



BACKGROUND

To embrace and uphold our tradition as a nation of immigrants.

Real Faces Behind the REAL ID Act

This document was compiled by the National Immigration Forum, Human Rights First, National Asian Pacific American Legal Consortium, American Immigration Lawyers Association, Tahirih Justice Center, National Immigration Law Center, National Council of La Raza, and Amnesty International.

It consists of two sections: short explanations of how the law could be applied if passed, and examples of how the various provisions could affect immigrants, refugees, and U.S. citizens (often based on actual cases).

CONSEQUENCES OF REAL ID

Insurmountable Hurdles for Asylum-Seekers and Others (Section 101)

This legislation would encourage the denial of asylum or other protection to:

- A Soviet Jew who was beaten and robbed by police, if he can't prove that prejudice was his persecutors' primary motive.
- A Tibetan woman who was raped by government officials, and exhibited a detached affect during her asylum hearing when retelling the story.
- A Senegalese woman who fled certain genital mutilation, if she cannot obtain a document proving that the operation was about to occur.
- A Syrian asylum-seeker who tells the immigration inspector that she fears for her life if returned, but who tells the asylum officer that she fears for her life and her children's lives if returned.
- A battered immigrant woman who testified that she came to the United States in May 2002 when in fact her documents show she entered in late April 2002.

The legislation broadly extends the same harsh evidentiary and credibility requirements that it imposes on asylum-seekers to other applications for relief, including withholding of removal and cancellation of removal. It makes a judge's denial of relief based on the lack of documentary evidence immune from judicial reversal, and likewise makes discretionary judgments immune from judicial review.

"Above the Law" Status to Expedite Border Fence Construction (Section 102)

This legislation gives the Secretary of DHS complete, unreviewable authority to:

- Circumvent environmental protection laws that would otherwise have to be satisfied before constructing a major barrier on the border.

- Seize private property and Native American land in order to construct a border fence.
- Permit construction companies to violate wage and hour, hiring, and occupational safety laws when they work on the fence. Companies could force workers to labor without safety equipment, and would be exempt from paying minimum wage or even workmen's compensation/other restitution if something goes wrong.
- These construction companies could even hire undocumented immigrants to get the job done, as immigration laws could also be waived under this broad power!
- The legislation even goes so far as to say that DHS' decisions to waive these laws are unreviewable—granting the secretary supreme authority to circumvent any laws in a way that raises serious Constitutional concerns.

Denial of Entry, Deportation for First Amendment-Protected Activity (Sections 103 and 104)

This legislation would deny entry or asylum to, or permit the deportation of:

- A legal permanent resident who donates online to a Tsunami relief fund that is a subsidiary of an organization in a Tamil Tiger-controlled region of Sri Lanka. The green card holder would have to show “clear and convincing evidence” that she did not know the associations of the charity she chose to donate to, and it's very hard to prove the absence of knowledge.
- A student who has done Arab-Israeli conflict resolution work in Gaza, because part of that work included food and clothing donations to various groups there.
- A person who urged support of the Northern Alliance against the Taliban, who supported the Contras in Nicaragua, or who supported the African National Congress before it came to power in South Africa—indeed anyone who ever wrote in defense of the use of force for national liberation, including our Founding Fathers.
- A spouse or child of anyone in the above situations (unless the association happened over 5 years ago).

Shotgun Deportations and Denial of Constitutional Rights (Section 105)

This legislation would deny:

- Federal court review for a Haitian asylum-seeker who enters the US without papers, is detained and referred to an asylum officer for a credible fear interview, and issued a negative credibility finding by the immigration judge.
- A single father of three from Iceland the opportunity to challenge his green card denial, which was based on subjective and legal errors by the judge, by restricting federal court review to pure questions of law and Constitutional claims.
- A Guatemalan woman seeking asylum the right to remain in the U.S. until her case is finally decided, by eliminating stays of removal—sending her back to her persecutors.

Outrageous Authority Granted Bounty Hunters; Pricing Liberty Out of Most Immigrants' Reach (Sections 106, 107, and 108)

This legislation would allow:

- A bail bondsman/bounty hunter to round up an immigrant he thinks could be a flight risk—even if the immigrant is not in violation of his bond. This is currently known as “kidnapping” and is illegal.
- Bail bondsmen unprecedented access to individuals’ personal information.
- Liberty to be priced out of most immigrants’ reach (requires a \$10,000 minimum bond and no release on own recognizance for immigrants in deportation proceedings).

