



Leadership Conference on Civil Rights

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OPPOSE H.R. 418, THE “REAL ID ACT OF 2005”

March 15, 2005

Dear Member of Congress:

On behalf of the Leadership Conference on Civil Rights (LCCR), the nation’s oldest, largest, and most diverse civil and human rights coalition, we urge you to oppose H.R. 418, the “REAL ID Act of 2005.” This radical proposal would undermine the rule of law, have a profound negative impact on immigrants and asylum seekers, and do little to protect American lives.

As an institution committed to civil rights, LCCR has spoken out on issues affecting the rights of immigrants because our nation’s immigration laws have far too often been used as a weapon against the weakest and least popular members of our society. In the past, immigration laws have been used to enforce overt racial discrimination and undermine the civil rights and liberties of noncitizens. Today, under the 1996 immigration revisions, various post-9/11 immigration policies, and the manner in which they have been enforced, immigration laws are again being used to attack basic civil rights – most notably, the right to due process and equal protection under the law. H.R. 418 appears to be little more than the latest such attack.

LCCR strongly opposes H.R. 418 for five key reasons:

- It would give the Secretary of Homeland Security the unprecedented authority, entirely free of any judicial oversight, to waive “all laws” that he determines are necessary to quickly construct barriers at United States borders.
- The asylum-related provisions in Section 101 would prevent many legitimate asylum seekers from obtaining safe haven in the United States.
- The drivers’ license provisions in Title II would unwisely force state motor vehicle departments to enforce immigration laws, undermining public safety and driving millions of undocumented immigrants even further underground.
- It would undermine our system of checks and balances by stripping the federal courts of jurisdiction to review erroneous rulings in deportation cases, opening the door to drastic consequences in many cases.
- It would provide bail bondsmen the unprecedented authority, with few if any clear due process safeguards, to arrest and detain noncitizens who face deportation.

First, H.R. 418 would authorize the Secretary of Homeland Security to waive “all laws” that he believes would interfere with the expeditious construction of barriers at our national borders. It would also eliminate the ability of any court to review a decision to waive a law, or to order any form of relief for damages arising from such a decision.

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The overbreadth of the authority granted by H.R. 418 is extremely disturbing. It would literally place the Secretary of Homeland Security above the law. The use of the term “all laws” indicates that the Secretary could waive not only particular environmental protections, as current law provides, but also any civil rights laws, immigration laws, labor laws or even criminal laws that he – in a decision that is completely immune from judicial review – unilaterally determines may stand in the way of border security construction projects. This irresponsible and unprecedented language is an affront to our most basic Constitutional principles.

Second, H.R. 418 would make several changes to the already-stringent rules governing the granting of asylum and other forms of humanitarian relief from removal. First, it would provide immigration officials broad discretion to arbitrarily demand “corroborating evidence” to support an asylum claim, with little regard to whether the evidence can realistically be obtained. Second, it would require asylum seekers to prove their persecutor’s “central” motive for engaging in persecution, which could essentially make the outcome of asylum petitions depend on the “cooperation” of persecutors themselves. Third, it would give immigration officials broad discretion to deny asylum based on highly subjective factors such as “demeanor,” which, given the trauma of persecution and its lasting impact, can be highly unreliable indicators of an asylum seeker’s credibility.

These changes would do little to prevent terrorist attacks. Any individual who is known to engage in terrorist activity is already barred from obtaining asylum or any other immigration benefit. Instead of making our country safer, Section 101 will simply make it far more difficult – or, in many cases, impossible – for legitimate asylum seekers to establish their claims. The current laws governing asylum wisely recognize the importance of judging asylum claims on a case-by-case approach, and while some changes to the laws are necessary, the changes outlined in Section 101 would take asylum reform in precisely the wrong direction.

Third, H.R. 418 would repeal the drivers’ license provisions that were enacted only several months ago in the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458), which implemented the recommendations of the 9/11 Commission. In their place, H.R. 418 would impose a legal presence requirement on all state drivers’ licenses. It would also create a separate temporary license for visitors on temporary visas, and would require motor vehicle agencies to verify each piece of identification used to support an application for a drivers’ license with the agency, domestic or foreign, that issued it.

In addition to creating tremendous administrative burdens on state motor vehicle agencies, Title II would not lead to fewer terrorists or make it more difficult for determined ones to obtain identification. Instead, it would simply result in more unlicensed and uninsured drivers on the roads. It would also lead to increased discrimination against immigrants who hold a different “temporary” drivers’ license, and may cause DMVs to erroneously deny drivers’ licenses to U.S. citizens who do not possess the necessary documents to verify their citizenship status. Furthermore, the increased difficulties in obtaining drivers’ licenses would also make voter registration under the National Voter Registration Act of 1993 (the Motor Voter Act) less accessible for citizens, particularly racial and ethnic minorities.

