



**AIUSA Issue Brief:
The REAL ID Act of 2005 and Its Negative Impact on Asylum Seekers**

Amnesty International urges the U.S. Senate to reject the REAL ID Act of 2005 (H.R. 418), a bill that would sharply restrict asylum. Senate leadership is now considering whether to attach the REAL ID Act to a supplementary appropriations bill. Amnesty strongly opposes this, since it would prevent the Senate from giving due consideration to a troubling, far-reaching bill. The REAL ID Act would, among other things, limit asylum, force construction of a fence along the U.S.-Mexico border, and pressure state governments not to issue driver's licenses to illegal immigrants. Amnesty International is primarily concerned about the provisions affecting asylum.

Under the bill, immigration judges or asylum officers would be authorized to deny asylum if they mistakenly distrusted an asylum applicant's demeanor, or because an applicant wasn't able to produce a particular piece of evidence. In such determinations, the bill restricts higher courts from reversing an immigration judge's decision.

Rep. James Sensenbrenner (R-WI), chairman of the House Judiciary Committee, rushed the bill through the House of Representatives, and introduced amendments to his own bill just one day before the House voted on it – not allowing for proper consideration of its provisions. Rep. Sensenbrenner claims the purpose of the bill is to prevent terrorists from obtaining asylum, but terrorists are already categorically barred from asylum. Passed by the House, the bill is now awaiting consideration by the Senate. Amnesty International USA believes the bill will harm legitimate asylum-seekers who represent no threat to U.S. security, rather than prevent terrorists from receiving asylum.

Section 101: Preventing Terrorists from Obtaining Relief From Removal

Section 101 would make it harder, especially for women, to win asylum in many cases. The bill would require that applicants demonstrate that their race, religion, nationality, membership in a particular social group, or political opinion was "a central reason" for persecution. To determine what was in the mind of a persecutor, particularly where mixed motives are involved, is obviously problematic if not unreasonable. Was the thug committing a robbery primarily motivated by the desire to steal or the desire to persecute a member of a religious minority? Determining an abuser's motivation could also be particularly difficult for gender-related claims – assessing "a central reason" for a husband to abuse his wife or for cases of rape.

The Board of Immigration Appeals in *Matter of S-P-*, 21 I&N Dec. 486 (BIA 1996) ruled that asylum applicants are not required to show conclusively why persecution has or will occur because the Court has recognized that persecutors often have mixed motives or even hide their motive to persecute. In this case, a Sri Lankan won asylum after he was tortured by his government to obtain information about the identities of guerrillas and the location of camps, since, he argued, his torturers also assumed that his political views were critical of the

government. The new standard in H.R. 418 would reverse this decision. When the direct abuser is not an official agent of the government, but rather a sadistic husband beating his wife or a paramilitary thug raping and robbing a girl, who is to say what primarily motivates him? Figuring out the motivation of the actual abuser may be less significant than discovering whether the abuse was condoned or facilitated by a government that discriminates against a group on the basis of their identity—be it race, religion, political opinion, or gender.

Section 101 also would give immigration judges and asylum officers discretion to require corroborating information to support an asylum applicant's testimony. This could create an onerous burden and long delays (particularly difficult for asylum seekers in detention), as asylum seekers collect corroborating documents from their home countries. Such delays would result in longer periods of detention, which is both costly to the government and injurious to asylum seekers, who are often traumatized. This process could also endanger family and friends still in the home country, while making it more difficult to keep an asylum application confidential. Until now, evidentiary burdens in the asylum context have been somewhat relaxed in recognition of the difficulty of finding corroborating documentation of human rights abuse. The bill would limit the ability of any court to reverse a judge's decision to require corroborating evidence.

Rep. Sensenbrenner's last-minute amendment also extended the new discretion provided to judges to cover all requests for relief from deportation, not just asylum. These would presumably include applications under the Convention Against Torture and the Violence Against Women's Act, Nicaraguan Adjustment and Central American Relief Act, Haitian Refugee Immigration Fairness Act, Cuban Adjustment Act, and voluntary departure. Therefore, the bill proposes to restrict not only asylum, but a much broader range of cases.