Complicated, Restrictive, and Expensive Driver’s License Requirements (Title II)

This legislation would deny driver’s licenses to:

- A U.S. citizen whose utility company won’t verify to the DMV employee that they issued a specific bill on a specific date.
- U.S. “nationals” who are not citizens (e.g. American Samoans, Swain’s Islanders).
- Marshall Islanders.
- American Indians born in Canada.
- An immigrant with temporary protected status whose work authorization was extended, but who hasn’t yet received the paperwork from USCIS.
- A naturalized U.S. citizen whose “immigration status” hasn’t yet been updated in the notoriously out of date USCIS computer system.
- A Central American refugee who applied for relief under NACARA decades ago, but hasn’t yet been processed for her green card and has no updated “proof” of her pending status.
- Applicants for non-immigrant visas already in the United States, including victims of trafficking (T visa) and victims of crime (U visa).
- People who have been “paroled” (a technical immigration term that permits entry) into the United States (i.e. Cuban parolees before they apply for Cuban adjustment), as well as people who have been granted withholding of removal or other forms of humanitarian relief.
- Undocumented immigrants in the states that to date allow people to get driver’s licenses regardless of immigration status, because these states believe it enhances public safety to have all drivers licensed.

It would:

- Put more unlicensed, untrained, and uninsured drivers on our nation’s roads (not only undocumented immigrants, but legal immigrants and temporary visitors who will have a hard time getting a license).
- Undermine the usefulness of DMV databases that are regularly used by law enforcement.
- Turn a “day at the DMV” into “weeks waiting for your license” as ordinary U.S. citizens would have to wait for document-issuing agencies (like utilities, passport agencies, and the like) to verify all of their individual documents.
- Expect untrained and unqualified DMV clerks to interpret complex questions related to immigration status.

- Legislate over the just-passed intelligence reform law that included document integrity and standardization provisions endorsed by the 9/11 Commission.

STORIES ILLUSTRATING THE IMPACT

The following stories illustrate how various provisions in the REAL ID Act could interact to harm real people in many ways. They include examples of asylum-seekers, long-time legal U.S. residents, victims of domestic abuse, and U.S. educational and religious institutions.

Examples of Title I Provisions

Asylum-Seekers

Motive (101)

Arkady is a 75-year-old citizen of a formerly Soviet republic. Arkady is Jewish. One day, he is attacked by a group of young thugs who demand his wallet, knock him down, steal his watch, and leave him lying on the ground. As they leave, one of them shouts an anti-Semitic epithet. When Arkady reports the attack, the police say there's nothing they can do since he did not recognize any of his attackers. A few weeks pass; his black eye heals. Going out has become frightening to Arkady—he stops taking his regular walks in the park and only leaves the house when absolutely necessary. But he is attacked again by a group of young men, who again rob and beat him, using ethnic slurs. This time Arkady suffers a sprain and a broken bone. He goes again to the police and demands that they do something. The police tell him that maybe he shouldn't walk around with so much money. Arkady has already lived through very difficult times—the Second World War, the Stalin years, the break-up of the Soviet Union and the ensuing attacks on ethnic minorities by nationalist extremists in his newly-independent republic. Now, at age 75, he decides he is too old and fragile to take this any more. He flees to the U.S. and seeks asylum. Arkady is sure that both the attacks on him and the lackadaisical response of the police were motivated, at least in part, by the fact that he is Jewish. But under REAL ID, Arkady would be required to demonstrate that his being Jewish was a *central* reason for the harm he suffered. Difficult, when the young thugs were clearly motivated also by theft, and when the police were clearly unmotivated to help, but were not explicit about their reasons.

Hassan is a native of Sudan's Darfur region where he belongs to the Masalit ethnic group, one of several black African ethnicities whose members have been the victims over the past two years of a campaign of killing, rape, looting, destruction, and forced displacement carried out by Arab Janjaweed militias acting in conjunction with Sudanese government forces. Hassan's village is bombed by Sudanese government forces. Hassan, who was grazing his herds some distance from the village at the time of this attack, is trying to make his way back home to look for his family when he encounters a "checkpoint" manned by Janjaweed fighters. They insult Hassan with racial epithets. They accuse him of supporting an armed rebellion, many of whose members are members of Hassan's ethnic group. They beat Hassan severely, tie him to a tree in the sun, and steal his cows. After night falls, Hassan is able to work his way free. He returns

to his village, only to find that the village has been bombed and burned, and there is no sign of his family. Hassan flees in the direction of Chad.

