

# IN DEFENSE OF ORGANIZING

FEDERAL INVESTIGATIONS  
AND PROSECUTIONS  
DEFINITIONS & ORGANIZING  
BEST PRACTICES

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n a t i o n a l  
**IMMIGRATION**  
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Resource materials following the “In Defense of Organizing: A Webinar of Federal Investigations and Prosecutions” Webinar, hosted by Mijente and the National Immigration Project of the National Lawyers Guild (NIPNLG) on April 26, 2017. All materials are for general information purposes only, and should not be considered legal advice. Paromita Shah and Julie Mao, at NIPNLG, and Jacinta Gonzalez and Tania Unzueta, at Mijente, prepared these materials and the webinar.

# Introduction

This set of resources is meant to give community organizers who work with people targeted by immigration enforcement or are undocumented themselves resources to understand the threats the Trump Administration poses when it comes to immigration investigations and federal prosecutions. It is also a guide for some of the best practices that as organizers and attorneys we have come up with to minimize risks and set us up for the best fight, should the Administration target or prosecute us.

We believe this preparation and information is important now particularly under a Department of Justice headed by Jeff Sessions, a politician who is well known for his right-wing, anti-immigrant politics, as well as use of retaliation and prosecution against people who pose a political threat. The reality is that undocumented organizers, people who defend undocumented immigrants, and others who may face targeted immigration enforcement should have a plan for organizing and legal defense should the federal government prosecute them.

These recourses are intended to support organizing efforts, not to discourage them. We assume that having good organizing practices and a smart security culture is the best tool of prevention, as well as the best preparation that will put organizers who the DOJ may prosecute are in the best position to mount a legal and grassroots defense. But there are new threats to defend our families and communities from, and additional risks to organizing. We hope that this is a simple tool that can help people understand and navigate those threats and risks.



# Definition of Federal Crimes

Below are definitions for “harboring,” “transporting,” and “smuggling,” three of the most likely federal charges that could be brought against people who work with deportable individuals. Some things to keep in mind that are common to all of these crimes include:

- Criminal exposure varies by geography (federal circuit courts)
- Charges can apply to people, businesses, or organization
- These are continuing offenses, meaning there is no expiration date
- There is no meaningful distinction among aiding, abetting, conspiracy
- Some of the consequences if found guilty include jail time, fines, forfeiture of assets
- There is a limited religious exemption; sanctuary churches are not automatically covered by this exemption.

## **Harboring** (8 U.S.C. § 1324(a)(1)(A)(iii))

Anyone who “concealed, harbored or shielded from detection” the [immigrant] and knew or recklessly disregarded that the immigrant entered or remained in the U.S. in violation of law.

- *Harboring*: Congress did not define harboring. As a result, the federal courts have tried to define these terms, but there is no one definition. Some courts have held that it could be just providing aid or assistance, like shelter. But many courts are uncomfortable with such a broad definition and spend a lot of time looking at the facts of the underlying case. It is very fact specific.
- *Shielding from detection*: A person may engage in shielding if they shield someone from detection by any means from immigration agents. Using an item, like a blanket to shield someone from detection can count. False statements or false documents could count as “shielding.”
- *Concealing*: Hiding
- *Monitoring of law enforcement example*: Some courts have distinguished general law enforcement monitoring (e.g. Cop Watch) from attempts to warn targets that immigration agents are coming or alerts to avoid an area.



## **Transporting** (8 U.S.C. § 1324(a)(1)(A)(ii))

Any person who “knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in U.S. in violation of law, transports, or moves or attempts to transport or move such alien within U.S. by means of transportation or otherwise, in furtherance of such violation of law...”

- Transportation, by itself, is not enough. It has to be in furtherance of the person’s presence in the United States.
- A fact finder may consider any and all relevant evidence bearing on the “in furtherance of” element (time, place, distance, reason for trip, overall impact of trip, defendant's role in organizing and/or carrying out the trip). For example, they may check whether there was compensation for the transportation; whether the individuals were friends, co-workers, or cargo; whether the transportation occurred near the border; whether they were seeking to evade detection by immigration agents.
- They can look at any type of transportation, cars, trucks, cycles, or any type of carrier.

