

How Helping an Immigrant Could Become a Crime Under HR 4437

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BACKGROUND

HR 4437 is anti-immigrant legislation — masquerading as an “immigration enforcement” bill — that passed the U.S. House of Representatives on Dec. 16, 2005. No action on this bill is expected in the Senate, but its provisions will likely be addressed in House-Senate negotiations if and when the Senate passes its own version of immigration reform.

How would HR 4437 make it a crime to provide assistance to certain immigrants?

- Section 202 of HR 4437 would expand the definition of “smuggling” so broadly that much ordinary, day-to-day contact with undocumented people would become a crime punishable by up to 5 years in prison for the first offense.
- Specifically, under this provision, for the first time a person who knowingly “assists” an undocumented immigrant to “reside or remain” in the U.S. would be guilty of the crime of “smuggling,” even if the person does not encourage or induce the immigrant to come to or reside in the U.S. unlawfully.

How would section 202 change current law?

- Under current law (8 USC § 1324), it is a crime to bring undocumented persons to the U.S., transport them into the U.S., or harbor and conceal them.
- Section 202 of HR 4437 would convert any of a wide array of sometimes ordinary, sometimes humanitarian, sometimes casual activities into a crime, if the accused knows or acts in reckless disregard of the fact that the immigrant does not have authority to be in the U.S. Such criminalized activities would include:
 - Assisting, encouraging, directing, or inducing the unauthorized person to come to or enter the U.S.;
 - Assisting, encouraging, directing, or inducing the unauthorized person to reside in or remain in the U.S.;

- Transporting or moving the unauthorized person in the U.S.; or
- Harboring, concealing, or shielding from detection the unauthorized person in the U.S.
- Section 202 also would expand the current civil forfeiture provisions to allow the seizure and forfeiture of any personal or real property — not just vehicles — used to commit “or facilitate” the commission of the smuggling or harboring offense. As under current law, civil forfeiture could be applied even if there were insufficient evidence to convict the property owner of any crime.

Who could be considered a *criminal* and subject to civil forfeiture under this section?

- Any social service organization, immigrant refugee agency, or church or any other group that helps or counsels undocumented immigrants.
- Employers, coworkers, and friends of an undocumented person.
- A U.S. citizen living with an undocumented parent, spouse, or child.

Would such a draconian provision really be enforced?

- There aren’t likely to be mass arrests or roundups of church groups and the U.S. citizen family members of immigrants, but
 - The innocent actions of these groups and family members would be a crime, regardless of whether it were prosecuted;
 - There would be no guarantee that any particular individual, company, or group would avoid prosecution; and
 - The threat of such prosecution would leave groups, companies, and individuals vulnerable to abuse by prosecutors who could use this power for inappropriate purposes.



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