall activity, consisting of Jim Corbett leading a group that brought fewer than 120 refugees per year across the border. 58 So-called “evasion services,” involving SM members transporting refugees to other locations to frustrate the efforts of local authorities, were more common. 59 The most common sanctuary work, however, consisted of providing “food, shelter, clothing, and medical assistance,” and many mainstream church participants resisted any agenda beyond that. 60 These mainstream

49. Id.
51. See Villazor, supra note 3, at 140–41.
53. Villazor, supra note 3, at 140–41.
54. See Loken & Babino, supra note 52, at 134.
55. Id.
56. Id.
57. Id. at 129–30.
58. Id. at 130.
59. Id. at 131.
60. Loken & Babino, supra note 52, at 129, 136. This was the definition of
churches objected to the political members’ efforts to accept only those refugees with “heart-wrenching tales of oppression and the ability to describe their experiences in overtly political terms.”

Just as the SM’s members had diverse goals and methods for offering sanctuary, they also had varying views on whether their actions were legal. Some believed that providing sanctuary was illegal under federal law, but felt that open defiance was a way of drawing attention to the cause. Others believed that they were following the law as defined by the 1980 Refugee Act and international refugee law. One sanctuary worker, Stacey Merkt, argued that she lacked the knowledge or intent to violate the 1952 Immigration and Nationality Act’s (INA) prohibition against harboring undocumented aliens because she thought that they qualified for asylum under the Refugee Act, and was just taking them to San Antonio to apply, as opposed to furthering their illegal presence in the United States. These types of justifications would soon collide with the federal government’s and the courts’ views of the law.

C. Federal Prosecution of the Sanctuary Movement

The federal government’s approach to the SM was to first leave it alone, then step in later and prosecute its members. When the SM began, the government dismissed it as a ploy for publicity and avoided pursuing undocumented refugees in

sanctuary as offered by the Chicago Religious Task Force on Central America, which became the national coordinator for the SM in 1982, and the definition was agreed upon by several churches and synagogues that joined the movement. Id.

61. Id. at 136 (emphasis omitted).
62. See id. at 138–39.
63. Id.
64. Altemus, supra note 25, at 705.
65. At that time, 8 U.S.C. § 1324(a)(2) defined “harboring” as transporting an illegal alien within the country, “willfully or knowingly” of their status. See Loken & Babino, supra note 52, at 162–63. Note that 8 U.S.C. § 1324 is sometimes referred to as I.N.A. section 274, but for the sake of clarity, this comment will refer to it by its United States Code designation.
66. See supra note 38 and its accompanying text for the definition of “refugee.”
67. Altemus, supra note 25, at 706.
68. See id. at 705–06.
69. See Villazor, supra note 3, at 141.
the churches. But when the movement grew to include more than 100 churches and as many as 30,000 participants, the government finally took action. In 1984, the Immigration and Naturalization Service (INS) authorized four undercover agents wearing “bodybugs” to enter churches and tape private conversations, tap telephones, photocopy documents, gather personal information, and report regularly to the United States government. The investigation led to the indictment of sixteen SM members and the arrest of more than sixty people on charges of smuggling, transporting, and concealing. This led to the most critical of all the SM cases.

In United States v. Aguilar, the sixteen SM members put forth defenses such as mistake-of-law-as-mistake-of-fact regarding the 1980 Refugee Act, legality under international refugee law, and allegations that the conduct of SM members was protected by a humanitarian exception to INA prohibitions. One by one, the courts rejected these defenses. Extending a pattern set by previous judges, Judge Carroll of the United States District Court for the District of Arizona barred testimony about religious motivation, the civil war in El Salvador, and international law.

70. Altemus, supra note 25, at 704-05.
71. Villazor, supra note 3, at 141.
72. Altemus, supra note 25, at 711.
73. See id. at 710-11.
74. See id. This was not the first, but the fifth, case for smuggling, harboring, or concealing an illegal alien. See generally id. at 705-14. In the first, Stacey Merkt was charged for driving illegal aliens within the United States. Id. at 705-06. In the second, Phillip Willis-Conger and Katherine Flaherty were detained for driving with four Salvadoran refugees, but the charges against Willis-Conger were eventually dropped when the judge found that the Border Patrol had no probable cause for stopping the car. Id. at 707. In the third case, Jack Elder was charged in 1984 with unlawfully transporting Salvadorans to the bus station and was eventually acquitted by the jury. Id. at 708-09. In the fourth case, both Elder and Merkt were charged with smuggling, transporting, and conspiracy after transporting two Salvadorans across the border; Elder was found guilty of conspiracy and aiding in the illegal entry and transport of aliens, while Merkt was convicted of one count of conspiracy to transport illegal aliens. Id. at 709.
75. See id. at 710.
76. See id. at 713; Loken & Babino, supra note 52, at 138-39.
77. See Altemus, supra note 25, at 713; Loken & Babino, supra note 52, at 140.
78. Altemus, supra note 25, at 713. In cases prior to Aguilar, judges did not permit the defendants to argue that they did not think they were breaking the law due to their understanding of the 1980 Refugee Act and international law,
The mistake-of-law-as-mistake-of-fact defense (originally argued in Liparota v. United States) was later rejected by the United States Court of Appeals for the Ninth Circuit, which held that mistake in application of the Refugee Act was a mistake of law "for which ignorance was no excuse." The only argument that the Ninth Circuit did not outright reject was that the harboring provisions of 8 U.S.C. § 1324(a) were not meant to criminalize the mere sheltering of undocumented refugees, absent a specific intent to help them evade INS detection. Nonetheless, after a six-month trial, a jury convicted eight of the eleven SM defendants. Six of the eleven were convicted of conspiring to smuggle Salvadorans and Guatemalans into the United States and the other two were convicted of concealing, harboring, or transporting an illegal alien.

D. Aftermath of the 1980s Sanctuary Movement

Donald M. Reno, the chief federal prosecutor, would later declare United States v. Aguilar to be the "death knell" of the movement. Yet the SM finally saw success in the early 1990s, when amendments to the INA were adopted that gave asylum seekers from Guatemala and El Salvador special refugee status. Sanctuary work continued in a less conspicuous manner, with several new sanctuary declarations after the Gulf War and intervention on behalf of Haitian refugees. Meanwhile, notable changes took place in immigration law due to the 1986 Immigration Reform and
Control Act (IRCA), which established a lower mens rea threshold for the harboring element of § 1324(a), so that instead of it being a felony to "willingly and knowingly" harbor undocumented aliens, one must merely be "knowing or in reckless disregard of the fact" of the alien's unlawful status. The IRCA also repealed the "Texas Proviso," which had exempted employers of illegal immigrants from the harboring provision. However, the IRCA may not be remembered so much for what it toughened as for what it forgave: the Act implemented a one-time amnesty program for illegal immigrants who entered the United States prior to January 1, 1982. They were free to apply for temporary residence status for eighteen months, then for permanent residence status so long as they satisfied other minimal eligibility criteria.