If Hassan should make it to the United States, REAL ID would require him to establish that his race or his political opinion were a “central reason” for his persecution. How is Hassan to do this? Hassan knows that all this happened to him because he is a member of his black African ethnic group. But what if an immigration judge decides that his persecutors were centrally motivated by their campaign to repress an armed rebellion and by greed for Hassan’s cows? He could easily be denied under REAL ID.

Kadiatu is a 14-year-old girl who is a member of the Fula ethnic group from the Gambia. One day her father announces that he has promised her in marriage and that the wedding will take place in four months. The husband-to-be is more than twice Kadiatu’s age, and she does not want to marry him. Kadiatu’s father will not tolerate her refusal, since if the marriage does not happen, he will lose face before his friend who has also agreed to pay a hefty amount of dowry. Kadiatu’s mother sympathizes with her fears but believes this is all for her daughter’s good, since this is what happened to her, her mother, and her grandmother before her. The Gambian government does not protect girls from forced marriage. Fortunately, Kadiatu has a distant aunt who left their community to work as a midwife in the city. The aunt does not believe in child marriage—she has seen too many girls suffer serious health problems from being married too early. When Kadiatu calls her in a panic, the aunt tells Kadiatu that she cannot protect her in the Gambia against the combined force of two families, but she will send her to the United States, where she has an old friend who can take her in. Kadiatu escapes to the U.S. and applies for asylum.

If REAL ID becomes law, Kadiatu would be required to show that her membership in a particular social group or her political opinion would be a “central reason” for the harm she fears. As is the case with many women, the persecution Kadiatu fears is at the hands of members of her family and community, whose motivations may be mixed and difficult to determine. Kadiatu’s father wants to please his friend, he wants the dowry this match will bring him, he thinks Kadiatu will be well off as the wife of a rich man’s son. Her mother thinks this is “a good thing for Kadiatu” and is happy that her daughter will be settled nearby. Both extended families believe girls are destined to marry and bear children, the sooner the better, and that children must obey their parents. Although these latter concerns are clearly related to Kadiatu’s status as a young unmarried girl from her ethnic group, REAL ID would require Kadiatu to show that this social group membership (or her own opposition to forced marriage) was a *central* reason for the harm she fears. Asylum applicants with these kinds of claims have already faced denials of protection on the theory that what they face is an expression of their culture, rather than persecution within the meaning of the Refugee Convention. REAL ID would encourage more such denials.

Credibility (101) and Elimination of Stays of Removal (105)

Mariama is an asylum seeker from Guinea who fled her country after she was detained and tortured by soldiers looking for her husband, an army officer who was accused of involvement in a coup attempt. Mariama makes it to the United States and applies for asylum. Mariama testifies credibly at her immigration court hearing about her

imprisonment and torture back home and her fears of return. On cross-examination, the DHS trial attorney asks her what date she graduated from high school. Mariama, who has been testifying for over three hours about her much more recent and traumatic experiences, answers “1965.” Her written asylum application (prepared under calmer circumstances) specifies that she finished high school in July 1967. The judge denies Mariama asylum based on this inconsistency—even though her graduation date is completely irrelevant to her asylum claim.

Mariama appeals to the Board of Immigration Appeals. But in the fall of 2002, the BIA adopted “streamlining” procedures that have led it to summarily affirm without opinion an increased proportion of immigration judge decisions. Since these procedures were adopted, the rate at which the BIA has granted the appeals of asylum seekers has dropped dramatically. The U.S. Commission on International Religious Freedom, in its recent report on asylum seekers in the expedited removal process, found that for the asylum seekers it studied, the BIA’s grant rate dropped from 23% in 2001 to 2% in 2002. As a result, the USCIRF found, “the BIA may now offer little protection from the possibility of erroneous immigration judge decisions.”

In Mariama’s case, a single BIA board member issues a two-sentence decision affirming “the result of the decision of the immigration judge.” Assume Mariama is lucky enough to find help from a lawyer or other English-speaker competent to help her file a timely petition for review with the federal court of appeals. Under the REAL ID Act, the court of appeals would no longer be able to grant a temporary stay of removal while it considers her case. Mariama would be returned to Guinea, her country of persecution, even while her case is on appeal to the federal court.

