

Fact Sheet - Press Response Document

On the criminalization of the church, its ministers and its members:

House Bill: Section 202 of the House bill provides for criminal penalties for anyone who “assists, encourages, directs or induces a person to reside in or remain in the United States, or to attempt to reside in or remain in the United States; transports or moves a person in the United States knowing or in reckless disregard of the fact that such a person is an alien who lacks lawful authority to enter or be in the United States, where the transportation or movement will aid or further in any manner the person’s illegal entry into or illegal presence in the United States; or harbors, conceals or shields from detection a person in the United States knowing or in reckless disregard of the fact that such a person is an alien who lacks lawful authority to be in the United States”

Senate Mark: Section 205 of the Specter Mark provides for criminal penalties for anyone who “facilitates, encourages, directs, or induces a person to come to or enter the United States, or to cross the border to the United States, knowing or in reckless disregard of the fact that such a person is an alien who lacks lawful authority to come to, enter, or cross the border to the United States; encourages or induces a person to reside or remain in the United States, knowing or in reckless disregard of the fact that such a person is an alien who lacks lawful authority to reside in or remain in the United States; transports or moves a person in the United States, knowing or in reckless disregard of the fact that such a person is an alien who lacks lawful authority to enter or be in the United States, if the transportation or movement will further the alien’s illegal entry into or illegal presence in the United States; or harbors, conceals, or shields from detection a person in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to be in the United States”

Frist Bill: Section 205 of the Frist Bill lifts the language from Section 205 of the Specter Mark.

Impact of This Provision:

1. Could criminalize churches, social service organizations and Good Samaritans simply for providing emergency humanitarian assistance to an undocumented person. These provisions would apply even if the person providing assistance has no intention of seeking financial gain from their actions. Effectively, the law would treat those who provide humanitarian aid the same way as it treats smugglers and smuggling organizations.

Our Lutheran tradition calls on us to welcome the stranger in our midst and to provide care to the most vulnerable among us. Furthermore, our faith teaches us that policy must be carried out with the utmost attention to the humanitarian needs of those who seek protection and opportunity in this country. Provisions that would criminalize the

church for providing humanitarian assistance interfere with our core teachings and values, and would prevent us from carrying out ministry and living the Word of God.

On provisions which criminalize the undocumented:

House Bill: Section 201 of the House bill would expand the definition of an aggravated felony in the Immigration and Nationality Act to include all illegal entry and reentry offenses where there is a sentence of one year or more. Combined with Section 203 of the House bill, this would make unlawful presence an aggravated felony and would also bar anyone convicted of unlawful presence from seeking asylum.

Senate Mark: Section 203 of the Specter mark would expand the definition and negative consequences of an aggravated felony and make this expanded definition retroactive. Coupled with Section 206, which makes unlawful presence an aggravated felony, this provision would significantly extend the number of people charged with criminal offenses and ordered deported.

Amendments and Floor Action: Senator Feinstein introduced an amendment to the Specter bill that would provide protections for asylum seekers who enter with false documents, and this amendment did pass the Judiciary Committee. We anticipate that it will be included in the final bill reported out of Committee. It is difficult to predict whether any floor action will impact this amendment.

Frist Bill: Sections 203 and 206 of the Frist bill lift the language from the corresponding sections of the Specter mark. However it does not include Senator Feinstein's amendment on asylum seekers.

Impact of This Provision:

1. An aggravated felony can be defined as an act that is neither aggravated nor felonious. Unlawful presence is already a civil violation but these provisions would make it a criminal violation and increase the penalties. Under existing law, a person convicted of an aggravated felony is subject to mandatory detention and mandatory deportation. However, currently unlawful presence and entry with false documents is not an aggravated felony. There is no protection for asylum seekers charged with an aggravated felony. Consequently under the proposed provisions individuals who are forced to flee persecution and therefore enter the United States without inspection or use false documents would have no right to seek asylum.
2. These provisions could criminalize the roughly 11 million undocumented people in the United States, costing taxpayer dollars, flooding the courts, and diverting resources from the fight against terrorism.

We acknowledge that those who enter this country without legal papers or who fall out of legal status are breaking our laws. Furthermore, we recognize the fundamental

right of a nation to enforce its borders and the rule of law. Yet we believe that laws must be proportional to the nature of the offense. Under provisions of current legislation individuals could be charged with aggravated felonies for actions that, by legal standards, are neither aggravated nor felonious. Deportation, bars to reentry, separation of families and the removal of livelihoods are overly harsh punishments for people who came to this country simply because they wanted to be with family, needed to find work to provide for their loved ones, or were fleeing persecution. Our faith tradition guides us to advocate for laws that are just and proportional.