Fourth, as amended by the House, H.R. 418 would further undermine our system of checks and balances and deprive noncitizens of their right to due process under law. The new Section 105 would eliminate *habeas* jurisdiction in most cases, bar the federal courts from reviewing mixed questions of law and fact, and prevent federal courts from issuing stays of removal to protect asylum seekers and other immigrants (those who would remain eligible for federal judicial review after these changes) from deportation while their appeals are pending in federal court.



LCCR strongly opposes any proposal that would eliminate access to the federal judiciary for any individuals. For over 50 years, the federal courts have played an indispensable role in the interpretation and enforcement of laws that affect civil rights, and attempts to weaken the role of the courts have too often served as proxies for attempts to enshrine discrimination into the law. By largely eliminating the ability of noncitizens to turn to the federal courts, the new “court stripping” proposals in H.R. 418 appear to be little more than an extension of measures enacted at the height of an earlier wave of anti-immigrant sentiment in 1996 – laws that were so extreme that the Supreme Court ultimately had no choice but to step in and scale them back. Further eliminating the ability of the federal courts to review erroneous immigration rulings would do little but insulate administrative officials from their own mistakes and increase the likelihood of tragic consequences.

Finally, H.R. 418 as amended would outsource immigration enforcement functions by giving bail bondsmen the power to arrest and detain immigrants who are in removal proceedings, with few safeguards. It would allow a bonding agent to take an immigrant with whom he has entered into a bond agreement into custody at *any* time, even before a breach of any bond conditions. It would also let an agent to keep a bond premium if the immigrant, in the agent’s sole discretion, “hides or is concealed” from the bonding agent – a power that could easily be abused by unscrupulous bail bondsmen. It would give bond agents “the right to pursue, apprehend, detain, and surrender” immigrants, but it does not subject them to the same due process restraints as law enforcement officers – leaving open many questions about what recourse, if any, innocent people (such as victims of mistaken identity) would have when their rights have been violated in the course of making an arrest. Finally, H.R. 418 would raise privacy concerns by giving bail bondsmen unfettered access to personal information being held by the government.

For the above reasons, we strongly urge you to vote against H.R. 418. If you have any questions, please feel free to contact Rob Randhava, LCCR Counsel, at 202-466-6058.

Sincerely,

Leadership Conference on Civil Rights

American-Arab Anti-Discrimination Committee
American Civil Liberties Union
American Federation of Labor – Congress of Industrial Organizations
American Friends Service Committee
American Immigration Lawyers Association
Americans for Democratic Action
Asian Pacific American Legal Center
AYUDA, Inc.
Bill of Rights Defense Committee
Center for American Progress
Center for Community Change
Center for Gender & Refugee Studies
Center for National Security Studies
Church World Service Immigration and Refugee Program
Community HIV/AIDS Mobilization Project
Episcopal Migration Ministries
Fair Immigration Reform Movement



Florence Immigrant and Refugee Rights Project
Friends Committee on National Legislation (Quaker)
Haitian American Youth Of Tomorrow Inc.
Heartland Alliance for Human Needs & Human Rights
Hmong National Development
Illinois Coalition for Immigrant and Refugee Rights
International Gay and Lesbian Human Rights Commission
Japanese American Citizens League
Jewish Community Action
Jewish Labor Committee
National Korean American Service & Education Consortium
Kurdish Human Rights Watch, Inc.
Labor Council for Latin American Advancement
Lawyers' Committee for Civil Rights Under Law
Love Sees No Borders
Massachusetts Immigrant and Refugee Advocacy Coalition
Mexican American Legal Defense and Educational Fund
Midwest Immigrant & Human Rights Center, a program of Heartland Alliance
National Association of Latino Elected and Appointed Officials Educational Fund
National Association of Social Workers
National Asian Pacific American Legal Consortium
National Center for Lesbian Rights
National Council of Jewish Women
National Council of La Raza
National Gay and Lesbian Task Force
National Immigration Forum
National Network for Immigrant and Refugee Rights
National Organization for Women
Northwest Immigrant Rights Project
Organization of Chinese Americans
Peace Action Wisconsin
People For the American Way
Presbyterian Church (USA), Washington Office
Pride at Work
Service Employees International Union
Southern Poverty Law Center
The Multiracial Activist
Union de Eexbraceros e Inmigrantes
Union of Needletrades, Industrial and Textile Employees
Unitarian Universalist Association of Congregations
Unitarian Universalist Service Committee
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USAction
Washington Lawyers' Committee for Civil Rights and Urban Affairs
WeCount!
Women's Commission for Refugee Women and Children
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