



MALDEF

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MALDEF Urges Senators to Vote Against *REAL ID*

MALDEF (Mexican American Legal Defense and Educational Fund) is a national, non-profit, non-partisan organization dedicated to protecting the civil rights of the nation's 40 million Latinos living in the United States through community education, advocacy, and litigation. MALDEF employs these strategies through five programmatic areas, including immigrants' rights. After engaging in a careful and critical analysis of the *REAL ID Act*, MALDEF opposes the following four provisions of the *Act*, for the reasons stated herein. Instead, MALDEF urges Senators to address the urgent need for comprehensive immigration reform.

Driver's License and Identification Provisions

1. **Pending Intelligence Reform and Smart ID Measures**

Important state identification document and driver's license measures were enacted in the *Intelligence Reform and Terrorism Prevention Act of 2004* (Public Law 108-58)(*Intelligence Act*). The *REAL ID Act* (H.R. 418) passed by the House on January 10th and referred to the Senate Judiciary Committee on January 17th, would repeal the important state identification document and driver's license measures and the rule-making processes enacted in the *Intelligence Act*.¹

Specifically, Title VII of *Intelligence Act, Implementation of 9/11 Commission Recommendations*, includes Subtitle B on *Terrorist Travel and Effective Screening*. Under that Subtitle, §7212 *Driver's Licenses and Personal Identification Cards*, sets forth new rules and procedures based upon the recommendations of the 9/11 Commission. Pursuant to §7212, the DOT, in consultation with the DHS must set standards regarding: (1) acceptance of identity documents that applicants present when they apply for a driver's license; (2) verifiability of such documents' authenticity; (3) fraud prevention; and (4) security features for license cards.²

Through the *Intelligence Act*, Congress also put into place a DOT-led negotiated rulemaking process, which requires consultation with state motor vehicle officials, immigration experts, state and local governments, and, most importantly, security experts. After such consultation, new federal standards relating to driver's licenses would be implemented.³

¹ §207 of the *REAL ID Act* provides: "Section 7212 of the *Intelligence Reform and Terrorism Prevention Act of 2004* (Public Law 108-458) is repealed." §207, H.R. 418, Cong. Rec. H536-541 (Jan. 10, 2005).

² *Intelligence Act* §7212(b)(2), *Minimum Standards*.

³ *Id.* at §7212(b)(4), *Negotiated Rulemaking*.

H.R. 418 would repeal this negotiated rulemaking process, which was just put into law based upon the advice of the 9/11 Commission, and instead legislate a laundry list of strict requirements for immigrants' access to driver's licenses. MALDEF respectfully submits that Congress already decided these issues through its debate and careful deliberation of the *Intelligence Act*.

2. *REAL ID* Ignores the Findings of the 9/11 Commission

The 9/11 Public Discourse Project, a public education campaign created by members of the 9/11 Commission, issued a Fact Sheet clarifying that immigration status-based restrictions would not have prevented the 9/11 terrorist attacks. In fact, all of the hijackers who committed the attacks were in the United States lawfully when they obtained driver's licenses.⁴ Imposing immigration status-based restrictions could actually make America less safe, by diverting our resources and intelligence investigations into immigration enforcement, rather than finding the real terrorists.⁵ Such a costly diversion disserves the goal of increased security.

3. State and Local Officials Oppose the *REAL ID Act* as Costly and Misdirected

The American Association of Motor Vehicle Administrators (AAMVA) opposes *REAL ID*. AAMVA, a public safety-oriented organization, the National Governors' Association, composed of Governors from both parties, and the equally bipartisan National Conference of State Legislators (NCSL), wrote letters to Congress opposing *REAL ID*.⁶ The AAMVA and state and local governments have on-the-ground, relevant experience in public safety and homeland security issues. The State Legislators' position is that the *REAL ID Act* is unnecessary, disruptive, prescriptive, unworkable, costly, rigid, and misdirected.⁷ The NGA and AAMVA similarly oppose *REAL ID*, because: (1) the provisions of the *Intelligence Act* are the best course for meeting security goals; (2) the *Intelligence Act* provides a more workable framework for developing meaningful security standards, by calling for input from state officials and being flexible enough to incorporate best practices; and (3) the verification standards that would be imposed by *REAL ID* are beyond current capabilities of even the federal government, and would be a costly unfunded mandate considering the 220 million driver's licenses issued by the states.⁸