The SM would return with full force when Congress tried to implement another massive reform of immigration laws in the aftermath of September 11, 2001.

E. Changes in Federal Immigration Policy After "9-11"

After the terrorist attacks of September 11, 2001, the federal government realized that the existing restrictions on entry of immigrants, document security, and background checks were not stringent enough. One report found that "more than [nine] million people are in the United States...

88. See id. at 162–63.
89. Id. at 164; see also I.N.A. § 274a(a), 8 U.S.C. § 1324(a)(a) (2006).
90. Loken & Babino, supra note 52, at 165–66.
91. Id. at 166.
92. Other acts regulating immigration were implemented between 1986 and 2001. The Immigration Reform Act of 1990 "modified" immigration law by (1) increasing the number of immigrants into the United States, (2) changing the non-status of immigrants in such areas as visa waiver, (3) giving the Attorney General naturalization power instead of the federal courts, and (4) revising the grounds for exclusion and deportation. Laurence M. Krutchik, Note, Down but Not Out: A Comparison of Previous Attempts at Immigration Reform and the Resulting Agency Implemented Changes, 32 NOVA L. REV. 455, 462, 463 & nn.47-48 (2008). The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 was intended to "strengthen and tighten" immigration laws by (1) "[enforcing] criminal penalties for high speed flight from immigration checkpoints," (2) increasing criminal penalties and adding civil penalties for documents fraud, and (3) facilitating legal entry and interior enforcement of the law. Id. at 463.
93. Id. at 464.
outside of the legal system." Congress sought to remedy this problem by passing a number of security acts, including the 2002 Homeland Security Act, the 2004 Intelligence Reform and Terrorist Prevention Act, and the 2005 REAL ID Act. While each act addressed issues surrounding illegal immigration, Congress did not confront the issue directly until late 2005, when the House of Representatives passed the "Sensenbrenner-King" Bill, or H.R. 4437.

By late 2005, it was clear that the IRCA of 1986 had done little to curtail illegal immigration or cure problems with the nation's legal immigration policy. The IRCA, with its tougher provisions and its one-time amnesty program, was designed to prevent future illegal immigration, yet it failed to stop the population of illegal immigrants from swelling to nearly twelve million people. Many, if not most, fled their countries due to economic motivations rather than political ones. Federal immigration law does not permit people to remain in the United States on economic asylum. Nonetheless, in spite of IRCA provisions against hiring undocumented workers, many employers hired them

94. Id. The report was issued by the National Commission on Terrorist Attacks Upon the United States. Id.
95. See generally id. at 465–68. The 2002 Homeland Security Act established the Department of Homeland Security as a cabinet-level department responsible for strengthening security measures used to protect against terrorism. Id. at 465. The 2004 Intelligence Reform and Terrorist Prevention Act was designed to "attack document fraud which aided terrorists in entering the United States," setting a more uniform standard for new licenses or identification cards. Id. at 465–66. The 2005 REAL ID Act, amongst other things, "modify[d] the eligibility criteria for asylum and withholding of removal; . . . expand[e] the scope of terror-related activity [that made] an alien inadmissible or deportable," and "require[d] states to meet certain minimum security standards in order for the [state-issued] drivers' licenses and personal identification cards . . . to be acceptable for federal purposes." Id. at 466–67.
96. See id. at 465–68.
98. See supra notes 88–91 and accompanying text.
99. See Villazor, supra note 3, at 143.
100. See Jeffrey L. Ehrenpreis, Note, Controlling Our Borders Through Enhanced Employer Sanctions, 79 S. CAL. L. REV. 1203, 1204 (2006) ("Despite the billions of dollars spent on immigration regulation, thousands of men and women come through the border every day in hopes of finding employment and prosperity.").
102. Section 1324a states that it is unlawful for any person "to hire, or to
willingly and without substantial penalty,\textsuperscript{103} claiming that their industries needed undocumented labor for jobs that citizens would not perform.\textsuperscript{104} As a result, illegal immigrants, mostly Latino, have continued to settle in the United States, not just in border states such as California, but increasingly in other areas less accustomed to hearing Spanish.\textsuperscript{105} Many have lived and worked in the United States for several years and have American-born children.\textsuperscript{106} However, many Americans fear that they will take jobs from natural-born citizens, use up health and education services that are already in short supply, and not assimilate to American culture.\textsuperscript{107} While some communities have welcomed illegal immigrants,\textsuperscript{108} others, frustrated by the federal government’s lax enforcement of immigration laws, have taken matters into their own hands.\textsuperscript{109}

H.R. 4437 sought to address these fears, with supporters claiming that it aimed to “re-establish respect for our immigration laws” and to “crack down on a culture of indifference” that led to millions of illegal immigrants living in the country.\textsuperscript{110} It did so by including several measures that increased penalties for illegally being in the United States.\textsuperscript{111} In particular, it rendered illegal status a felony and sought to

\footnotesize

recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien.” Id. § 1324a(a)(1)(A).

\textsuperscript{103} Ehrenpreis, supra note 100, at 1206.

\textsuperscript{104} O’Rourke, supra note 97, at 195; see also David Streitfeld, Illegal—\textit{but Essential}, \textit{L.A. Times}, Oct. 1, 2006, at A1 (“[Cracking down on hiring illegal workers] would be a horrible negative,’ said Jeff King, co-founder of King’s Seafood Co. . . . ‘You cannot get Americans to come in at entry-level wages. You’d have to pay a premium.’”).

\textsuperscript{105} See Stephen Ohlemacher, \textit{Illegal Immigrants—Who Are They?}, ABERDEEN AM. NEWS, Mar. 29, 2006, at A8 (discussing the spread of illegal immigrants to states such as North Carolina, Iowa, Ohio, and Georgia).

\textsuperscript{106} See, e.g., Glanton, \textit{supra} note 8.


\textsuperscript{110} O’Rourke, supra note 97, at 205.

