

**Analysis of Proposed Anti-Immigrant Legislation in Louisiana:
House Bill 24 (Harboring)
House Bill 25 (Verification of Status upon Arrest)
House Bill 26 (Transporting)***

H.B. 24 Creates the Crime of Harboring an Illegal Alien

H.B. 24 would prohibit “harboring, concealing, or sheltering from detection” an illegal alien, “knowing or in reckless disregard” of the alien’s legal status. H.B. 24 defines “illegal alien” as “any person who is not a United States citizen, who is physically present in the United States without the legal right to remain in the United States.” The penalty for violations of this law would be a fine of up to \$1,000 and/or up to one year imprisonment.

H.B. 26 Creates the Crime of Unlawful Transportation of an Illegal Alien

H.B. 26 would prohibit transporting an undocumented immigrant in the state of Louisiana “in furtherance of the illegal presence of the illegal alien in the United States.” This bill’s definition of “illegal alien” mirrors that in H.B. 24. The penalty for violations of this law would be a fine of up to \$1,000 and/or up to one year imprisonment.

Analysis

Preemption: Under the United States Constitution, federal law is the supreme law of the land. States and municipalities are “pre-empted” from enacting legislation in areas where Congress has enacted comprehensive legislation or in areas that would conflict or duplicate federal legislation.¹

The Immigration and Naturalization Act (INA) is a comprehensive law that regulates immigration matters.² The INA explicitly prohibits transporting and harboring undocumented immigrants.³ The federal law provides for harsh penalties, including heavy fines, the forfeiture of property, and up to ten years in prison. While the INA does not expressly preempt state laws regarding transporting and harboring, a strong argument can be made that (through the INA) the federal government occupies the field in this area.

Due Process Issues: The bills’ definition of “illegal alien” is problematic because it makes it seem as if determining legal status is simple and straightforward. Immigration law, however, is extremely complex. Determining whether a person is lawfully present requires familiarity with the intricacies of immigration law. As illustrated by the list below, there are many types of immigrants considered lawfully present under

* The information contained in this document is for general informational purposes only. It is not intended to serve as legal advice and it does not substitute for legal counsel.

¹ For a detailed analysis of preemption, please see “State and Local Initiatives Targeting the Undocumented: Can They Withstand Legal Scrutiny?” at

<http://cliniclegal.org/StateandLocal/PreemptionAnalysisFinal.pdf>

² 8 USC § 1101 *et seq.*

³ 8 USC § 1324(a)(1)(A).

immigration law. It is important to consider whether or not a state court judge would understand that the following groups have the legal right to remain in the United States (although perhaps in some cases where an application or status is later denied or terminated, not permanently):

- Applicants for asylum;
- Individuals with a pending or approved application for Temporary Protected Status (TPS);
- Individuals with a pending application for Lawful Permanent Residency;
- Individuals who have applied for protection under the Violence Against Women Act;
- Individuals granted withholding of removal under section 241(b)(3) of the Immigration and Nationality Act or granted withholding or deferral of removal under the Convention Against Torture;
- Cuban-Haitian parolees or other individuals paroled into the United States in the public interest;
- Individuals with final orders of removal that cannot be returned to their countries of origin, who are allowed to remain in the United States under an order of supervision and with employment authorization; and
- Individuals granted voluntary departure or deferred enforced departure.

What resources would a state court judge have if faced with determining an individual's immigration status? Note that under these bills, a person who assists an undocumented immigrant—not the immigrant himself—would be before the court. As an example, under H.B. 24, the state could charge a motel owner who rented rooms to farmworkers during the harvest season. How would the county prosecutor prove that the farmworkers were undocumented? How would the motel owner prove that they were not? The federal government does not currently have a system for county attorneys or state judges to use to verify the immigration status of people not involved in the court proceeding. The due process rights of defendants would be severely compromised under this bill.

The Bills' Exception Clause

Both H.B. 24 and H.B. 26 state that these pieces of legislation are not intended to prohibit either:

1. state and local public benefits which are provided in emergency situations, or
2. "public health services provided by a private charity using private funds."