4. *REAL ID* May Lead to Impermissible Regulation of Immigration by State and Local Employees and Result in Civil Rights Abuses

When unauthorized, untrained state and local officials start asking U.S. residents about immigration status, racial profiling of Latino citizens, legal residents and immigrants is likely.⁹ Such racial profiling is prohibited as unconstitutional discrimination.¹⁰ Requiring motor vehicle

⁴ 9/11 Public Discourse Project, *Fact Sheet: Driver's Licenses, 9-11, and Intelligence Reform* (2004).

⁵ Center for Advanced Studies in Science and Technology Policy, "Not Issuing Driver's Licenses to Illegal Aliens is Bad for National Security," *U.S. Newswire* (Dec. 17, 2004).

⁶ NCSL, *Letter to Speaker of the House Dennis Hastert and Minority Leader Nancy Pelosi Regarding H.R. 418 and H.R. 368* (Feb. 3, 2005); NGA and AAMVA, *Letter to Speaker of the House Dennis Hastert, Majority Leader Thomas DeLay, and Minority Leader Nancy Pelosi* (Feb. 8, 2005).

⁷ NCSL, *The REAL ID Act Talking Points* (Feb. 2005) ("unnecessary, disruptive, prescriptive, unworkable, costly, rigid, and misdirected" is quoted from the NGA/AAMVA letter).

⁸ NGA and AAMVA, *Letter to Speaker of the House Dennis Hastert, Majority Leader Thomas DeLay, and Minority Leader Nancy Pelosi* (Feb. 8, 2005).

⁹ See, e.g., *Lopez v. City of Rogers*, Civil Action No. 01-5061 (W.D.Ark. 2002).

¹⁰ *Id.* Moreover, disparate treatment based upon immigration status and state DMV inquiries about immigration status may also be unconstitutional. Frank J. Kelley, *State of Michigan Attorney General*

officials to inquire about immigration status and encouraging other state and local officials to inquire about immigration status would lead to an increased use of racial profiling.

DMV officials do not have the proper competency to verify immigration status. Immigration law is complex, and President Bush has admitted that the system is badly broken.¹¹ Many are out of status through no fault of their own.¹² DMV officials could not be properly trained to distinguish which documents prove lawful status, and mistakes are likely. For this reason, the Puerto Rican Legal Defense Fund (PRLDEF) filed suit against New York DMV lawful presence requirements, on behalf of plaintiffs lawfully in the United States who were denied driver's licenses. One plaintiff has Temporary Protective Status (TPS) and another has been granted asylum in the United States.¹³ On February 4, 2004, the New York State Supreme Court issued an Interim Order enjoining New York State "from denying renewal licenses to any of the plaintiffs in this action and any similarly situated persons on the basis of their failure to comply with DMV's legal presence... policy."¹⁴

Profiling and due process violations may occur even outside of the DMV. In 2003, in a Riverside, California avocado grove, the local police demanded to see the licenses of all Latino workers in the grove, including U.S. citizens and Legal Permanent Residents (LPRs), threatening arrest and turning them over to the Border Patrol, even though only one person was driving.¹⁵ In 2002 in Texas, MALDEF settled a case in which the motor vehicles department seized a LPR's green card and refused to return it.¹⁶ Incidents of citizens and legal permanent residents being demanded to prove immigration status or being denied licenses demonstrate why state DMVs should refrain from enforcing immigration laws, and instead concentrate on improving public safety.

Furthermore, civil immigration enforcement is the exclusive jurisdiction of the federal government. This has been confirmed on a number of occasions by the United States Supreme Court. In 2003, in a final rule issued through the federal rule-making process, the DOJ and the former INS cited to Supreme Court precedent, reiterating that:

Federal control over matters regarding aliens and immigration is plenary and exclusive. "Control over immigration and naturalization is entrusted exclusively to the Federal Government, and a State has no power to interfere." *Nyquist v. Mauclet*, 432 U.S. 1, 10 (1977); see also, e.g., *Matthews v. Diaz*, 426 U.S. 67, 81 (1976)("[T]he responsibility for regulating the relationship between the United

Opinion No. 2883 (Dec. 14, 1995); J. Joseph Curran, Jr., *State of Maryland Attorney General Opinion No. 03-014* (Sept. 12, 2003).

