

Immigration Practice Tips

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Senate Considers Legislation Severely Impacting the Rights of Undocumented Immigrants and Immigrants with Criminal Dispositions

As noted in the last issue of *REPORT*, the US House of Representatives has passed HR 4437, a bill laden with harsh enforcement provisions that restrict the rights of immigrants and expand the criminal dispositions that would make immigrants deportable, unable to obtain lawful permanent residency, or ineligible for citizenship. (*REPORT*, Nov.–Dec. 2005, pp. 7–8).

As the *REPORT* goes to press, the US Senate is poised to vote on one or more immigration bills containing many of the provisions of HR 4437. One bill expected to be approved by the Senate Judiciary Committee and to reach the floor of the Senate during the last week of March is the “Comprehensive Immigration Reform Act of 2006,” proposed by Judiciary Committee Chairman Arlen Specter (the “Chairman’s Mark”). Currently, the Chairman’s Mark includes the following provisions that are particularly relevant for immigrants in the criminal justice system:

- **Would impose harsh criminal penalties on immigrants living in the US without proper documentation or in violation of immigration laws.**

Those affected would include undocumented immigrants and lawfully-present immigrants who may be in technical violation of immigration laws (for example, because they did not file a change of address form with the federal government within 10 days of moving). The bill also increases the maximum penalties for this new federal offense and for the offenses of illegal entry and reentry into the US. Terms would be: 1) 10 years if the offense occurred after 3 misdemeanor or one felony conviction(s); 2) 15 years if the offense occurred after one felony conviction for which the person received a prison sentence of 30 months; or 3) 20 years if the offense occurred after a conviction for a felony for which the person received a prison sentence of 60 months.

- **Would greatly expand the scope of federal document-related offenses for which an immigrant may be convicted, denied lawful permanent residency (even without a conviction), or deported.**
- **Would further expand the already-discredited “aggravated felony” category, which leads to**

* IDP provides training and legal support to defense attorneys, other immigrant advocates, and immigrants themselves in defending against the immigration consequences of criminal dispositions. For backup assistance on individual cases, call the IDP at (718)858-9658 ext. 201. We return messages. IDP is located at 25 Chapel Street, Box 703, Brooklyn, NY 11201.

mandatory detention and deportation, to include the following offenses:

- Minor accessory roles in the criminal conduct of others, including soliciting and aiding and abetting;
- Misdemeanor drunk driving offenses;
- New federal offense of being present in the US in technical violation of immigration laws;
- New federal offense for assisting an undocumented immigrant to reside in the US; and
- Expanded federal document-related offenses.

In addition, the bill allows an immigration judge to look behind the record of conviction to determine the age of the victim, when considering whether an immigrant has been convicted of a “sexual abuse of a minor” aggravated felony.

- **Would bar US citizens and lawful permanent residents from petitioning to bring their relatives to the US if that US citizen or lawful permanent resident has been convicted of murder, rape, or sexual abuse of a minor**
- **Would severely expand the scope of immigration detention, including:**

- Giving the government the authority to indefinitely detain immigrants who have been ordered removed, but whose removal it cannot execute;
- Giving local law enforcement the authority to issue detainers to hold an immigrant after completion of a prison sentence and the authority to hold certain immigrants for 14 days after the completion of a prison sentence;
- Requiring that the Department of Homeland Security (DHS) detain certain immigrants who fail to file a change of address form with DHS and creating a presumption of flight risk for undocumented immigrants and lawfully-present immigrants who failed to file such form on more than one occasion.

Criminal defense attorneys who are representing immigrant defendants should be aware that any bill that is passed by the Senate and finally adopted may include some or all of these provisions (among others), and **may contain language to apply these provisions retroactively to convictions predating adoption.** Due to these and other potential changes in immigration law, defense practitioners and others may wish to advise their clients of the pending legislation’s effects should it pass. In addition, practitioners may wish to counsel defendants to make statements on the record during any plea allocutions that the plea is based on the defendant’s current understanding of immigration law. This may provide a basis for the defendant to later move to withdraw or vacate the plea should new immigration legislation change the consequences of that plea.

For more information on pending legislation, contact the Immigrant Defense Project at (718) 858-9658 ext. 201. ☪