

How HR 4437 Would Criminalize Immigrants

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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.

■ What does “‘criminalization’ of immigrants” mean?

It means the U.S. would treat as lawbreakers millions of immigrant men, women, and children who live in our communities, go to our schools, and work alongside us. This would tax our already burdened criminal justice system and misuse taxpayer monies.

■ How would HR 4437 do this?

Section 203 of HR 4437 would make it a crime for immigrants to be in the U.S. in violation of immigration laws or regulations. Immigrants convicted of this crime could be punished by imprisonment for a year and a day and/or a fine. Under current law, unlawful presence is a civil, not a criminal, violation of immigration law.

■ What violations of the immigration laws or regulations would be covered?

Immigrants who committed even *minor* violations of immigration laws could be criminalized. These people could become felons:

- Babies whose parents brought them to the U.S. without a visa.
- Honor roll college students who are not taking the number of courses required by their student visas.
- A foreign business executive who does not provide a written change-of-address notification to the Dept. of Homeland Security within 10 days.
- A hospitalized tourist whose visa has expired.

■ Could such a criminal violation be “cured”?

No. Long after the problem is resolved and the immigrant has been granted lawful status — or even U.S. citizenship — he or she would remain liable for prosecution for having been in the U.S. in violation of immigration laws.

■ Would someone who is found guilty of this felony be eligible for lawful immigration status in the future?

No. Section 201 of HR 4437 would make conviction for presence in violation of immigration laws an *aggravated felony*. This carries devastating consequences: automatic deportation, as well as *ineligibility* for asylum, cancellation of removal, voluntary departure, or practically any lawful status in the future.

■ Is this a back-door way to allow state and local police to enforce federal immigration law?

Yes. State and local police with no immigration law training could claim new authority as enforcers of criminal law to decide when someone who “looks foreign” or “sounds foreign” has violated federal criminal immigration law.

■ Couldn’t the federal government just use its prosecutorial discretion to not prosecute immigrants as felons?

Yes, but do we really want Congress to enact yet another immigration law that is so overreaching and senseless that the best argument its supporters can make for it is that it would not be enforced?

■ Would this do anything to solve our immigration problems?

No. This provision would criminalize whole communities of people. Most Americans recognize the real solution lies in the opposite direction — providing immigrants with a reasonable mechanism to work their way out of the shadows and into the American dream.



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