Guilt by Association (103/104)

Aung is a 13-year-old child who lives in Kentucky with his U.S. citizen aunt and cousin sister. Aung files an asylum application with DHS because he fears persecution in his home country of Burma. In Burma, Aung was threatened with death because his father had joined an insurgency against Burma’s government. Aung himself has never been involved with politics and spends most of his days in school, playing with friends, and watching TV with his cousin. Aung goes to the asylum office in Louisville to present his application for asylum. Under the REAL ID Act, Aung can be denied asylum and found deportable based on his father’s association with the insurgency. Since the immigration laws already bar asylum to people who are involved in terrorist activity, anyone who is labeled as such are barred from asylum relief. The REAL ID Act makes the definition of “terrorism” broad and hollow, and extends it to children, many of whom are assimilated in our U.S. schools and with clear claims for persecution in their home country. This does not make the nation safer but instead bars asylum to genuine refugees.

Joseph, age 12, is conscripted into a rebel army that is a designated terrorist organization under the PATRIOT Act. Whether Joseph went willingly is in some ways beside the point, since his recruitment as a 12-year-old violated his rights as a child under international law. But the Department of Justice has argued, in connection with the bar to asylum based on “material support” to a terrorist organization, that there is no requirement that a person’s support to a terrorist organization be voluntary in order to bar him or her from asylum and withholding of removal. Under current law, the mere

fact of membership in a terrorist organization would not bar Joseph from asylum. But under the REAL ID Act, the government's position on involuntary conduct would be applied to this new ground for ineligibility for refugee protection, and Joseph would be barred from asylum and withholding of removal based simply on the fact of his membership in the rebel army, without any further showing that (1) he joined voluntarily or (2) engaged in any criminal activities while there.

Rana was born in Syria but grew up in a Persian Gulf state after her father, a long-time political critic of the Syrian government, fled Syria many years ago. Now, Rana is studying on a non-immigrant visa in the U.S. She a member of a student organization that was founded by an organization that also has ties to extremist groups in the Middle East.

During Rana's senior year, her father decides to risk a return to Syria to attend to his ailing mother. He is arrested at the airport. Rana's extended family cannot find out what his happening to him or where he is being detained. As her father's detention stretches on, Rana realizes that her own right to return to her country of residence in the Gulf is endangered because her residency rights depended on her father's continued employment there. Given what has happened to her father, she is very much afraid to return to Syria. She therefore applies for asylum in the United States.

Under the REAL ID Act, Rana could be barred from asylum for her membership in a student group that has absolutely no involvement in terrorist activity, if that group can be linked at some point to an organization that meets the very broad definition of "terrorism" in REAL ID.

Elimination of Habeas Corpus Review (105)

Mrs. Chen from the People's Republic of China was forced to undergo sterilization because of China's coercive family planning policy. She escaped to the United States. Mrs. Chen hired a lawyer to file her asylum application, but the lawyer failed to do so within the one year required under current law. She is subsequently placed in removal proceedings. The Immigration Court and the Board of Immigration Appeals deny her asylum claim because she did not file her application within the one year deadline, notwithstanding the fact that she did not do so because of the lawyer's negligence. Because current law bars judicial review of the one year filing deadline rule, Mrs. Chen cannot raise the issue of ineffective assistance of counsel in a petition for review. However, under current law, she can file an application for a writ of habeas corpus to have a federal district court review whether her failure to file an asylum application within the one year deadline may be excused in light of her lawyer's negligence. If the REAL ID becomes law, she will lose her only opportunity to have her case reviewed by a federal court. At best, she will have to challenge the constitutionality of this section.

Elimination of Stays of Removal (105)

Rodi Alvarado (an actual asylum applicant whose case is now well-known) fled severe domestic abuse in Guatemala. Over the course of ten years of marriage, her husband beat her into unconsciousness, tried to abort her child by kicking her in the spine, threatened her with machetes and guns, and dragged her by her hair, breaking windows

and mirrors with her head. The authorities in her homeland ignored her repeated pleas for protection, driving her to flee her country in search of protection in the United States.

Although an immigration judge granted her asylum after finding that her husband had inflicted severe abuse and that she was unable to seek protection from the Guatemalan government, the Board of Immigration Appeals (BIA) reversed the immigration judge's decision in 1999 and ordered Ms. Alvarado deported. Her denial was overturned by Attorney General Janet Reno in 2001, only to be recertified to Attorney General John Ashcroft in 2003. In February 2004, the Department of Homeland Security, reversing its earlier position in the case, filed a brief with the Attorney General asking him to grant Rodi Alvarado asylum. In January 2005, the Attorney General responded by remanding the case to the BIA. With both sides now agreed that she should be granted asylum, Ms. Alvarado can hope for an end to her years of fear and limbo.

