



**Amnesty International USA's  
REFUGEE ACTION**

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**Oppose the “REAL ID” Act of 2005;**  
**Urge the Senate Not to Attach it to Emergency Spending Bill**

**SUMMARY**

The REAL ID Act (H.R. 418), introduced by Rep. James Sensenbrenner (R-WI) and passed by the House, would sharply restrict asylum. Under the Act, judges could deny asylum if they misunderstood the applicant’s demeanor, for example, or because an applicant wasn’t able to produce a particular piece of evidence from his or her home country. Higher courts would be barred from reviewing some immigration judges’ decisions. Rep. Sensenbrenner rushed this bill through the House of Representatives, claiming it would prevent terrorists from obtaining asylum – but terrorists are already categorically barred from asylum. If passed, the Act would harm legitimate asylum-seekers, not terrorists.

The House has now attached the bill to an emergency spending bill for tsunami relief and the Iraq war (H.R.1268) – as a tactic to push it through the Senate. If the Senate agrees, REAL ID is likely to pass quickly, without proper consideration. Please – call and fax your Senator, asking that the REAL ID Act not be attached to the supplemental spending bill.

**BACKGROUND**

In addition to its anti-asylum provisions (which are disingenuously named, “Preventing Terrorists from Obtaining Relief from Removal”), this bill would restrict states from issuing drivers’ licenses for various categories of non-citizens, and would direct the U.S. government to ignore any relevant laws (such as environmental laws) that might slow the construction of a fence along the U.S. Mexico border. Last fall, Rep. Sensenbrenner tried to attach some of the same provisions to the bill to implement the recommendations of the 9/11 Commission – even though the Commission recommended nothing of the kind. These provisions were stripped from the bill. Now he is trying again. Here are the provisions of H.R.418 about which Amnesty International USA is most concerned:

## **Sec. 101—Raising the Burdens for Asylum Claims**

Section 101 would create a new burden of proof for establishing an asylum claim (or a claim for another form of relief called withholding of removal) by requiring the applicant to show that “a central reason” for his or her persecution was or will be race, religion, nationality, membership in a particular social group, or political opinion. It can be very difficult for an asylum-seeker to prove this, especially when his or her persecutor extorts or robs, or commits rape and other sexual abuses. For example, if a Janjaweed militiaman in Sudan steals a Darfurian woman’s cow and rapes her, how can she prove that his “central” reason was her ethnicity, and not his desire to rape her or to take her cow?

Section 101 would also increase the burden of proof for some asylum applicants, by allowing judges to require supplemental evidence, and to deny asylum if it isn’t supplied. This section also expands the new corroborating evidence and credibility standards to all other forms of legal relief from deportation, under laws regarding violence against women, and the U.N. Convention against Torture, for example. Obtaining such evidence can be difficult for refugees who often flee without their belongings, and who are often put into detention after they arrive here. This section also restricts higher courts’ ability to overturn an immigration judge’s demand for such corroborating evidence.

Section 101 would also introduce new credibility grounds for denying asylum. Under this section, an immigration judge may make credibility determinations in asylum proceedings on any single factor. This means any inconsistency, inaccuracy, or falsehood contained in an applicant’s written application or oral testimony can serve as a basis to deny asylum, regardless of whether the inconsistency is even material to the claim of asylum. Since asylum-seekers often find themselves forced to use false documents to escape their countries, it is unreasonable to use an applicant’s first statement to any U.S. official to impeach his or her sworn testimony - no matter how well supported.

Use of other highly subjective factors such as an applicant’s “demeanor” could also become a determining factor in assessing credibility. Judging credibility based on an applicant’s demeanor could have negative affects on applicants who have been sexually abused. A victim of sexual abuse may not look an examiner in the eye because of feelings of guilt or shame, common side effects with violence of this nature. Thus, this section allows a bona fide applicant to have their application denied based on behavior that is a product of violence, not lying.