On the need for a path to permanence:

House Bill: does not include any temporary worker provision or a solution to the problem of the undocumented.

Senate Mark: Title IV of the Specter mark lays out a temporary worker program that would enable people to come to the United States temporarily to perform labor or services. However, this title is essentially a work and return strategy. There is no path to permanent status other than currently existing mechanisms that allow employers to sponsor employees, a system in which there are not enough visas to meet demand. Title VI of the Specter bill includes provisions that would allow the undocumented to enter into a temporary worker status providing they meet certain requirements. However, it does not provide a means for them to obtain permanent status, other than the currently existing and insufficient program in which employers can sponsor employees. Effectively, these provisions would create a permanent subclass of temporary workers.

Amendments and Floor Action: Judiciary Committee staffers are working to reach a compromise that would insert a permanency program into Specter's mark. However, negotiations are currently stalled and it is difficult to assess the prospects for success.

Frist Bill: Does not include provisions for either a temporary worker program or a solution for the undocumented.

President Bush: Has recommended some form of temporary worker program

Impact of This Provision:

1. Would not end the marginalization of the undocumented because it fails to create a system that would encourage those without legal status to come forward, regularize their status and become fully integrated into American society.
2. The only workable solution for the problem of immigration and a key component in securing our borders is to put the undocumented on a path to earned permanence.

Earned permanence is not an amnesty and neither the ELCA nor LIRS support amnesty. In contrast, amnesty means a free pass, and automatic pardon and a trip to the front of the line. People who wish to regularize their status through an earned permanence program are not guaranteed an opportunity to remain in the US permanently. Instead, those who have been contributing to our economy and society will be required to come forward, pay a fine, application fees and back taxes, undergo a background check, and demonstrate that they are learning English. In addition, such individuals would be required to get in line behind those who have been waiting outside the US for a visa, and would not be able to apply for permanent status for six years, the estimated time it would take to reduce the current visa backlog.

On the importance of ensuring basic constitutional due process rights in the enforcement of our laws:

House Bill: Provisions are located throughout the bill

Senate Mark: Provisions are located throughout the mark, with a particular concentration in Title VII

Amendments and Floor Action: None of these provisions have been removed from the Specter mark in Committee. It is likely that they will make it into both the bill reported out of Committee and any final Senate bill.

Frist Bill: Provisions are located throughout the bill, with a particular concentration in Title V

Impact of This Provision:

1. Would strip our Federal Courts of their longstanding jurisdiction over immigration matters, limiting the courts' historical ability to guard against miscarriages of justice.
2. Would require the removal of asylum seekers and trafficking victims who used false documents to flee persecution and permit the executive branch to indefinitely detain individuals whose countries will not accept their return, in contravention of a recent Supreme Court decision.

As Lutherans we advocate for the protection of the fundamental human rights and dignity of all persons, while at the same time protecting the common good of society and the rule of law. Due process and judicial review are fundamental principles of US and international law. Our tradition, and America's history as a nation of laws, confers a moral as well as a legal responsibility to provide these rights to all migrants, regardless of their immigration status. In particular, we believe that all people should be guaranteed access to the courts and that America must carefully preserve our system of checks and balances.

On the importance of the “Agricultural Job Opportunities Act” for farm workers:

Agricultural Job Opportunities, Benefits and Security Act of 2005 represents a major compromise on farm worker immigration issues between farm worker advocates and agricultural employers. It amends sections of the immigration laws affecting guest workers and H-2A visa categories for temporary admission for farm labor only. Both sides have wanted these changes for sometime and have waited for the major immigration reform proposal to move.

House Bill: Has no similar provision as it is an enforcement bill only.

Senate Mark: To date has no similar provision but may add a separate guest worker compromise affecting other sectors of workers using temporary visa categories (ex. B-1 business) and undocumented persons. There is also discussion around a compromise on this provision as part of the Senate mark-up which will occur, if at all, Monday, March 27, 2006.

Floor Amendment to Senate Bill: If there is no amendment accepted in the Senate Judiciary Committee, Senator Craig (Republican, Idaho) is expected to offer it as a floor amendment.

Frist Bill: Has no similar provision.

Impact of this provision:

1. Create an “earned adjustment” program enabling some undocumented farm workers and H-2A guest workers to obtain temporary immigration status with possibility of becoming a permanent resident of the U.S.
2. The compromise would modify the H-2A temporary foreign agricultural worker program, which permits employers to hire guest workers to fill agricultural jobs that last no longer than 10 months. It would provide basic H2A requirements to protect U.S. workers from adverse effects and to protect foreign workers from exploitation.