The first exception listed is mandated by federal law.⁴ Agencies are not required to verify immigration status for the following programs:

1. emergency medical care;
2. noncash emergency disaster relief;
3. immunization programs;
4. certain services (such as soup kitchens and short-term shelter) that
 - A. deliver noncash services through public or private nonprofit agencies;
 - B. provide services without regard to the individual recipient's income; and
 - C. are necessary for the protection of life and safety.⁵

These exceptions are quite narrow. Under the bill, the following activities could be considered "harboring" if provided to an undocumented person:

- Education and ESL classes;
- Nonemergency health care;
- An apartment lease;
- Legal services; and
- A ride to school or the supermarket.

These bills could prevent Catholic service organizations in Louisiana from meeting their mission. In addition, these bills could have a chilling effect on good neighbors. For example, a person might be afraid to provide food or other resources to low income neighbors who happened to be immigrants.

Confusion about the bills' provisions could also lead to the denial of essential services to undocumented immigrants. For example, under the federal law cited above, domestic violence shelters are explicitly exempt from verifying immigration status. If an undocumented wife flees her U.S. citizen husband and finds refuge at a domestic violence shelter, the husband could attempt to retaliate by informing the local police of her immigration status and her location. A local law enforcement officer would likely not understand that federal law provides the shelter with immunity from prosecution for harboring. The shelter might be subject to legal proceedings, and might decide in the future to dedicate its services only to U.S. citizens and lawful immigrants.

⁴ 8 U.S.C. § 1621.

⁵ 8 U.S.C. § 1621(b).

H.B. 25 Provides for Verification of Citizenship or Immigration Status upon Arrest

The bill requires peace officers to determine the citizenship status of every arrested person at the time of booking. If it is unclear whether the person entered the United States lawfully, the officer must attempt to determine his immigration status, using the Law Enforcement Support Center, a federal database that provides immigration status and identity information to local, state, and federal law enforcement agencies. If the officer is still unable to determine the arrestee's status, he must notify the Department of Homeland Security (DHS). Although the bill does not state that a person who admits being undocumented would be reported to DHS, one assumes that this would occur.

Analysis:

While this policy does not appear to conflict with federal law, there is a concern that peace officers—who have not been trained in immigration law—could misapply the law.

Under federal law, when a local police officer contacts DHS about an arrestee who is undocumented, DHS files a “detainer,” a writ authorizing the immigrants’ detention until DHS can take custody.⁶ After receiving DHS’s detainer request, local police can continue to hold an immigrant for 48 hours (waiting for DHS to take custody).⁷ After 48 hours, local police no longer have authority to hold the immigrant (unless he is charged with a state crime). A local police officer who is untrained in immigration law might continue to hold the immigrant beyond the 48 hour period.

For example, an undocumented immigrant might be arrested for a minor crime and receive a very brief custodial sentence. At the end of his criminal detention period, DHS might file a detainer, after being contacted by local law enforcement. After filing the detainer, DHS might not find time to come to the jail to take custody during the following 48 hours. A local police officer might not realize that, after the 48 hours had passed, he no longer had authority to detain the immigrant. The undocumented immigrant would remain in custody until either DHS arrived or he was able to file a writ of habeas corpus.

Another issue with this bill is the concern that some state and local law enforcement agencies have expressed regarding how enforcing civil immigration law interferes with their ability to build trust in immigrant communities. The Chiefs of Police of a number of major cities with large immigrant populations listed a number of concerns in a policy brief.⁸ Among other areas, the police chiefs were concerned that crime victims and witnesses might be afraid to speak up, making it more difficult for local police to carry out their core function of enforcing local laws. For example, victims of domestic violence might be afraid to call the police on their abuser if they knew that an arrest would lead to his deportation.

⁶ 8 C.F.R. §§236.1, 287.7, and 1236.1.

⁷ 8 C.F.R. §287.7(d).

⁸ See Major Cities’ Chiefs’ Immigration Committee Recommendation for Enforcement of Immigration Laws by Local Police, at www.majorcitieschiefs.org/pdfpublic/mcc_position_statement_revised_cef.pdf