

# Immigration Practice Tips

## Defense-Relevant Immigration News

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### House of Representatives passes bill that would severely impact on rights of immigrants who are undocumented or have criminal records

On December 16, by a vote of 239 to 182, the US House of Representatives passed HR 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act. If enacted, it would make millions of undocumented immigrants subject to criminal prosecution for a new federal crime of unlawful presence in the US. In addition, instead of enacting long-needed reforms of the nation's deportation laws to give immigrants facing deportation based on past criminal convictions a chance to show why their deportation would be unfair and contrary to the nation's interests, HR 4437 increases the unfairness and harshness of the immigration laws relating to such noncitizens. Among the changes most relevant to immigrants and the criminal justice system are the following:

- **HR 4437 would impose extremely harsh criminal penalties on immigrants living and working in the US without lawful admission documentation.**

*Mere presence* in the US without a valid visa will become a crime subject to stiff federal criminal penalties despite the fact that workers from abroad are needed and solicited by US employers. The bill imposes particularly draconian penalties on immigrants found in the US without proper documentation if they have ever been convicted of certain crimes, including a mandatory *minimum* of ten years in federal prison for someone convicted in the past of the ever-expanding "aggravated felony" category that may include crimes that the criminal justice system found so minor that no jail time was imposed [§§ 203 and 204]

- **HR 4437 would further expand mandatory deportation provisions in current law to include additional categories of minor offenses for which no extenuating circumstances may be considered.**

The bill does this by expanding the misnamed "aggravated felony" definition to include:

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\* 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.

- Mere presence in the US without proper documentation**, a category that could include millions of immigrants currently living and doing hard work needed by US employers [§§ 201 & 203]
- Assisting an undocumented immigrant to reside in the US**, which could be interpreted broadly to include helping another immigrant in any way to get a job or a place to live [§§ 201 & 202]
- Misdemeanor drunk driving offenses**, including such offenses committed before enactment of this law [§ 606]
- Accidental injury offenses** where the immigrant had no intention to cause any injury to another, including such offenses committed before enactment of this law [§ 613]
- Minor accessory roles** in the criminal conduct of others, including such conduct committed before enactment of this law [§ 201]

- **HR 4437 would bar grant of lawful resident status to millions of immigrants currently working in the US, including many immigrants with US citizen spouses or children or fleeing persecution abroad.**

The bill does this by:

- Barring lawful admission, without a waiver, of immigrants who at any time in the past have been convicted of an offense falling within the grossly misnamed "aggravated felony" definition [§ 604(b) & (c)], including mere presence in the US without proper documentation
- Barring lawful admission of immigrants who at any time in the past have been found to have possessed or used a false social security card or other document to be able to work or pay taxes in the US [§ 604(a)]
- Barring a waiver of inadmissibility for refugees and asylees whom the US government has already determined have established legitimate claims of fleeing persecution if at any time in the past they have been convicted of a so-called "aggravated felony" offense [§ 605]

- **HR 4437 would bar a grant of citizenship to many immigrants who are already lawful residents based on long-ago conduct.**

The bill would do this by prohibiting a good moral character finding for any immigrant who *at any time in the past* has been convicted of any offense falling within the grossly misnamed "aggravated felony" definition even if the individual can demonstrate complete rehabilitation and excellent present moral character. [§ 612]

- **HR 4437 would deem an immigrant convicted of a crime even in some situations where a state or local**

**court has vacated or reversed the conviction.**

The bill would amend the immigration laws to allow the federal government to ignore certain vacatur or reversals of a criminal conviction by a state or local court, including vacatur or reversals based on unlawful failure to advise the immigrant of the immigration consequences of a guilty plea. [§ 613]

Due to these and other potential changes in deportation laws relating to accusations of criminal conduct, defense practitioners advising non-citizens currently accused of crimes and considering guilty pleas may wish to counsel that the noncitizen or noncitizen's lawyer consider making a statement on the record during any plea allocution indicating that the plea is based on the defendant's understanding of current immigration law. This may give the defendant a basis for later moving to withdraw or vacate the plea should HR 4437's crime-related provisions become law in 2006.

In the New York delegation, those voting in favor of H.R. 4437 were: King (R-03), Fossella (R-13), Kelly (R-19), Sweeney (R-20), McHugh (R-23), Boehlert (R-24), Walsh (R-25), Reynolds (R-26), Higgins (D-27), Kuhl (R-29). Those voting against the bill were Bishop (D-01), Israel (D-02), Ackerman (D-05), Meeks (D-06), Crowley (D-07), Nadler (D-08), Weiner (D-09), Towns (D-10), Owens (D-11), Velazquez (D-12), Maloney (D-14), Rangel (D-15), Serrano (D-16), Engel (D-17), Lowey (D-18), McNulty (D-21), Hinchey (D-22), Slaughter (D-28). Not voting was McCarthy (D-04). H.R. 4437 now goes to the Senate, which is expected to take up consideration of similar measures in early 2006. ¶