Previously, Ms. Alvarado had filed a petition for review of the 1999 BIA decision with the court of appeals for the 9th Circuit, which granted the stay that kept her safe from deportation while the Justice Department considered and reconsidered her case. Were it not for the availability of a temporary stay of removal in federal court (i.e. were the REAL ID Act in effect), Ms. Alvarado could have been deported before her case was finally ruled upon.

New Bond Requirements and Powers for Bounty Hunters (106, 107, and 108)

Marcela, who was arrested and tortured in her native Gambia, arrives at Kennedy Airport and asks for asylum. She passes a credible fear interview and is scheduled for an asylum hearing before an immigration judge. She does not have a lawyer and does not know how to present evidence that she is not a flight risk or threat to the U.S., so that the judge could meet the new requirements under REAL ID before releasing her on her own recognizance. Marcela is also penniless, but has an aunt who is willing to help her get out of jail. But in order to secure her liberty, Marcela must agree to a \$10,000 bond due to the REAL ID Act's new minimum bond requirements. Her aunt is a home health care worker and is putting her only daughter through college. She cannot spare the money required, and Marcela remains in jail where she receives no psychological help for the trauma she experienced back home. She remains jailed through the duration of her immigration court proceedings—14 months in total.

Tobias is an asylum applicant in removal proceedings. His case is very strong. With the help of relatives in the U.S., he has posted the required \$10,000 bond under REAL ID and is released pending his next hearing. Tobias moves to his sister's house and notifies the bondsman before he moves. The bondsman erroneously decides that Tobias is a flight risk, even though Tobias has not violated any condition of his bond. Under the REAL ID Act, the bondsman has the power to label his charge a flight risk and determine that he should be taken into custody. The bondsman does not need an order from a judge or DHS determining that Tobias is a flight risk or should be taken into custody before he acts. The bondsman, who thinks that Tobias' sister may be concealing him, sends a bounty hunter out after Tobias. He breaks down the door of the sister's house, takes Tobias into custody, and turns him over to DHS. The bondsman keeps the bond premium, claiming that he may do so under REAL ID.

Victims of Domestic Violence

Elimination of Judicial Review of Discretionary Decisions (101)

Mara from Peru marries a police officer who is a U.S. citizen. A few months into the marriage, her husband begins abusing her physically, sexually, and emotionally, including inflicting severe beatings, forcing her to do pornography, and threatening her frequently with guns and knives. Mara turns to the police for help, but her English is poor and his fellow officers credit her husband's version of events that she's the one out-of-control. On one occasion, they arrest her and charge her with assault for grabbing at her husband's shirt during a fight. She is convicted but serves no time.

Mara falls into despair, thinking she has no other option but to endure the abuse. Mara's husband threatens that he will have her deported and separated from their infant daughter if she ever stands up to him again. And in fact, she believes that he has this power because he never filed the proper immigration papers for her and she is without legal status.

Finally, with the counseling and encouragement of her church, Mara manages to escape to a domestic violence shelter. With the help of a *pro bono* lawyer, Mara applies as a battered spouse for immigration relief under the Violence Against Women Act (VAWA). Part of her application for VAWA relief involves petitioning to adjust her status to that of a legal permanent resident, without the need for her abusive husband's sponsorship.

But her husband is angry that she left and decides to make good on his threats. He calls immigration enforcement (ICE) and reports her as an illegal alien with criminal convictions. She's placed in removal proceedings. Before the government can approve her adjustment application, she must be evaluated to see if there are any bars to her "admissibility." At this stage, she faces a significant hurdle, in that her "violent" criminal record is grounds to deem her "inadmissible."

She applies for a discretionary waiver, and goes before a judge who weighs a number of subjective factors such as "family unity" concerns and other "hardship" considerations. Unfamiliar with domestic violence dynamics, and because the entirety of her husband's pattern of prolonged abuse is not before him in the waiver proceeding, the judge believes the criminal charges were the result of a "he said/she said" domestic dispute where both parties could have been at equal fault, and he is unsympathetic to her application. The judge's limited perspective affects his evaluation of all discretionary factors and he denies her application.

Under REAL ID, the judge's discretionary denial would be immune from any review by a higher court. Mara would be deported and separated from her baby, because her husband won't consent to Mara taking the baby with her back to Peru. She would have been entitled to relief under the Violence Against Women Act, but her husband's manipulation of the system and the further restrictions imposed by REAL ID would lead to her deportation and separation from her child.