¹¹ See, e.g., *Remarks by the President—On Immigration Policy*, The East Room (Jan. 7, 2004).

¹² See, e.g. *Padilla v. Ridge*, Complaint No. M-03-126 (S.D. Tex. 2003)(class action of persons with valid immigration rights approved by the judiciary unable to receive documentation from the DHS due to backlogs and other breaches of due process rights under the 4th Amendment of the U.S. Constitution).

¹³ National Immigration Law Center (NILC), *Immigrants' Rights Update*, Vol. 18, No. 6, *Lawsuit Challenges N.Y. Requirement That License Applicants Present SSN and/or Proof of Lawful Residence* (Sept. 21, 2004).

¹⁴ *Maria Lubas, et. al., v. Pataki and Martinez*, Interim Order No. 12371/04 (N.Y. S.Ct., March 4, 2005).

¹⁵ "Sheriff Brutality Case Renews Call for Police Conduct Guidelines; MALDEF Opposes CLEAR Act," *MALDEF Newsletter* (Fall 2003).

¹⁶ "Texas Improperly Seizes Work Permit of Driver's License Applicant," *MALDEF Newsletter* (Fall 2002).

States and our alien visitors has been committed to the political branches of the federal government.').¹⁷

This is one reason why the *Intelligence Act* requires consultation with immigration experts. Under our constitutional system of federalism, the Congress may not require the states to undertake immigration policy matters, because such matters are the responsibility of the federal government.

In sum, the DOT is poised to consult with security experts and state and local officials with direct, relevant experience in these important matters. Congress should defer to security experts who will make objective evaluations about what measures are needed to protect America, rather than overturning the security-focused process already underway and putting fundamental American rights at risk.¹⁸ For all these reasons, MALDEF urges Congress to refrain from repealing the smart identification and driver's license measures, as well as the rule-making process, just recently approved in the *Intelligence Act*.

Bail Bondsperson Provisions

I. REAL ID Replaces Judicial Authority with a Financially Interested Bail Bondsperson's Judgment

The *Sessions Amendment* passed as part of H.R. 418 would replace the current immigration bond with a system devolving significant authority to bond agents. Specifically, the bail bondsperson's judgment would replace judicial authority. The *Sessions Amendment* allows that:

At any time, *before a breach of the bond conditions, if in the opinion of the surety or bonding agent*, the principal becomes a flight risk, the principal may be surrendered to the Department of Homeland Security for removal.¹⁹

Also, licensed bondspersons would have access to any and all government records about immigrants, not just those that are relevant.²⁰ In addition, the minimum bond would increase from \$1,500 to \$10,000,²¹ creating a substantial financial interest for the bail bondspersons. Further, many families who were able to afford \$1,500 for the release of their loved ones from detention may find it difficult to pay \$10,000. Furthermore, under *REAL ID*, bonding agents and financial institutions would carry much less financial risk. First, if the principal violates any conditions of the bond, or "commits any act that

¹⁷ Immigration and Naturalization Service (INS), Dept. of Justice, Final Rule, *Release of Information Regarding Immigration and Naturalization Service Detainees in Non-Federal Facilities*, 19 Federal Register 4364 (Jan. 29, 2003),

¹⁸ Moreover, the consultation processes are already underway at the DOT, which issued a public notice on the matter on February 23, 2004. DOT, *Notice of Intent to Form a Negotiated Rulemaking Advisory Committee, Driver's Licenses and Personal Identification Cards*, Vol. 70, No. 35 F.R. 8756 (Feb. 23, 2005). The new standards must be set within 18 months, *Intelligence Act*, §7212(b)(2), and after two years, states will have to update their procedures and the federal government will not accept any nonconforming state identification document issued after such date. *Id.* at §7212(b)(1). Certainly, Congress could monitor the DOT rule-making process to ensure that any concerns that may be raised during the remaining rule-making process.