This section of the bill also introduces new credibility grounds for denying asylum. The new law would permit an immigration judge to make credibility determinations in asylum proceedings based on any factor, including inconsistency, inaccuracy, or falsehood contained in the applicant's written application or oral testimony. Requiring an applicant to demonstrate consistency in his or her oral and written statements "made at any time and whether or not under oath" ignores the purpose of asylum. In order to escape persecution and flee to safety, refugees sometimes need to misrepresent why they are leaving one country and entering another. For reasons of fear, desperation, confusion and trauma they often do not tell the full story or the accurate story. To use an applicant's first statement to impeach his or her sworn testimony, no matter how well supported, is unreasonable and unfair. In *Paramasamy V. Ashcroft* (295 F.3d 1047), the Ninth Circuit Court of Appeals ruled that a rape victim's failure to provide the details of her rape to a male interviewer at the airport cannot be considered an inconsistency, and the woman should not be assumed to be lying. H.R. would undo this important precedent.

Section 101 also includes a subsection on credibility determinations, which allows the immigration judge or asylum officer in his or her discretion to deny asylum based on the "demeanor" of the applicant, and other subjective factors relating to the applicant's credibility. Demeanor is highly cultural. In one culture, looking a judge in the eye would be interpreted as candor, while in another it would be interpreted as contempt. Downcast eyes might be interpreted as respect for authority in one culture and evasiveness in another. Torture victims often have what mental health professionals call a "flat affect" (lack of apparent emotion) when recounting

their experiences, a demeanor that a judge might misinterpret. Current Board of Immigration Appeals precedent holds that credibility determinations must be made on the basis of specific and cogent reasons, such as inconsistencies that are material to the claim, or vagueness. Current law allows for denial of asylum based on credibility, but the judge's credibility determination cannot be made on wholly subjective grounds; H.R. 418 would allow a high degree of subjectivity, and possible bias, in making these determinations. Under the bill, higher courts would also be restricted from reversing an immigration judge's credibility determinations.

Section 103 and 104: Inadmissibility Due to Terrorist and Terrorist-related Activities and Removal of Terrorists

Existing law makes foreign nationals inadmissible if they knew or should have known that the support they provided to a group would further the group's terrorist activity. Section 103 would make a person deportable unless he or she can show "by clear and convincing evidence" that he or she did *not* know that the group they were supporting was involved in broadly defined terrorist activities. This is an impossibly high standard, forcing persons to prove by "clear and convincing evidence" what they did not know.

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. Section 103 additionally expands the concept of material support to include soliciting to *any* member of a terrorist organization. With the definition of "terrorist organization" already broadly defined, an individual is just as susceptible to provide material support to a terrorist organization as becoming associated with such an organization without even being aware of it. Including such broad language could result in the deportation of an immigrant who donated money for tsunami disaster relief in the Aceh province of Indonesia, not knowing that the organization that received the funds had a subgroup that DHS considered terrorist.

Section 103 makes little to no allowance for innocent people who are often forced by rebel groups to provide them support, such as shelter or transportation. Many refugees are coerced to provide money and other support to organizations on the State Department's list of Foreign Terrorist Organizations. Ironically, the very heart of the asylum claim can be used to render people ineligible for asylum. This has an especially damaging impact on refugees from Colombia who have been forced to pay "taxes" to the FARC and other organizations on the State Department's list. By making people deportable and ineligible for asylum and withholding of removal for any connection to terrorist activity -- even when they bear no personal responsibility or have acted involuntarily under threat of force -- the REAL ID Act would encourage such extreme interpretations of existing law.

This bill would additionally make immigrants deportable—and refugees ineligible for asylum—based on the actions of their spouses and parents. If sections 103 and 104 become law, a 13-year-old girl threatened with death because her father had joined an insurgency against her country's government could find herself denied asylum based solely on the fact that she is her father's daughter. A narrow exception based on lack of knowledge or renunciation of the father's affiliation would do nothing to protect a child who knew her father had joined a rebel movement,

but had no control over his actions, or could not "renounce" an affiliation she never had to begin with.

This section also permits immigrants to be deported for exercising rights of free speech that are protected under the U.S. Constitution. Under current law, anyone who engages in or incites terrorist activity is already deportable. Under sections 103 and 104, the 13-year-old girl could also be deported—and denied asylum—because her father wrote a letter to a newspaper editor, advocating armed resistance against a dictatorial regime.

Recommendation:

Amnesty International USA urges the U.S. Senate to reject the REAL ID Act of 2005 (H.R. 418), a bill that would sharply restrict the ability of victims of persecution to find asylum in the United States. Amnesty International USA has particular objections to sections 101, 103, and 104.