\textsuperscript{111} \textit{See generally id. at} 198–207.
amend § 1324(a) so as to make it a felony to aid someone in "knowing or in reckless disregard" of their illegal status. 112 In December of 2005, H.R. 4437 passed the House with overwhelming Republican support, 113 but never became law. 114

The Senate offered different legislation in the form of the 2006 Comprehensive Immigration Reform Act (CIRA 2006), which was not as punitive and offered a path to citizenship.115 It, too, never became law, but a similar version with the same name was offered in 2007 (CIRA 2007). 116 By then, however, illegal immigrants and churches alike were reeling from fear of what H.R. 4437 could do to their tax status if it ever became law.117

Both groups feared that their status would be criminalized, and the churches strongly objected to having their traditional work for the needy labeled a crime.118 Cardinal Roger Mahony, the Catholic Archbishop of Los Angeles, complained in a letter to President Bush that H.R. 4437 would "require of all personnel of [churches and of all non-profit organizations to verify the legal immigration status of every single person served through our various entities," which would force priests, ministers, and rabbis to become "quasi-immigration enforcement officials."119 Meanwhile, illegal immigrants, faced with threats of raids

112. Id. at 198, 201.
115. See Editorial, Melting Pot Won't Work Without Hope of Citizenship, OREGONIAN, May 24, 2006, at E06.
117. Sylvia R. Lazos Vargas, The Immigration Rights Marches (Las Marchas): Did the "Gigante" (Giant) Wake Up or Does It Still Sleep Tonight?, 7 NEV. L.J. 780, 783, 786 (2007).
118. See discussion infra Part IV.C for more information about why churches and immigrants objected to H.R. 4437.
and deportation, responded with a series of nationwide protests that were joined by many clergymen. As they marched, they held up placards with messages such as: "We are workers and neighbors, not criminals." Cardinal Mahony also wrote a stinging editorial for the New York Times, pledging civil disobedience and stating that "providing humanitarian assistance to those in need should not be a crime." Despite these efforts, it was not until one illegal immigrant sought sanctuary in a Chicago church that churches organized en masse to form the New Sanctuary Movement.

F. The New Sanctuary Movement

In August 2006, thirty-one-year-old Elvira Arellano, a Mexican national, took sanctuary in the United Methodist Church in Chicago. Arellano was scheduled to be deported, after twice violating immigration laws: once for having crossed the border illegally in 1997, and once for working under a false Social Security number in 2002. Fearing separation from her American-born son, Arellano remained in the church for a year, until she decided to go to Los Angeles and speak out at a rally. She was arrested just outside of the Our Lady Queen of Angels church and later deported. Inspired by her story, churches decided to join forces and protect against raids and deportations. On January 29, 2007, "representatives from [eighteen] cities, [twelve] religious traditions, and [seven] denominational and interdenominational organizations" joined to strategize over how to keep immigrant families together until immigration

120. See, e.g., Frank Trejo, Tim Wyatt & Patricia Estrada, Raid Rumors Leave Workers on Edge, DALLAS MORNING NEWS, Apr. 28, 2006, at A1.
121. See generally Lazos Vargas, supra note 117, at 786–98. The protests included several immigration marches between March and May of 2006, attended by an estimated three-and-a-half to five million protesters, in hundreds of cities from New York to Los Angeles. Id. at 781.
122. Id.
123. Id. at 783 & n.15.
124. Villazor, supra note 3, at 144–45.
126. Id.
127. Id.
128. Id.
129. Villazor, supra note 3, at 144.
reform became a reality.\textsuperscript{130} They formally declared the New Sanctuary Movement (NSM) on May 9, 2007.\textsuperscript{131}

In forming the NSM, the churches drew a conscious comparison between their efforts and those of the original SM of the 1980s.\textsuperscript{132} They credited the SM with success in changing both immigration policy and protecting thousands of individuals and families.\textsuperscript{133} To an extent, they even treated the NSM as a natural extension of the original SM, with no genuine break in between.\textsuperscript{134} The two movements had strong similarities in three respects. First, both involved churches and religious groups offering sanctuary to illegal immigrants, with some in the new movement having been part of the original movement.\textsuperscript{135} Second, both required each congregation that joined to make a public statement.\textsuperscript{136} Finally, both sought out for sanctuary illegal immigrants whose stories fit their mission, while articulating somewhat vague goals for the movement as a whole.\textsuperscript{137} However, there have proven to be substantial differences as well.

While the SM of the 1980s sought to help refugees fleeing for their lives from specific wars, the NSM appears focused on economic immigrants living in the United States,\textsuperscript{138} who were not necessarily endangered in their home countries and whose countries’ fiscal woes might continue indefinitely. Whereas the SM enjoyed strong public support for its actions,\textsuperscript{139} the NSM faces a public that is wary of illegal immigrants in light of their rapidly increasing numbers and

\begin{itemize}
\item \textsuperscript{130} New Sanctuary Movement, The Convening, http://www.newsancituarymovement.org/the-convening.htm (last visited Aug. 9, 2009).
\item \textsuperscript{131} James Barron, Churches to Offer Sanctuary, N.Y. TIMES, May 9, 2007, at B1.
\item \textsuperscript{132} New Sanctuary Movement, Building on a Powerful Tradition, supra note 31.
\item \textsuperscript{133} Id.
\item \textsuperscript{134} See Villazor, supra note 3, at 145–47.
\item \textsuperscript{135} Id.
\item \textsuperscript{136} Loken & Babino, supra note 52, at 133; New Sanctuary Movement, Prophetic Hospitality, http://www.newsancituarymovement.org/hospitality.htm (last visited Aug. 9, 2009).
\item \textsuperscript{137} Loken & Babino, supra note 52, at 134–36; New Sanctuary Movement, Prophetic Hospitality, supra note 136.
\item \textsuperscript{138} See New Sanctuary Movement, Prophetic Hospitality, supra note 136 (mentioning “day laborers,” “immigrant domestics,” and workplace discrimination).
\item \textsuperscript{139} Villazor, supra note 3, at 144.
\end{itemize}
The NSM’s goals, as articulated on its website, are to take a public stand for immigrant rights; to protect undocumented immigrants from “hate, workplace discrimination, and unjust deportation”; and to “reveal the actual suffering of immigrant workers and their families” to the religious community and the public, which is based on “current and proposed legislation.” To implement its goals, it has sought out immigrants whose cases “clearly reveal the contradictions and moral injustice of our current immigration system while working to support legislation that would change their situation.” The families involved must be in the deportation process; they must include citizen children, and the adults must have good work records.

