

The “REAL ID Act” is a Really Bad Idea

General Talking Points

- **The “REAL ID Act” is a wish list of far reaching anti-immigrant measures, not a national security bill.** In the past, anti-immigrant groups have been unable to sell these ill-conceived proposals on their own merits, and now they are trying to scare politicians and confuse the public by cloaking them in the guise of national security.

Note that the measures in “REAL ID” are *not recommended by the 9/11 Commission or any other national security professionals or experts* who have objectively studied the nation’s vulnerability. Their recommendations were included in the Intelligence Reform Act enacted in December. Instead, those leading the charge all have a long-standing anti-immigrant agenda.

- **The “REAL ID Act” would make us less safe.** “REAL ID” would have done nothing to prevent the 9/11 terrorist attacks, and its adoption now would actually leave us more vulnerable to terrorists.
 - **It would force immigrant communities further underground** and accelerate the growing black market in documents, thereby making it easier for terrorists and other criminals to operate.
 - **It would undermine America’s moral authority** by turning away legitimate asylum seekers fleeing tyranny and making it harder to overturn illegal decisions by immigration authorities.
 - **It would waste valuable resources** on a few miles of border fences when we all know that all of the fences in the world won’t protect us if we don’t get serious about reforming our broken immigration system.
- **These complex issues need to be debated more fully.** Such drastic changes should not be passed without hearings or simply attached to other critical legislation. The “REAL ID Act” moved very quickly through the House of Representatives without the benefit of adequate debate, study, and hearings in the relevant committees and without adequate debate on the House floor. Changes were made to the language hours before the vote on the floor and members did not have a chance to read the final bill before passage.
- **We need real reform.** We should address the underlying problem -- that our immigration laws are seriously outdated. Our immigration system desperately needs a complete make over to meet the needs of the 21st century. The “REAL ID Act” is a step backward because it is divisive, not constructive.

Section 101 Restrictions on Asylum

- **Terrorists are already ineligible for asylum.** A terrorist applying for asylum would be quickly identified due to the kind of information required by the asylum application and the identification of fingerprints, which are taken immediately. In the words of the *Wall Street Journal*, the “REAL ID Act’s” asylum changes are “a solution in search of a problem.” Terrorists do not apply for asylum because asylum seekers must provide more documentation of their prior life than any other category of immigrant.
- **Asylum is a key tool in the battle against tyranny and terrorism.** Those who seek refuge in America from persecution are our allies in the fight for democracy and against despotism. By sheltering these courageous individuals, we send a signal of support to those who remain under the kinds of regimes that foster terrorism. In the same way, each time we turn away a legitimate asylum seeker we strengthen their persecutors.
- **Proponents’ alarming anecdotes of terrorist asylum seekers are untrue and misleading.** Those who favor the “REAL ID Act’s” asylum changes often point to one or more examples of terrorists they claim abused our asylum laws. The examples that supporters of the “REAL ID Act” cite are obsolete because these individuals applied for asylum before the asylum system was reformed in 1996. Furthermore, the reforms envisioned by this section would not have changed the outcome of those cases because none of these individuals would have been granted asylum. The asylum system has already undergone tremendous reform that eliminates false incentives to apply for asylum, such as being allowed to claim asylum at an airport and be released into the general public. The U.S. government is now required to detain any person who asks for asylum at an airport. In fact, under current law an immigration judge has no authority to release asylum seekers who are detained by DHS; DHS has the sole discretionary authority to determine an asylum seeker’s eligibility for parole. As a result, many legitimate asylum seekers now spend months or even years in detention while their claims are investigated.
- **Loopholes in the asylum system were corrected more than a decade ago.** There was some abuse of the asylum system in the ‘80s and ‘90s; immigrants could often get work authorization for years just by applying for asylum because of an ever-increasing backlog of asylum applications being filed. But that is no longer true. Asylum seekers are not allowed to work while their claims are pending, and applications must be adjudicated in timely fashion. As a result, applications have fallen from 140,000 to an average of only 30,000 per year.

Section 102

Suspension of Federal Laws in Order to Complete Additional Barriers Along U.S. Borders

- **Authority to waive any law with no judicial check.** Section 102 includes an unprecedented provision empowering the Secretary of Homeland Security, at his absolute discretion and without judicial review, to waive any and all laws he deems necessary to expedite construction of barriers and roads in the vicinity of any part of the U.S. border. This appears to be an attempt to open a Pandora's box by invoking a never-tested section of the U.S. Constitution which allows Congress to limit Supreme Court appellate jurisdiction. Laws one could imagine being waived include those against toxic dumping; environmental impact study requirements; minimum wage; occupational or public safety; federal, state, or local taxes; whistleblower protections; and any other provisions considered impediments by the Secretary.
- **Fencing and other infrastructure projects do not decrease migration.** Since the late 1980s spending on fences and border security has expanded exponentially with poor results. Rather than deter immigration, these measures have just caused border crossers to shift to more dangerous areas and pay larger sums to criminal smugglers. Despite the implementation of border security infrastructure projects in California, Arizona, and Texas the Border Patrol estimated that the number of undocumented migrants entering the U.S. rose from 250,000 to 375,000 per year from 1998 to 2002.
- **Fencing and other infrastructure projects are Band-Aids when surgery is needed.** Fences and militarization of the border are a sign of weakness, not of strength. They are a symptom of our broken immigration system, rather than a solution. We need comprehensive immigration reforms.