¹⁹ *Id.* at §106 (a)(7)(A)(*Surrender*)(emphasis added).

²⁰ *Id.* at §106 (a)(8)(A)(iv).

²¹ *Id.*

may lead to a breach of the bond,” the principal may be surrendered to the DHS without the return of any bond premium to the immigrant or his or her family.²² Liability is expressly limited by legislative language providing the bonding agent or surety “the absolute right to locate, apprehend, arrest, detain, and surrender any principal,... who violates any of the terms and conditions of his or her bond.”²³ Also, since liability is exonerated, more bonding agents and sureties would be likely to get into the immigration removal proceedings bonding business.²⁴

Financial liability and responsible decision-making are also eliminated through transfer of judicial authority to bail bondspersons. If the surety or bonding agents decides *before a breach of the bond conditions, if in the opinion of the surety or bonding agent*, that the immigrant they have issued a bond becomes a flight risk, they may surrender the immigrant to the DHS for removal proceedings,²⁵ having the right to pursue, apprehend, detain and surrender the immigrant to any DHS detention official or detention facility, or “any detention facility authorized to hold Federal detainees.”²⁶ At this point, without any judicial or even administrative review, the official “*shall* detain the principal in custody,”²⁷ and the DHS Secretary “*shall* immediately exonerate the surety from any further liability on the bond.”²⁸ There is no financial risk under these surrender proceedings.

Additionally, the bonding agent or surety has a right to petition the DHS Secretary or any Federal court, “without having to pay any fees of court costs, for an arrest warrant of the principal.”²⁹ Permitting bonding agents and their financiers to automatically procure arrest warrants without any court costs decreases financial risk to them. As discussed below, it would create new financial burdens on Federal courts.

2. Potential Windfall for Bail Bondspersons in Florida Alone Would be in the Millions

The increased financial interest coupled with decreased financial risk would contribute to an increased unscrupulous opportunity for the mal-intentioned bonds person. For example, the potential financial windfall in Florida alone would be in the millions. Approximately 131,200 Latino immigrants per year would potentially be affected by the *Sessions Amendment*.³⁰ Many would potentially be released on \$10,000 bonds and subject to the new bond agent and surety rules. If only 100,000 were released on bonds, since the bonds are now at minimum \$10,000 instead of \$1,500 (at least \$8,500 more costly) along with being risk-free, this means approximately \$85 million in new business in bonds for Latino immigrants in removal proceedings Florida.

Florida courts would have to process and issue arrest warrants, at a cost of millions to the Florida federal court system alone. If a great proportion of Latino immigrants were to be considered a flight risk *before a breach of the bond conditions, if in the opinion of the surety or bonding agent*,

²² *Id.* at §106 (a)(7)(B)(*Forfeiture of Bond Premium*).

²³ *Id.* at §106 (b)(8)(C)(i).

²⁴ *Id.* at §106 (b)(8)(C)(ii).

²⁵ *Id.* at §106 (a)(7)(A)(*Surrender*)(provision quoted above).

²⁶ *Id.* at §106 (a)(7)(A)(iii).

²⁷ *Id.* at §106 (a)(7)(B)(i)(*Effects of Delivery*)(emphasis added).

²⁸ *Id.* at §106 (a)(7)(B)(ii)(emphasis added).

²⁹ *Id.* at §106 (a)(7)(A)(i)(ii)(*Certified Copy of Bond and Arrest Warrant to Accompany Surrender*).

³⁰ BICE Fact Sheet, *Detention and Removal Operations: Alternatives to Detention* (July 14, 2004)(1.6 million arrested per year); Migration Policy Institute (MPI), *Who's Where: The Latino Foreign-Born in Florida*, www.migrationinformation.org/USFocus/whosresults.cfm (1.9 million foreign-born Latinos or 12% national total in Florida); MPI, Jeffrey Passel, *New Estimates of the Undocumented Population in the United States* (May 22, 2002)(8.5 million national, 700,000 in Florida, Latinos ¾ of population).