While the NSM articulates the goals of protecting families and changing the public debate, it does not explain how these goals or the movement itself would translate into acceptable reforms that could pass both houses of Congress. Rather, when the NSM does mention legislation, it simply states a desire for a bill to “give legal status to undocumented people in the United States, set up jobs programs in communities with high levels of unemployment, and protect the rights of all workers, immigrant and native born.” It dismisses “Washington’s various reform proposals,” which assume “that immigrants should not be the equals of the people around them, or have the same rights” and instead advocates for a policy that allows immigrants to go wherever they can find the highest wages. The NSM does not refer

140. See supra notes 107-09 and accompanying text. Public opinion will be discussed further in Part IV.C.
142. New Sanctuary Movement, Prophetic Hospitality, supra note 136.
143. New Sanctuary Movement, Building on a Powerful Tradition, supra note 31.
145. Id. (“Today, working people of all countries are asked to accept continuing globalization, in which capital is free to go wherever it can to earn the highest profits. By that same token migrants must have the same freedoms, with rights and status equal to those of anyone else.”).
to CIRA 2006 or 2007, except to use the passage of CIRA 2006 to claim that its position is legal, pointing out that CIRA provided a humanitarian exemption for individuals and organizations that, knowing or with reckless disregard of their immigration status, harbored illegal aliens from detention. The NSM also uses a textual reading of § 1324(a) to justify its legality, stating that the section only applies to those who kept silent about illegal immigrants’ presence, rather than those who have reported the immigrants’ presence but continue to shelter them.

The NSM’s actions have not passed without criticism. Some have condemned the churches for being “staging grounds for political works,” stating that their tax-exempt status forbids such action. Various clergymen have called for a different approach, such as churches directing medical, educational, and spiritual services to the immigrants’ home countries, “where their family support system is.” Other critics have questioned whether Christian teachings even require churches to advocate for immigrants who have come to a country illegally for economic reasons. Biblical teaching requires adherence to a temporal sovereign. While Catholic teaching permits civil disobedience in resistance to unjust laws, and provides that that pastors must give care to all types of immigrants, the Vatican has nonetheless acknowledged that governments have a right to regulate migration for the common good, and Church documents limit reasons for migrating to life- and faith-threatening reasons. Regardless, the biggest problem facing the NSM is that its actions may be legally indefensible.

III. IDENTIFICATION OF THE PROBLEM

Besides the fact that political support for immigration

146. New Sanctuary Movement, Prophetic Hospitality, supra note 136.
147. Id.
151. Id. at 94.
152. Id. at 82, 86, 94–95.
reform is tepid at best, the NSM's actions are not legally justifiable and threaten churches' tax-exempt status; therefore, it is likely that the movement will fail and that churches and illegal immigrants alike will suffer the consequences. First, the NSM movement may not have a true legal basis for its actions. The NSM argues that its reading of § 1324(a) is valid and cites the original SM as a success; but given recent history and case law, the NSM's claims that it is following the law based on its good faith understanding of the law may not pass scrutiny. If that is the case, two unwanted scenarios could result: like members of the original movement, the NSM members could face imprisonment, and federal agents could decide to enter churches and arrest the illegal immigrants. That they have not entered churches is a choice, rather than an acknowledgement that sanctuary holds some sort of legal power. Just as the federal government did not immediately intervene in the original SM, its distance from the NSM may only be temporary. Second, churches have I.R.C. section 501(c)(3) tax status, which means that they are exempt from paying certain taxes as long as "no substantial part" of their activities is "attempting . . . to influence legislation" or intervening in "any political campaign on behalf of (or in opposition to) any candidate for public office." If, as critics claim, the NSM has been engaging in these sorts of political activities, then should federal authorities choose to press the issue, they may revoke the churches' tax-exempt status. The resulting loss of funds could make it more difficult for churches to fulfill their overall mission of providing religious guidance.

To make matters worse, the American public substantially opposes the NSM's goals for illegal immigrants,

153. See supra notes 133, 147 and accompanying text.
154. See supra notes 79–80 and accompanying text.
155. See supra notes 82–83 and accompanying text.
156. Villazor, supra note 3, at 147.
157. See id. (discussing the law under 8 U.S.C. § 1357 (2006)).
158. See id.
160. See supra note 148 and accompanying text.
and supports tough enforcement provisions. If the NSM is to have a truly positive effect on illegal immigrants' status, it must find a realistic way to put its proposals into law without violating its tax-exempt status, most likely through the passage of compromise legislation, like CIRA 2007.

These issues present grave legal and social repercussions. Churches remain a vital part of our society, and illegal immigration is much more prevalent than it was during the 1980s. If what the churches are doing is illegal and the mass arrest of church members and illegal immigrants takes place, there could be a great social uproar. This is especially likely in light of the large-scale protests that followed the mere possibility of H.R. 4437 becoming law. That makes it even less possible that a rational solution to the immigration crisis would be debated and passed into law at a time when rational reform is sorely needed. The remainder of this comment will analyze whether the churches are engaging in illegal activity and how well their goals match up against those of the 2007 compromise legislation, the last time comprehensive legislation was attempted. It will then propose legal, realistic reforms that the NSM could adopt to keep families containing illegal immigrants together.

IV. ANALYSIS

A. Section 501(c)(3) Status

The first issue is whether the NSM's actions violate the section 501(c)(3) prohibition against church involvement in political activities. Section 501(c)(3) permits charitable organizations, including churches, to avoid paying federal income and employment taxes as long as certain restrictions...
are met: they cannot use a "substantial part" of their activities for propaganda or other attempts to influence legislation and they cannot participate or intervene in a political campaign on behalf of any candidate for public office. 168 But only one church in the past fifty years has lost its tax-exempt status: the Church at Pierce Creek, for urging Christians not to vote for Bill Clinton in 1992. 169 That means churches included in the original SM did not lose their tax-exempt status. 170 Nonetheless, the possibility remains that the IRS could enforce section 501(c)(3)'s prohibitions more stringently, so it is worth determining whether the NSM's activities violate them.

In order to do so, one must first look to whether the NSM's disregard of federal immigration law goes against section 501(c)(3) provisions. Section 501 does not contain any language regarding lawbreaking. 171 One might conclude, then, that if it did not violate the provisions having to do with politics, then a church could break federal law and still maintain its tax-exempt status. Therefore, the NSM's actions in defiance of § 1324(a) would not violate section 501(c)(3) prohibitions unless they constituted a "substantial" part of the churches' activities, attempted to influence legislation, or intervened in a political campaign. 172

Next, one must look to whether sheltering illegal immigrants in churches constitutes a "substantial" part of the NSM's activities. "[S]ubstantial" is not defined under section 501, 173 so one cannot assess what percentage of the churches' activities would qualify. The NSM website states that churches wishing to join must host one immigrant family and be ready with a place to live (on congregation-owned property), help with "material and spiritual support," and be available for press conferences. 174 While the burden might vary depending upon the congregation, it appears that hosting just one family would not take up a substantial amount of a church's activity. As previously noted, providing

168. James, supra note 159, at 44–45.
169. Id. at 71.
170. See id.
172. See James, supra note 159, at 45–46.
services and spiritual support is part of a church's larger mission. Therefore, it stands to reason that assistance offered to illegal immigrants would be like the assistance that is offered to the rest of the congregation.