## **Sec. 103/104 Would Allow for Summary Deportations of Immigrants**

Section 103 would allow the government to deport immigrants whom it suspects of having had some tie to a group that is involved in “terrorist activity.” This section defines terrorist activity so broadly that it could apply, if taken literally, to a fraternity prank. And immigrants would only be able to prevent their deportation by overcoming an almost impossible bar: to prove by “clear and convincing evidence” that they did not know that an organization to which they had some tie was involved in “terrorist activities” as

defined in the bill. It is very difficult to prove lack of knowledge of anything, as a general rule. And the definition of terrorist organizations includes a “group of two or more, whether organized or not” or a subgroup of such a group that is involved in vaguely defined terrorist activities. For example, if an immigrant donated money to help tsunami victims to a charity that was part of an organization that had a subgroup involved in rebellion against the Indonesian government, the donor could be deported for aiding terrorists - unless he or she could prove “by clear and convincing evidence” that he or she didn’t know of the link.

Section 103 also would penalize people for espousing or endorsing terrorist activity, again, so broadly defined that it could refer to what the Founding Fathers did - calling for the armed overthrow of an oppressive regime. This broad language extends beyond conduct and could infringe on a person’s freedom of speech, as defined in the Constitution of the United States. Therefore the bill could penalize freedom of speech in this country.

### **SUGGESTED ACTION**

Please write, call and fax your Senator as soon as possible explaining Amnesty International’s concerns regarding these provisions of H.R. 418 as it was passed by the House and referred to the Senate. Ask them to help make sure the REAL ID Act is not attached to the emergency spending bill, and ask them to vote against the REAL ID Act.

### **APPEALS TO**

Call Your Senator through the Senate Switchboard at 202-224-3121 or send a letter by fax. Or to find your Senator’s phone and fax numbers, visit <http://www.senate.gov>.

### **SAMPLE LETTER**

Dear Senator \_\_\_\_\_:

As your constituent, I am writing to urge you to make sure that the REAL ID Act of 2005, an anti-refugee bill, is not attached to the emergency spending bill on Iraq and tsunami aid (H.R.1268) when considered by the Senate. It is a complex bill that should be duly considered, not pushed through hastily.

And when the Act does come up for a vote, I strongly urge you to vote against it.

I wish to express particular concern about sections 101, 103, and 104 of the bill. Section 101 is titled, “Preventing Terrorists from Obtaining Relief From Removal,” but that makes no sense to me. Terrorists and suspected terrorists are already categorically barred from asylum, as you know, and this bill would not actually protect me, you, or any other Americans from terrorists.

Instead it would place burdens on asylum-seekers that would likely fall hardest on the most vulnerable among them, such as women who have been victims of gender-based persecution. How can a woman who was raped show that her ethnicity, or her religion, was “a central reason” for her persecution? Similarly, the most frightened and traumatized asylum-seekers may be just the ones whose “demeanor” does not strike a judge as credible, since torture survivors often recount their sufferings without apparent emotion. Section 101 would also increase the burden of proof for some asylum applicants, by allowing judges to require supplemental evidence, and to deny asylum if it isn’t provided. Obtaining such evidence can be difficult for refugees who often flee without their belongings, and who are often put into detention after they arrive here. Finally, asking their family or friends back home to collect the evidence often puts them in danger.

I am also worried that immigrants, including asylum-seekers and asylees, could be wrongfully deported under the extremely broad definitions of terrorist activity in Sections 103 and 104. The definition of terrorist organizations includes a “group of two or more, whether organized or not” or a subgroup of such a group that is involved in vaguely defined terrorist activities. And section 103 would create an impossibly high standard, requiring immigrants to prove by “clear and convincing evidence” that they did not know that an organization with which they had some association was involved in broadly defined terrorist activities. This is a virtually impossible level of proof because it would require a person to prove what they did not know, so immigrants would be unable to defend themselves against a mistaken accusation.

Section 103 also penalizes people for espousing or endorsing terrorist activity. This broad language extends beyond conduct and has the potential to infringe on a person’s freedom of speech. To verbally endorse an activity is currently well permitted in the Constitution of the United States. The bill in its current form imposes dangerous penalties on freedom of speech in this country.

I hope that you will consider my concerns when you decide how to vote on this bill.

Sincerely,