New Bond Requirements and Powers for Bounty Hunters (106, 107, and 108)

Lauren had left an abusive husband in the U.S., against whom she filed criminal complaints for assault and battery, and applied for cancellation of removal under the Violence Against Women Act. DHS issued an arrest warrant because it believed that Lauren violated the conditions of her bond. The police have her medical records as well as medical, psychologist, and school records for her children that were provided in connection with the criminal charges. The police file also includes the address of the battered women's shelter where Lauren is staying. The bonding agent demands that all these records be provided to him for his use in locating Lauren, in accordance with the REAL ID Act.

The bonding agent speaks to the abusive husband and discloses the address of the shelter, the children's school, and the doctors' and psychologists' offices. The husband goes to the shelter and threatens his wife and the staff. Criminal charges are filed against the husband. The bonding agent is subpoenaed to testify before a grand jury to provide information about how the husband learned of his wife's whereabouts. But he refuses to testify, because the REAL ID Act allows him to avoid disclosing any information received from any governmental source, person, or other entity.

Long-Time Legal Permanent Residents

Credibility (101)

Tesfaye is a native of Ethiopia and lawful permanent resident of the United States. He received his green card ten years ago based on his employment with Citigroup, where he currently serves as the Chief Financial Officer. Tesfaye is placed in removal proceedings because he failed to file a change of address within 10 days of moving to his new house. He applies for cancellation of removal relief based on his long time residence in the U.S. and close family, property, and professional ties in the U.S. Tesfaye has three children who were born in the U.S. and currently attend elementary school, has owned a house in upstate New York for the past five years, and has worked for Citigroup in a senior capacity for the last seven.

Tesfaye has no criminal history or record of wrongdoing. He and his family are accompanied by a seasoned attorney for his hearing before the immigration judge. He presents credible, detailed, and moving testimony about the life he has built in the United States. The immigration judge notices that Tesfaye's written affidavit states that he drove from Buffalo to Albany with his wife, whereas he testified on the stand that he drove with his wife AND children. Based on this discrepancy alone and in accordance with the REAL ID Act, the immigration judge denies Tesfaye cancellation of removal and orders him removed to Ethiopia.

Guilt by Association (103/104)

Ricardo came to the United States several years ago fleeing political repression in Cuba. He received permanent residence under the Cuban Adjustment Act and has been living peacefully since then in Miami, where he runs a small translation service. One day, frustrated by the Castro regime's continued detention of several Cuban dissidents, Ricardo

writes a letter to the *Miami Herald* in which he states, among other things, that only the Cuban people rising up by force of arms will bring about change in Cuba. This statement could make Ricardo deportable on terrorist grounds if the REAL ID Act becomes law, on the theory that he was “endorsing” the “use of a firearm, weapon, or other dangerous device” with “intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property” in a way that would be unlawful under the laws of the place where it would be committed, Cuba. It would not matter that the Castro regime itself came to power through armed force, or that the U.S. government at one time attempted to topple that same regime by the same means. Or that Ricardo’s letter to the editor had no discernible effect in either Cuba or the U.S., since Ricardo is a person of no particular prominence in either country.

Note that anyone who actually “incites” others to commit terrorist activity is already barred by a separate provision of the *current* statute. This means that the amendments proposed by the REAL ID Act are either completely redundant or intended to apply to speech that would be protected under the First Amendment—and are clearly unconstitutional.

James, originally from South African and a supporter of the African National Congress’ lawful, nonviolent anti-apartheid work during the 1980’s, immigrated to the U.S. in 1992. The ANC used violence in the past, and the State Department regularly labeled it a “terrorist organization” until it came to power in South Africa in 1994. James maintained contact with some of his fellow activists back in South Africa even as he established his life in the United States.

James opened up a private charity in Chicago to assist low-income children with tutoring and mentoring. A Mexican businessman donates money to this local charity, having no knowledge of James’ previous associations and no knowledge of the ANC’s use of violence. Under REAL ID, both the South African man and his Mexican immigrant donor would be deportable for the “association” and “material support,” and it would be no defense to show that the support was legal, intended, or even used to further violent or terrorist activity.

Gloria, a long-time permanent resident, donates money for Tsunami disaster relief in the Aceh province of Indonesia, not knowing that the organization that received the funds had a subgroup that the Department of Homeland Security considers terrorist, because of its armed struggle against the government of Indonesia. Under the REAL ID Act, Gloria would be deportable unless she could show “by clear and convincing evidence” that she did *not* know that the relief organization’s affiliate was a terrorist organization under the law’s extremely broad definition of that term. Since it is almost impossible to prove a lack of knowledge of anything, this standard would make it nearly impossible for Gloria to defend herself against deportation.