Finally, even if sheltering illegal immigrants did meet the test for "substantial," one must ask whether it constitutes propaganda and other attempts to influence legislation, or intervention on behalf of a candidate. As with "substantial," nowhere in section 501 is "propaganda" defined. Using a basic legal definition, we might argue that by making law-abiding families the public face for illegal immigration, the NSM is using propaganda to influence future legislation, providing selected information to promote a specific cause. On the other hand, such a definition could ensnare anyone—when promoting a point of view, it is difficult not to somehow provide selected information. Moreover, the NSM's message is not nearly as dominant as the Catholic Church's message opposing abortion, which it has expressed in an extensive, nationwide campaign with the goal of making it illegal.

The NSM has not lobbied for specific legislation that reflects its goals or intervened on behalf of a candidate in an election. It is true that illegal immigration is an issue for which both major parties have drawn firm lines, and Democrats tend to support more rights for illegal immigrants. Yet, while NSM members have praised legislative proposals from Democratic Congressmen Shelia

175. See supra note 1 and accompanying text.
176. James, supra note 159, at 44–45.
178. Black's Law Dictionary defines propaganda as the "systematic dissemination of doctrine, rumor, or selected information to promote or injure a particular doctrine, view, or cause." BLACK'S LAW DICTIONARY 1335 (9th ed. 2009).
179. See supra notes 142–43 and accompanying text.
180. See supra note 178.
181. James, supra note 159, at 50.
182. See Raymond Hernandez, Opinions, Far Apart, Underscore Immigration Bill's Obstacles, N.Y. TIMES, June 5, 2007, at 1 (demonstrating various Democrats' concerns that immigrants could be exploited by a guest-worker program, while a Republican fears amnesty); Editorial, The Grand Collapse, N.Y. TIMES, June 30, 2007, at A16 (describing Republican Senators' opposition to the 2007 immigration reform legislation, while Senator Kennedy and allies compared it to the Civil Rights legislation).
Jackson Lee\textsuperscript{183} and Dennis Kucinich\textsuperscript{184} while rejecting the anti-illegal-immigration stance of former Republican Congressman Tom Tancredo,\textsuperscript{185} the movement has not gone so far as to promote the proposals on its website.\textsuperscript{186} Moreover, there is no evidence that the NSM intervened in an election on behalf of Lee, Kucinich, or any Democrat; in fact, the NSM expressed ambivalence toward most of the Democratic candidates for the 2008 election.\textsuperscript{187} This stands in stark contrast to Catholic churches endorsing candidates who were anti-abortion from the pulpit, or the Christian Coalition specifically advocating for President Bush’s tax cuts on its website.\textsuperscript{188}

Compared to the direct activities of those religious organizations that are allowed to maintain their tax-exempt status,\textsuperscript{189} it is fair to conclude that the NSM churches’ tax-exempt status should not be revoked. To avoid future risk, however, the NSM would be wise to refrain from endorsing particular candidates during election time or lobbying for specific legislation.\textsuperscript{190}

\textbf{B. Legal Defenses for the New Sanctuary Movement}

The second issue regarding the NSM’s actions is whether the legal justifications it puts forward provide any security against the trials and arrests that met the original movement. The NSM claims that a textual reading of § 1324(a) gives its actions legality, because the harboring provision only applies to those who hide illegal immigrants, rather than those who are open with their actions.\textsuperscript{181} The intent of the law, however, is to prevent harboring, so it may be irrelevant whether the NSM’s actions are open or

\begin{itemize}
  \item 183. Bacon, \textit{supra} note 144, at 8.
  \item 185. \textit{Id.}
  \item 186. \textit{See} New Sanctuary Movement, The Convening, \textit{supra} note 130.
  \item 187. \textit{See} Lopez, \textit{supra} note 184, at 9.
  \item 188. James, \textit{supra} note 159, at 50, 59.
  \item 189. \textit{See generally id.} at 48-69 (describing how the Catholic Church, the Religious Right, and African-American churches have overtly pushed for political issues and candidates without incurring penalty).
  \item 190. This will be discussed further in Part V.
  \item 191. Villazor, \textit{supra} note 3, at 146-47.
\end{itemize}
concealed. One could argue that even under its own interpretation, the NSM harbors illegal immigrants in the churches, given that a church "conceals" illegal immigrants and shields them from immediate detection, or at least "attempts to conceal them." The NSM likely understands, from the previous movement's history, that the federal government would be more reluctant to arrest and deport illegal immigrants if they were out in the open or in their home, than if they were harbored by a church.

Furthermore, because Congress lowered the mens rea threshold for harboring between the early 1980s and 2007, from "willingly and knowingly" to "knowing or in reckless disregard of the fact," it intended to make it more difficult for people to shelter illegal immigrants while claiming ignorance of their status. Certainly if harboring can consist of mere sheltering, then the NSM meets even the toughest mens rea threshold for harboring an illegal immigrant, because its members "willingly and knowingly" keep illegal immigrants in their churches. Regardless, the NSM's interpretation of what § 1324(a) permits resembles the mistake-of-law-as-mistake-of-fact defense employed by members of the original SM.

United States v. Aguilar demonstrates that this defense is untenable. Then, during the trial and appeal, members of the SM argued that if one had a good-faith belief that an illegal immigrant was entitled to live in the United States because he fit the description of a refugee under the 1980 Refugee Act, that was a reasonable defense against the knowledge element of § 1324(a). The Ninth Circuit, however, rejected this argument, stating that a mistake about the Refugee Act was a mistake of law and ignorance was therefore no excuse. Moreover, among those convicted were

192. Id. at 147.
194. See supra note 88 and accompanying text.
195. See supra notes 135–37 and accompanying text.
196. See supra note 135–37 and accompanying text.
197. See supra note 52, at 139.
198. See id.
199. Id. at 147.
200. Id.
SM members who merely provided shelter to illegal immigrants, such as Father Anthony Clark, who invited a Salvadoran to lunch and to stay in an apartment behind the church.\textsuperscript{201} The issue revolved around not 
how the SM members harbored illegal immigrants, but whether they knew the individuals were illegal.\textsuperscript{202}

The court's response to the SM, when applied to the NSM's justifications, strips away the latter's legal defenses. The NSM argues that it is obeying the law by revealing to the federal government that illegal immigrants are staying within the churches.\textsuperscript{203} Yet as Father Clark's example demonstrates, providing mere shelter to illegal immigrants, as opposed to hiding them, is no defense.\textsuperscript{204} Furthermore, whereas members of the SM could make a plausible case for lacking knowledge of the refugees' legal status based on their understanding of the Refugee Act,\textsuperscript{205} the NSM members openly admit that they are aware that people who are in the United States illegally are being sheltered under their roofs.\textsuperscript{206} This more than adequately satisfies the "knowing or in reckless disregard of the fact" portion of § 1324(a),\textsuperscript{207} which, given the Ninth Circuit's decision under the previous, harder-to-meet standard,\textsuperscript{208} would be grounds for conviction.