## **Smuggling** (8 USC §1324(a)(2))

“[T]he person knowingly brought an alien to the United States.... knew or was in reckless disregard of the fact that the alien had not received prior official authorization to come to or enter the United States.”

- More narrow than harboring and harder to prove
- Not as common



# Organizing as Defense

The U.S. government has a history of surveilling, prosecuting and harassing activists, organizers, community leaders and dissenters. The Trump Administration not only threatens organizing wins that have been accomplished in many areas, but also threatens to normalize restrictions on freedom of expression, deterioration of our constitutional protections in criminal proceedings and expansion of mass surveillance. Trump's appointment of Jeff Sessions as Attorney General also presents a concrete threat to organizers and groups that will be face of the resistance. Technology gives the U.S. new weapons against organizers and communities.

We still believe that having good organizing practices and a smart security culture is the best tool of prevention, as well as the best way to set yourself up for a strong legal and grassroots defense.

In order to continue to organize in an era of increased threats, we need to create stronger movement infrastructure that helps us defend our teams from attack with a pro-organizing message. Many groups across the country such as MagNet and May First have taken the lead on offering tools and tips to organizers and journalists on how to protect themselves from electronic surveillance. The best tools to protect our digital security, like encryption, are free; all we have to do is use them regularly, like personal hygiene.

However we are never fully safe from surveillance. So what do we do if we are the target of criminal investigation? How do we communicate with each other in times of crisis when we know the government is surveilling us? To be ready to respond quickly and efficiently it is important to have conversations before these things happen and create clear protocols so that we have defense plans in times of need. In times of high pressure and vulnerability, our weakness is being sloppy with information or hesitant in our response.





## Assessing the Threats, Vulnerabilities

As a team, it is important to conduct a risk assessment to evaluate possible threats to your organizing efforts. Some questions to consider are:

**Threat:** Who are your enemies and what do they have the power to do? What threat are you protecting yourself from? Some possible threats include:

- Criminal prosecution for harboring, smuggling, or aiding/conspiracy therein, conspiracy, “terroristic threats,” etc. for work happening already;
- Subpoenas for information or testimony in criminal investigation;
- Request for interview by federal law enforcement (e.g. ICE, HSI or FBI);
- Challenging non-profit tax status and financial audits by IRS;
- Entrapment and infiltration (e.g. cultivation of confidential informants on wiretapped conversations and meetings, likely scenario because they do it already);
- Hate crimes and attacks from non-state actors;
- Personal vulnerabilities.

**Adversary:** Who is in a position to impact our ability to organize? We are very clear on the national threat that someone like Jeff Sessions poses for everyone, but local and state prosecutors and politicians might also be more likely to go rogue knowing that there will be little constitutional oversight. Do research on who they are.

**Asset:** What are we protecting? In addition to protecting our organizations and team members we are also protecting the legal and biographical information of our members, strategic surprise during organizing campaigns, financial information, etc.

**Risk:** What is the likelihood? At such and early part of the administration it is hard for us to evaluate the likelihood of these types of prosecutions, but given Jeff Session’s history we must keep a close eye on his offices’ actions.



## Elements of a Safe Plan

It is important to have a plan ahead of time discussed with every member and staff of the organization, as well as any trusted volunteers deeply involved in the organization. Here are some basic elements of a plan:

### 1. Safe communication and roles

- a. Establish concentric circles of information and who is part of them: public, internal, and secure;
- b. Encrypted communication: Encrypted text and call apps like Signal protect the privacy of your information and communications. Make sure that you set your settings to “Erase” so that if your phone is taken, sensitive information is not on it. Verify the privacy settings of any other communication apps that you use, programs like Zoom record your conversations and the United States could obtain them with a subpoena to use in a criminal prosecution.
- c. Roles: determine who are decision makers that will be in the secure circle of information and who will be the emergency family liaisons. Decide who in the organization is authorized to sign subpoenas as the organization (Note: Don’t sign any subpoenas without talking to an attorney!).