Sections 103/104

Expansion of Inadmissibility/Removal Provisions

- **Here we go again.** Every year, it seems, Congress passes another law to tighten "loopholes" that allegedly are preventing us from deporting terrorists. As a result, the definition of "terrorism" keeps expanding to include more innocent activities undertaken by decent individuals who detest terrorism. REAL ID would completely eliminate any requirement of a link between a person's conduct or associations and any actual terrorist activity. It would even make an immigrant deportable who is innocent of any wrongdoing based on the actions of his or her spouse or parents.

Section 105

Restrictions on Immigrants' Access to Federal Courts

- **These provisions undermine basic American values.** The “REAL ID Act” would explicitly suspend the "Great Writ" of Habeas Corpus for certain immigrants for the first time since the Civil War. It would also allow asylum seekers, abused spouses and children, long-term legal permanent residents (LPRs), and other immigrants to be deported *before* the completion of their federal court cases. Even if they later win their case in federal court, they may be unable to return to the U.S.

Section 106, 107, and 108

Broadened Powers for Bail Bondsmen and Bounty Hunters

- **The “REAL ID Act” super-sizes the powers of paid bounty hunters, imposing vigilante justice on immigrants who are awaiting their day in court.** This provision grants unprecedented power to bounty hunters to hunt down and arrest immigrants even *before* the immigrants have violated any bond conditions. It also increases the profit motive for bail bondsmen to abuse their new power. Finally, this provision also gives these bounty hunters broad access to sensitive federal, state, and local government information about immigrants and others without any privacy protections or other limits to prevent misuse.

Section 202

Restrictions on Immigrant Access to Driver's Licenses and Creation of Distinct Licenses for Different Classes of Americans

- **The “REAL ID Act” repeals better federal driver's license standards just passed by Congress and signed by the President.** The Intelligence Reform Act, enacted in December 2004, contained detailed and comprehensive federal standards on state-issued driver's licenses and IDs to improve security and reduce fraud, which were recommended and endorsed by the 9/11 Commission. These standards go into effect in just 18 months after a process of consultation with states, law enforcement, and other experts.
- **The “REAL ID Act” would not have stopped the 9/11 terrorists.** The terrorists had visas and entered the U.S. legally. They obtained valid driver's licenses in their own names using valid and accurate documents. Federal requirements that a license expire with immigration visas would not have stopped them either. In fact, nothing in the “REAL ID Act” would prevent them from doing so again. They did not need driver's licenses to board planes or enter federal buildings because they all had valid passports from their home countries.
- **Immigrant driver's license restrictions make us all less safe.** Denying driver's licenses to large segments of the population only increases the number of unlicensed, uninsured drivers on our roads. Immigrant driver's license

restrictions take away a key law enforcement tool by excluding large numbers of residents from the most comprehensive government database of all, one that is constantly used to track down and capture criminals as well as terrorists. Restrictions also increase the black market for fraudulent documents.

- **A federal requirement that driver's licenses expire with immigration visas reflects a misunderstanding of the immigration system and is ineffective.** Visas and immigration statuses do not have uniform documentation nor do they have simple expiration dates. Many noncitizens are still lawfully in the country even though their immigration document may have expired. For example, a non-immigrant who has applied for extension of a visa is lawfully present while awaiting a decision on the application. But for driver's license purposes, they will appear to be out of status. The Department of Homeland Security is hopelessly behind on processing immigration applications and changes in or extensions of status. DHS backlogs will prevent many noncitizens from obtaining or proving their status in order to get a driver's license. DHS backlogs will only increase if the agency's resources must be consumed in proving immigration status for driver's license purposes.
- **The driver's license provisions will result in increased discrimination and civil rights abuses.** The "REAL ID Act" would create a multitiered system in which drivers have distinct licenses; U.S. citizens and legal permanent residents would have one type of license, and lawful temporary immigrants would have an easily distinguishable distinct license. It is also possible for undocumented immigrants to have a driver's license that singles them out as well. This type of system opens the door to widespread discrimination and civil rights violations.

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