It might be possible for members of the NSM to plead a mistake of fact defense,\textsuperscript{209} based on the immigrants' otherwise lawful conduct in the United States. However, because immigrants like Elvira Arellano have a recorded history of breaking immigration laws repeatedly,\textsuperscript{210} such a defense would likely fail. The NSM might also try to raise a defense

\begin{flushleft}
\textsuperscript{201} Id. at 124–25.
\textsuperscript{202} See id.
\textsuperscript{203} Villazor, supra note 3, at 146–47.
\textsuperscript{204} Loken & Babino, supra note 52, at 124–25.
\textsuperscript{205} Id. at 139–40.
\textsuperscript{206} See New Sanctuary Movement, Prophetic Hospitality, supra note 136.
\textsuperscript{207} Section 1324(a) states that any person who "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" receives a criminal penalty. 8 U.S.C. § 1324(a)(1)(A)(3) (2006).
\textsuperscript{208} See Loken & Babino, supra note 52, at 140.
\textsuperscript{209} See United States v. Smith-Baltiher, 424 F.3d 913, 925 (9th Cir. 2005) ("[W]e also characterized a mistake as to alienage as a mistake of fact, concluding that such a mistake negates the specific intent required for culpability." (citing United States v. Aguilar, 883 F.2d 662, 675 (9th Cir. 1989))).
\textsuperscript{210} See Watanabe, supra note 125.
\end{flushleft}
based on a humanitarian exception to § 1324(a), much as members of the original SM sought to do. However, the Aguilar court stressed that humanitarian aid was not a "complete defense" and that such aid must be "incidentally related" to furthering the alien's illegal status. Because the NSM's sheltering of illegal immigrants in the churches is largely an attempt to further their presence in the United States, it would not satisfy this requirement. The fact that the NSM cites the humanitarian exception in the CIRA 2006 that passed the Senate suggests that it knows that such an exception does not exist in the current version of § 1324(a).

Given that the NSM does not have case law or legislative history to bolster its claims that its interpretation of § 1324(a) is valid, and that any other defense it raised would fail, the NSM is likely illegal under current law. While it might still be possible for the NSM to do as the original movement did and achieve its objectives in spite of arrest and conviction, given the harsher social and political climate at present, such an outcome would be far from certain. The question therefore becomes what NSM members could legally do to further their goals for fair immigration policy. Though section 501(c)(3) status might preclude the churches from lobbying for certain legislation or a specific party or politician, it would not prevent them from stating the types of goals that they wish could be met, in a specific enough way that legislators of both parties could use it as a guide to craft legislation that may pass both houses of Congress.

C. New Sanctuary Movement Goals and "CIRA"

The final issue is whether the NSM's goals for changing immigration policy are realistic enough to have a chance of becoming law. To determine this, it is helpful to compare them to the 2007 comprehensive reform legislation in Congress. Although CIRA 2007 received its share of criticism and never left the Senate, it had notable assets

211. See supra note 75 and accompanying text.
212. Aguilar, 883 F.2d at 687.
213. See New Sanctuary Movement, Prophetic Hospitality, supra note 136.
214. Id.
215. See supra notes 82–86 and accompanying text.
216. See e.g., Larry Blasko, Editorial, Common-Sense Immigration Reform Should Focus on Economics, Not Emotion, CINCINNATI ENQUIRER, Aug. 1, 2007,
that future reform legislation will likely need. First, unlike the Republican-backed H.R. 4437, CIRA 2007 had the enthusiastic support of a bipartisan group of Senators, as well as President George W. Bush. Such bipartisan support is necessary to push legislation through the Senate, where majority groups rarely dominate because of the filibuster option. Even with the large Democratic majorities of the current Congress, there is no guarantee that comprehensive reform will have the votes to pass in 2010, thanks in part to the Republicans' use of the filibuster. Second, in contrast to the intentions behind H.R. 4437, CIRA 2007 represented a good-faith effort to help illegal immigrants in the United States obtain legality while addressing concerns about lax enforcement of immigration laws.
The NSM's goals, meanwhile, are to prevent "unjust deportation" from breaking up families, prevent discrimination, and to bring attention to illegal immigrants' plight.225 Other goals include achieving equal rights for immigrants and for migrants to be able to move about freely to wherever they can earn the highest wage.226 At the same time, churches and illegal immigrants have reacted with horror to the measures of H.R. 4437.227 Whether CIRA 2007 is closer in nature to the NSM's goals or to H.R. 4437 is of critical importance. If CIRA 2007 is more like H.R. 4437, that could signal that both bills were addressing certain special needs that the NSM does not want to consider. The more uncompromising the NSM's goals, the less likely they are going to be realized.

Churches and immigrants have objected to many of H.R. 4437's provisions, but especially to sections 203 and 202.228 Section 203 would have made "unlawful presence" in the United States an aggravated felony.229 Under section 203, illegal immigrants would be required to serve jail time and would be barred from future legal status or re-entry into the country.230 Section 202 would have prohibited assisting an illegal immigrant residing in the United States, and carried several criminal penalties.231 Many feared that this meant humanitarian aid workers, emergency health technicians, religious workers, and other well-meaning citizens would face imprisonment.232 There were other concerns as well, such as H.R. 4437 defining documents fraud as an aggravated felony, creating a new 700-mile fence along the Southwestern border, allowing an individual to be held indefinitely if he was determined to be a "dangerous alien," and authorizing state and local law enforcement to enforce federal immigration laws.233

CIRA 2007, on the one hand, offered the reverse of what

---

225. See supra note 141 and accompanying text.
226. See supra note 145 and accompanying text.
227. See discussion supra Part II.E.
228. See supra notes 118–21 and accompanying text.
229. O'Rourke, supra note 97, at 198.
230. Lazos Vargas, supra note 117, at 782 n.10.
231. O'Rourke, supra note 97, at 201.
232. Id.
233. Lazos Vargas, supra note 117, at 782 n.10.
H.R. 4437 prescribed in certain key areas—particularly, aid to illegal immigrants. Section 274(a)(3)(A) states that it is not a violation "for a religious denomination having a bona fide nonprofit, religious organization in the United States . . . to encourage, invite, call, allow, or enable an alien who is present in the United States."234 If CIRA 2007 became law, the churches’ main fear about their personnel being arrested for doing their usual work would be put to rest.