Amina immigrated to the United States from India at the age of 3, and is now a 20 year-old college student and active in a Muslim student organization on campus. Her organization is a member of an umbrella organization of Muslim student groups in North America. A different student organization, which is also a member of the umbrella organization, has several chapters on different campuses in different states that collect donations from their membership and their surrounding communities, some of which

were sent to orphanages in the West Bank that are run by Hamas. Many of those who gave money to this cause were not aware that the orphanages were linked to Hamas; others knew this but donated anyway because they thought Hamas was providing a necessary social service to needy children.

Amina has never been a member of this other student organization or contributed to their charity drives. Her only connection to that group is that it is a member of the same umbrella organization as her own student group, and that she and a chapter president of that other student group organized and spoke together on a panel at a conference that both attended.

Under the REAL ID Act, Amina could be deportable on terrorist grounds, on the theory that she is a member of the umbrella organization, and that a “subgroup” of that umbrella organization—namely the other student organization to which she does not belong—provides “material support” to a terrorist organization. In order to avoid removal, Amina would bear the burden of showing by “clear and convincing evidence” that she did not know and should not reasonably have known that the other student organization was collecting money for orphanages affiliated with Hamas. Proving a negative is always difficult; proving a negative by clear and convincing evidence is almost impossible.

Elimination of Judicial Review (105)

Juan is a citizen of Colombia who was admitted to the United States as a lawful permanent resident when he was five years old. Juan was raised and educated in Maryland, where he lived with his parents and his younger brother. Juan met his wife Julie, a Maryland native, in high school. They built a life in Maryland—running a grocery store, raising two sons, and attending church on a regular basis.

Juan, now thirty years old, has been served with deportation papers because of two bad checks he wrote just after high school. This required Juan to present his case to an immigration judge and apply for a “waiver” based on his high school crime. Juan feels remorse and explains to the immigration judge the importance of teaching his own children about right and wrong during their school years. The immigration laws require Juan to show that his U.S. citizen spouse and children will suffer “extreme hardship” if he is deported to Colombia.

Juan describes the ties his children and wife have to the Maryland community, school system and church, and the turmoil his family would face if they are displaced to Colombia. Juan’s wife is now pregnant with their third child, and currently not working. For this reason, Juan is serving as the financial breadwinner for his family. Juan and his family speak no Spanish, have no family in Colombia and have no feasible way of supporting themselves financially in Colombia.

The immigration court denies Juan’s waiver. The Board of Immigration Appeals adopts the decision of the immigration court, without analysis or reason. The REAL ID Act bars people like Juan from challenging this decision in federal court. Denying long-term immigrants their day in court violates due process and is un-American.

Ralph, a middle-aged lawful permanent resident of three decades with a U.S. citizen parent, U.S. citizen brothers and sisters, a U.S. citizen wife, U.S. citizen children and grandchildren is placed in removal proceedings because of a criminal conviction from his early twenties. He goes through the Immigration Court and the Board of Immigration Appeals (BIA), but as with many immigrants in removal proceedings, he is not represented by an attorney. Because Ralph is unrepresented, he does not realize that he must file a petition for review to the court of appeals within thirty days and misses the deadline.

When Ralph receives a “bag and baggage” letter asking him to report to the local Immigration and Customs Enforcement (ICE) to be deported, he and his family gather together what money they have to finally hire a lawyer. As the lawyer interviews him, the lawyer realizes that Ralph may in fact have become a U.S. citizen in his youth through his father, who is a naturalized U.S. citizen. However, before the lawyer can assemble all the documents necessary to show that he is a U.S. citizen (Ralph has to show that his father fulfilled the residency requirement to transmit U.S. citizenship to him), ICE deports him. Under the current law, Ralph can file an application for a writ of habeas corpus with the federal district court to ask that court to review his claim for U.S. citizenship. However, if REAL ID becomes law, he will lose his only opportunity to have a federal court review his claim to U.S. citizenship. At best, he will have to challenge the constitutionality of the provision.

U.S. Businesses, Universities, and Religious Institutions

Elimination of Federal Court Review of Discretionary Decisions (101)

Georgetown University hires Han, a Muslim and a native of Iraq, to be a professor of Physics. They sponsor him for an H-1B visa. After three years of employment at the university, the Georgetown administration decides to petition DHS for a green card for Han, as a professor of “extraordinary ability” in the area of string theory. Han has written several books on the subject, published cutting edge research papers in the most prestigious journals, and even met with members of President Bush’s cabinet to discuss the importance of pure research to the national economy.