### 2. Responding to criminal investigations and law enforcement requests for information.

We frequently train our members and organizers on how to interact with the police during actions, protests, or in the streets, but we must also consider how to respond if we are subject to a request for info, subpoena or search warrant.

When interacting with law enforcement officer, either police or prosecutors it is important to use common sense and not try to aggravate a situation. Every person in the United States has the constitutional right to remain silent and the right to have attorney present during questioning. Many times, officials respond with threats and intimidate folks that do not openly cooperate with their investigations. It is helpful to go through scenarios and do role plays with members of a team in case folks are interrogated or a search warrant is executed at your office.





3. **Emergency Contact.** When someone is arrested or under investigation, it can pose a tremendous strain on that person's loved ones. It is helpful to have conversations with close family and friends and determine who from the organizing group will be in touch. It is extremely important that friends and family are told about the importance of preserving confidentiality and not having sensitive conversations or sharing information without encryption.
4. **Protecting your legal and confidential documents and your members' privacy.** Documents and files containing legal information and advice may be protected by privilege. For this reason, it is important to label all of your documents; placing stickers that clearly label files and documents as legal and confidential can be helpful. In order to preserve privilege, develop a protocol that restricts access to the files. For example, make sure that after printing out call sheets that you shred them and don't allow volunteers to be take them out of the office.
5. **Securing legal defense.** Before the need is there, it is important to find legal counsel that agrees to respond quickly, can assess your needs and provide mitigation advise, and understands organizing. Get yourself a good movement lawyer! Your legal defense team should have the skills to match up to the level of threat you and your group faces. For example, it is very likely that the local criminal defense attorney that usually helps you with direct actions might not have experience in Federal Court. National organizations such as the National Lawyers Guild can help identify attorneys that can be allies. We recommend having a defense attorney that can be immediately available to handle requests for interview or evidence from federal law enforcement or court-compelled warrants or subpoenas at a home or office, etc.



## Suggested Protocols in Case of Emergency

1. In the case that that the government arrests someone serves a subpoena, or executes a search warrant, an encrypted text message should be sent to the decision-making circle. The government could use unencrypted calls and emails against you in your legal case;
2. Contact with emergency liaison if appropriate;
3. Contact legal representation to immediately go to the location where the attorney is needed;
4. Remember that all jail calls are recorded and can be used against you. In some instances, lawyers have reported their attorney-client conversations being recorded;
5. To evaluate the severity of the risk and determine a plan of action, decision makers should have an agreed upon location that is technology free. Leave computers and phones in a separate room to ensure that you are not being recorded;
6. Inform other team members; and
7. Decide when to go public.



# Other Useful Information

## How to know if you are under investigation

Usually there is a voluntary request for interview or an unannounced visit and interrogation by law enforcement at home of community member. Other ways include financial audits by IRS (for organizations), search warrants, subpoena for evidence or testimony or a target letter.

## What are some things to do, and not do, if federal agents interrogate me?

- Do assert your right to remain silent when questioned;
- Do ask for your lawyer;
- Do ask if you are free to leave or ask them to leave;
- Do ask for the name and identification of the federal agent(s);
- Do NOT answer any of their questions without your lawyer
- Do NOT lie or make up facts (you should not be talking in the first place!);
- Do NOT destroy evidence or admit to the destruction of evidence;
- Do NOT consent to their entry into your home or office.

## What agencies may do the investigation?

- Immigration and Customs Enforcement;
- Homeland Security Investigations;
- Customs and Border Patrol (CBP);
- U.S. Marshalls. Separate from DHS; involved in all federal investigations;
- Federal Bureau of Investigation: federal police for all federal crimes;
- U.S. Attorney: prosecutes the federal crimes



### **About Mijente**

Mijente is a national political home for Latinx and Chicanx grassroots organizing that comes out of the Not One More Deportation Campaign. - [www.mijente.net](http://www.mijente.net)

### **About the National Immigration Project of the National Lawyers Guild**

The National Immigration Project of the National Lawyers Guild (NIPNLG) is a national non-profit organization that provides technical assistance and support to community-based immigrant organizations, legal practitioners, and all advocates working to advance the rights of non-citizens. - [www.nipnlg.org](http://www.nipnlg.org)