CIRA 2007 also provided methods of achieving legality for illegal immigrants or those in a guest-worker program or a tiered system of legal status.235 However, while this might be closer to the NSM’s dream for greater legal rights for migrant workers than H.R. 4437, it also might draw criticism from the NSM for not giving equal rights, but rather qualified rights, to certain groups. CIRA 2007 would have established a work visa, H-2C, but that would have only allowed migrants to stay in the United States temporarily.236 Furthermore, CIRA 2007 would have placed illegal immigrants into three groups, who gained legal status depending upon how long each had lived in the country.237 Those who had lived in the United States for five years and had a good work and personal history could apply for green cards, while those who had lived here for fewer than two years would have no path to legality.238 The NSM would likely welcome the part of CIRA 2007 that deals with the incorporation of the Development, Relief, and Education for Alien Minors (DREAM) Act, which would have given illegal immigrant children in-state residency status to attend college, thereby incorporating them more into American society.239

CIRA 2007’s overall goals for illegal immigrants—preserving humanitarian aid and helping them become legal, productive members of society—appear much more in line with the NSM’s goals than with H.R. 4437. At the same time, CIRA 2007 merely softened, and in some cases even

236. See id. at 475.
237. See id. at 478–79.
238. Id. “Group B,” the illegal immigrants who have lived in the United States between two and five years, would have been required to leave the country and apply for an H-2C visa or a green card. Id. at 479.
239. Id. at 481.
expanded, H.R. 4437's initiatives. While not advocating for a 700-mile fence, it did require that the existing border fence be repaired and for 200 miles of vehicle barriers to be constructed at "breach points" for illegal immigrants.\textsuperscript{240} It also increased the number of border patrol agents and included unmanned border patrolling technology, such as cameras, unmanned aerial vehicles, and scanners.\textsuperscript{241} Finally, it instituted a tough employee verification system,\textsuperscript{242} which could have made employment for illegal workers more, not less, difficult. What the NSM might find most disturbing, however, is that CIRA 2007 aimed to allow the federal government to detain illegal immigrants beyond the specified time periods, even when there was no significant likelihood of removal in the near future.\textsuperscript{243}

The NSM might pause, though, before demanding that any acceptable reforms drop employment verification or border enforcement, as public opinion polls taken over the past several years indicate strong opposition to illegal immigration.\textsuperscript{244} For instance, a 2009 CNN/Opinion Research Corporation Poll found that seventy-three percent of respondents wanted the number of illegal immigrants decreased—the highest percentage since the poll was first conducted in 2006.\textsuperscript{245} A 2008 Gallup Poll found that sixty-three percent felt that illegal immigrants cost society too much, compared to thirty-one percent who felt that they paid

\textsuperscript{240} Id. at 470–71.
\textsuperscript{241} Krutchik, supra note 92, at 469.
\textsuperscript{242} Id. at 477.
\textsuperscript{243} Id. at 473–74. This addition is based on a Supreme Court decision in 
Zadvydas v. Davis, 533 U.S. 678 (2001), which found that an illegal immigrant with a criminal background and a history of flight could be held by the INS beyond the ninety-day removal period if he posed "a risk to the community," without it being a violation of habeas corpus. Id.
\textsuperscript{244} See, e.g., PollingReport.com, Immigration, http://www.pollingreport.com/
immigration.htm (last visited Jan. 3, 2010). One April 2009 CBS News/New York Times Poll does show that if given a choice, a plurality of forty-four percent would prefer that illegal immigrants working in the United States be able to stay and apply for citizenship, versus twenty-one percent who think that they should be guest workers and thirty percent who think that they should leave. Id. NSM members might cite this poll to suggest a growing tolerance of illegal immigrants, but at the same time, critics could argue that it shows a majority of fifty-one percent wants illegal immigrants to either leave the United States or become guest workers.
\textsuperscript{245} Id.
their fair share.\textsuperscript{246} This number has scarcely changed since a previous 2006 poll, which was conducted before the NSM began.\textsuperscript{247} A June 2008 CNN Poll found that a slim majority of fifty-two percent favored building a 700-mile border fence between the United States and Mexico, and one taken in January 2008 found that sixty-five percent wanted a decrease in illegal immigration.\textsuperscript{248} When asked what the focus of our U.S. immigration policy should be, more respondents in a 2007 L.A. Times/Bloomberg Poll chose border security (thirty-one percent) than a pathway to citizenship (twenty-seven percent).\textsuperscript{249} However, there is reason for the NSM to be encouraged: several polls taken over the past few years show strong support for allowing illegal immigrants to stay in the United States if they are law-abiding, pay fines, and learn English.\textsuperscript{250} Overall, there is a strong indication that while Americans can be welcoming of newcomers, we also care a great deal about our laws being obeyed.\textsuperscript{251} The NSM ought to take this into account in its approach to illegal immigration. Enough common ground exists between the NSM's goals and those of bipartisan lawmakers and the public. With some modification, the NSM can achieve several of its goals.

V. PROPOSAL FOR THE NSM TO LEGALLY PROMOTE ITS CAUSE

In order to effectuate change, the NSM must do two things: end the policy of keeping illegal immigrants in its churches and adopt a concrete set of goals that can be

\textsuperscript{246} Id.
\textsuperscript{247} Id.
\textsuperscript{248} Id.
\textsuperscript{249} Id.
\textsuperscript{250} PollingReport.com, Immigration, supra note 244 (showing that in a June 2007 L.A. Times/Bloomberg Poll, sixty-three percent supported allowing illegal immigrants who followed these procedures to stay, versus just twenty-three opposed). An April 2009 ABC News/Washington Post Poll shows that sixty-one percent of respondents supported allowing illegal immigrants to stay “if they [paid] a fine and [met] other requirements,” while thirty-five percent were opposed. Id.

\textsuperscript{251} An October 2007 CNN Poll found that seventy-six percent felt that illegal immigrants should not receive driver's licenses; a March 2007 USA Today/Gallup Poll found that eighty-six percent favored requiring tamper-proof Social Security cards to be shown in order to gain employment; and a June 2007 NBC/Wall Street Journal Poll found that fifty-seven percent believed that fines should be imposed on businesses that hired illegal immigrants. Id.
conceivably passed in legislative form.