As a part of his application, Han and Georgetown present several of his publications, and originals of all of the documents he filed previously with DHS. He also submits his birth certificate, valid passport, and driver’s license. The adjudicator notes that Han’s identity and immigration papers are all in order. Also, Han has passed all of the security checks required for a green card applicant. Finally, the officer is more than convinced that Han meets the legal requirements for his application. However, the immigration officer improperly uses her subjective distaste for Islam to deny Georgetown’s petition for this professor in the exercise of discretion. Under the REAL ID Act, this denial is unreviewable by a higher court.

The **First Baptist Church** of Nashville, TN decides that it wants to minister to the growing Korean-American population in Nashville, and petitions for a pastor from Korea who would be able to minister to their congregation in both English and Korean. The church filed all the requisite documents to show that the pastor was eligible for a religious worker visa, including his degree from a well-known U.S. seminary, and

certificates from his past ministries in Korea. However, the church's petition is denied by DHS who challenges the need for a foreign minister. Under the REAL ID Act, the church would not be able to challenge the denial of its religious worker petition.

Examples of Title II Provisions

The following examples focus on the driver's license and identity document provisions in REAL ID.

Elisa is a newly naturalized U.S. citizen and has recently moved to a new state. She presents her naturalization certificate to the Department of Motor Vehicles (DMV) to apply for a driver's license. The state DMV contacts the Department of Homeland Security to verify her documents, in addition to her local power utility and the other issuers of documents she has provided to establish residency and identity. It takes the DHS and other agencies several weeks to respond because they are overwhelmed with verification requests. The DHS databases have not been updated to reflect Elisa's new citizenship status and show that she is still a legal permanent resident. Furthermore, the DHS database does not contain her new address. The DHS responds with a non-confirmation and Elisa is denied a driver's license.

Frank qualified for legal permanent residency under the Nicaraguan Adjustment and Central American Relief Act (NACARA), and has been waiting since 1998 for his application to be adjudicated. While he was able to get a driver's license in Virginia by showing that he has an application for adjustment of status pending, he was given a temporary license with a one-year expiration date. When he goes back to the DMV a year later, he is told that he cannot get the license renewed because new federal law requires proof from DHS that his "status" has been extended. Because he has no official immigration status, and is merely stuck in the backlog of applications for NACARA that are waiting to be adjudicated, Frank is unable to renew his driver's license.

Kim came to the U.S. from Thailand on a tourist visa, and stayed on to work in her uncle's friend's tool and die shop to make money to send home. Living in a rural community in Washington state, public transportation is not a viable option. Kim saved up enough money to buy an old car, but lacking legal immigration status she was unable to get a state driver's license or to buy car insurance. One day while driving home, her car slips on the ice and she runs into a ditch. Her car is damaged enough that she can't drive it home, and Kim's leg is injured. However, fearing the consequences of a police report, Kim leaves her car behind.

Already, states that restrict driver's license access by immigration status experience myriad problems. The following are based on actual reports from advocates or articles in newspapers.

ALABAMA: Immigrants in Alabama report repeated incidents in which DMV workers misinterpreted immigration status or the rules for who is eligible for a license, sometimes discriminating against them because of their immigration status. For example, a doctor with an H-1(b) professional visa granted by the U.S. in order to work in a medically underserved area, who had a valid Ohio driver's license, a Social Security card, passport,

and valid visa was denied a license because the “H” category of visas was not on the DMV approved list. Driver's license applicants with pending adjustment of status applications were denied the right to take the driver's license exam—despite the fact that they had Social Security cards and work authorization—because they did not have visas and did not have “green cards.”

TENNESSEE: Immigrants in Tennessee, which grants a certificate of driving (not valid for identification) rather than a driver's license to non-immigrants and undocumented immigrants, report that DMV employees refuse to honor a “green card” as proof of lawful permanent residence because its validity was extended by a sticker on the back pending arrival of a new card. Insurance companies refuse to issue car insurance or charge exorbitantly high rates because their certificate of driving is considered a “second class” driving permit. Police arrest drivers rather than issuing a citation to appear in court, because they do not accept the certificate of driving as proof of identity. DMV employees refuse to issue regular licenses to refugees. Non-immigrants encounter problems using their passports (which may not be written in English) as proof of identity. DMV employees confiscate valid immigration and Social Security documents; and DMV employees fail to recognize that people born in Puerto Rico are U.S. citizens.

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