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Criminalizing Friendship: Immigration Foes Overreach

Do you know anyone that is in the country illegally? If you do, you had better watch your step. Millions of Americans may have violated federal immigration law and are probably unaware of it. That's because federal prosecutors are taking an expansive reading of a law against "concealing or shielding illegal immigrants."

There is a federal statute that says, "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, [and] attempts to conceal, harbor, or shield from detection, such alien in any place" is in violation of federal criminal law.

What does "shield from detection" mean? According to federal prosecutors, it means "to protect from or to ward off from discovery." The implications of that interpretation are enormous.

Last year, in a criminal prosecution, the trial judge instructed the jury that "shielding from detection" meant "the use of any means to prevent the detection of illegal aliens in the United States by the Government." In the past, the federal laws were used most frequently against smugglers who help individuals sneak into country, but the laws can also apply to persons who help aliens remain in the country long after a border crossing.

Some courts have interpreted the federal statute narrowly--as applying only to persons who engage in conduct that "substantially" conceals, harbors, or shields aliens from detection--like those who supply false papers or those who operate "safe houses." Other courts, however, have ruled that even mild actions violate the law (pdf). Advising an alien to go to and from work without talking to strangers, to abstain from joining sports and other community activities, and to avoid certain parts of town, can be considered illegal acts, which means fines and jail time for the "friendly tip."

It has been estimated that there are 11 million illegal immigrants in the U.S. If so, there must be millions of other people (citizens and legal immigrants) around them, such as neighbors, friends, and co-workers, who may have unknowingly violated federal criminal law by simply by wishing them well and urging them to remain "low key" so as to avoid detection.

No one should expect a wide-ranging "crackdown" by federal prosecutors. We all saw how the feds backed away from taking any action against the cute girl who revealed the vulnerability of her family to Michelle Obama. The enforcement of this law will be infrequent and arbitrary. States like Arizona, however, could raise the stakes by replicating the federal statute (How could President Obama and Attorney General object to that?) Still, as bad as that might be, we have a much bigger problem. Even if this particular immigration law does not affect your life, chances are there is another criminal law that does. Legal experts are coming to the frightening realization that most of us are on the wrong side of the law! That should disturb people from all across the political spectrum.

Tim Lynch directs the Project on Criminal Justice at the Cato Institute and is the editor of *In the Name of Justice*.