A. End the Sheltering of Immigrants in Churches

The NSM must end the very thing that gave the movement so much publicity—sheltering illegal immigrants in the churches. The movement has no legal justification for this practice, given that it cannot plausibly claim that the immigrants meet a statutory definition that makes them legal and that its reading of § 1324(a) would likely be ruled a mistake of law and therefore invalid.\textsuperscript{252} NSM members might consider it worth the legal risk if there were some tangible benefit, such as improved public opinion that put pressure on Congress to pass more favorable legislation. However, as the polls indicate,\textsuperscript{253} despite the fact that the NSM has been active for close to three years, public opinion has barely changed since Elvira Arellano first took shelter in a Chicago church. Furthermore, given that the poll responses reveal a strong desire for respect of American laws,\textsuperscript{254} the NSM members may be hurting their cause by not only sympathizing with those who have broken immigration laws, but by breaking the law themselves.

The NSM could still highlight the tragedy of families being broken apart by raids and deportations through other means. They could use the media in the form of newsletters, articles and letters in newspapers, television news stories, radio, online advertising, and websites. By doing this, they could present their point of view without being accused of not caring about the law, leading the average American to be more receptive to the message. Moreover, the NSM could continue to offer the services that they offer everyone—regardless of whether they are legal or illegal—such as spiritual counseling. By simply offering services, they could highlight what makes them so vital and why it is wrong to penalize churches and other community organizations for offering them without first inquiring about status.

B. Specify a Group of Illegal Immigrants to Help

If the NSM is serious about wanting reforms in

\begin{footnotesize}
\begin{itemize}
\item[252.] See discussion supra Part IV.B.
\item[253.] See supra notes 244–51 and accompanying text.
\item[254.] See supra note 251 and accompanying text.
\end{itemize}
\end{footnotesize}
immigration policy, it needs to articulate more concrete goals than the ones stated on the official website. To begin with, it must consider the illegal immigrants for which it is advocating. The movement's choice of using immigrants with good work histories, no criminality, and American children suggests that the NSM is most concerned with illegal immigrants who would largely blend into, and be an asset to, American society. However, not every illegal immigrant is a law-abiding, productive individual with American ties, and it would be disingenuous for members of the NSM to claim otherwise. If the NSM is seeking to bring legality to all illegal immigrants, it may have a much more difficult time winning the sympathy of the public or Congress. Therefore, the NSM should consider whether to limit its advocacy to illegal immigrants whom it would seem the most unjust to deport—well-meaning, hard-working, law-abiding immigrants with families and roots in the United States.

C. Adopt Specific, Pragmatic Reforms

The NSM should adopt a series of specific goals that relate to helping this class of illegal immigrants. In order to avoid risking the churches' section 501(c)(3) status, it could just state them as goals rather than push for specific legislation, but at the same time be concrete and realistic enough that they could achieve the bipartisan support needed to pass both houses of Congress. It could aim for a series of separate initiatives, or a comprehensive package like the bipartisan CIRA 2007.

One major goal could be for an explicit humanitarian exception to § 1324(a)'s harboring provisions to be written into law. Until now, the NSM has acted as though one already exists, but has not actually advocated for one. Having this exception in place would be vital to allowing churches and other humanitarian organizations to continue

---

255. See supra note 143 and accompanying text.
257. See supra notes 218–20 and accompanying text.
258. See supra note 146 and accompanying text.
their work without having to constantly second-guess recipients’ legal status. It would also be good public policy, as it would encourage other Americans to be neighborly and offer assistance to those who need it without fear of being accused of harboring.

Another goal in line with the NSM’s desire to keep families together could be for the two main groups listed in CIRA 2007, consisting of five-year residents and two-to-five-year residents,259 to be combined into a single group, with the same path to legality. Two years would be long enough to establish ties to the United States and would make it so that not every illegal immigrant that lived in the United States, no matter how short a time, could apply for legality. The NSM ought to advocate for a streamlined process for law-abiding illegal immigrants to gain legality that does not require them to leave the country or be placed on tiers. At the same time, it ought to be sensible of the fact that majorities of Americans believe that illegal immigrants should only gain legality after paying fines and enduring other large penalties.260 As a way to balance its call for making the process easier to follow, it might advocate for more or higher penalty fees, so opponents could not claim that its plan was just another form of amnesty.

Regarding the NSM’s concern about deportation, the movement might advocate for fairness and openness in detention and deportation procedures. In situations where detention might go over the designated period and threaten habeas corpus, the NSM might advocate for a system that allows immigrants to stay under the watchful eye of the law while not actually being held, enabling them to lead a normal life until the judicial process is completed.

Finally, in order for any of the NSM’s goals to have a practical effect, it will have to agree on what goals not to pursue. Americans do not show any tolerance for an “open borders” society where migrants can freely move across the border to obtain the highest wage.261 They support more border enforcement, penalties for employers who hire workers illegally in the country, and do not tolerate documents

259. See supra note 238 and accompanying text.
260. See supra note 250 and accompanying text.
261. See PollingReport.com, Immigration, supra note 244.
Therefore, the NSM should accept that even if its highest aims are put into legislation, they will have no chance of becoming law unless accompanied by tough enforcement provisions. This could mean that the law-abiding people for whom the NSM advocates may not benefit from path-to-citizenship legislation until after enforcement measures have been implemented.

In the meantime, the NSM can focus on ways to help people from other countries while respecting the nation’s immigration laws. It can provide services to countries that experience economic hardship, so that the citizens have options and do not need to immigrate to the United States. It can also advocate for changes to the legal immigration process to allow more disadvantaged people to come legally, so that illegality is not an issue.

VI. CONCLUSION

If the New Sanctuary Movement wishes to make its mark on the heated and ongoing debate over illegal immigration, it must abandon that which made it known in the first place—its movement to shelter illegal immigrants in the churches—and adopt an approach that urges targeted, specific legal reform. The churches should adopt a series of specific proposals for legal reform that include a more streamlined path to legality, reforms in areas such as detention, and enforcement.

If the churches, as well as Congress, adopted this approach, it could go a long way toward easing the tensions of illegal immigration. Finally, the question of what to do with the twelve million “shadows” would be resolved, and families could stay together. At the same time, American citizens might feel more at ease knowing that our borders and laws are being respected through tough enforcement, so that another twelve million do not arrive illegally. It will never end the problems with illegal immigration because the United States will remain a cultural and economic draw for millions around the world, but it would bring some benefit and relief.

262. Id.
263. See discussion supra Part V.A–C.
264. See discussion supra Part V.B–C.