and they were surrendered to the Federal courts in Florida, those courts would be required to produce arrest warrants with no court costs. The current filing fee for civil actions in Federal Courts in Florida is \$250.³¹ Since the *Sessions Amendment* envisions a two-step “petition” for surrender, certification of bond and arrest-warrant issuance process, another fee would have been contemplated, were it not for the fee and court cost exemption in the two stages of the process of the *Sessions Amendment*. In addition, although Federal Courts would have no discretion over whether to issue the arrest warrant, they would have to certify the bond, which will take training and resources. In sum, the court costs are estimated at least \$250/procedure, and approximately 100,000 Latino immigrants in Florida could be “surrendered” by bail bondspersons and/or sureties in Florida each year. This means a potential cost to Florida federal courts of at minimum, \$25 million per year.

3. REAL ID Would Not Protect Against Unscrupulous Bail Bounty Hunters

State bail bondspersons licensing laws would be subverted by the *Sessions Amendment*, which does not provide protections against abuse of the wide discretion described above.³² With regard to those in the bail bondsperson/bounty hunter profession, incidences of violence and other unscrupulous acts have been reported across the country.³³ H.R. 418 does not offer any national standards for bail agents and/or bounty hunters to ensure proper training, sufficient knowledge of immigration law and civil rights of individuals apprehended, or basic requirements to maintain consistent national standards. Furthermore, in analyzing state bail laws, the lack of continuity with regard to codified requirements and standards for bonding agents and bounty hunters is apparent. Some states allow agents to begin their career at age eighteen; others do not require a bounty hunter license, while a handful of states allow former felons to enter into the profession.³⁴

³¹ Clerk’s Office, *Southern District of Florida Federal Court Fee Schedule*, citing 28 U.S.C. §1913, 1914 and 1917, www.flsd.uscourts.gov/default.asp?file=general/feeschedule.html.

³² See, e.g., §106, *REAL ID*, *passim*. (no bail bondsperson or surety licensing provisions).

³³ See, e.g., Associated Press, “Riverside bail bond company president agrees to plea bargain,” *The Mercury News* (June 26, 2004)(President of a major bail bond company was charged with paying jail inmates to solicit business); “Four Bounty Hunters Arrested: Police Investigate Group’s Actions,” *nbc4.com* (Feb. 11, 2004), [www.nbc4.com/print/2839594/detail.html] (agents for Capital Fugitive Recovery Agency, Inc arrested for allegedly overstepping their authority; police said the agents identified themselves as the police or the Immigration and Naturalization Service (now Department of Homeland Security)); Max B. Baker, “Bail system quirks hurts immigrants,” *Star-Telegram* (Dec. 8, 2003); Associated Press, “State fines bail bonding firm, revokes its license,” *The Miami Herald* (Nov. 29, 2004)(Black and Hispanic lawmakers concerned that poor minorities are spending more time stuck in jail than necessary because inability to afford bondsmen’s services); Richard Willing, “Skipped bail is taking a huge bite,” *USA Today* (Oct. 13, 2004) [http://www.usatoday.com/news/nation/2004-10-13-bail-bonds_x.htm](Alan Henry, director of the Pretrial Services Resource Center, states the criminal justice system “has allowed commercial bonding to become a very lucrative business with very little accountability.”).

³⁴ Some States Prohibit Bail Bonding and Bounty Hunting—Illinois, Kentucky, Oregon, and Wisconsin prohibit bail bonding and bounty hunting within their states. Florida prohibits bounty hunting, while North Carolina and South Carolina prohibit freelance bounty hunting. Most States Do Not Indicate an Age Requirement—Some states allow individuals to enter the profession at 18 years of age, while others require a bonding agent or bounty hunter to be 21. Georgia is the only state requiring a bounty hunter to be 25 years of age. Oklahoma Is The Only State Requiring a High School Diploma or Equivalent Degree. Nevada is the only state requiring bounty hunters to have a high school diploma or an equivalent degree. The 48 other states have no education requirement for entering the profession. 11 states require bounty hunters to be licensed—Indiana, Nevada, Mississippi, South Dakota, Connecticut, Arizona, Utah, Iowa,

In sum, lack of proper regulation, risk of abuse of discretion, and the financial rewards offered by the *Sessions Amendment*, would combine to create an extra-judicial system in which immigrants, many of whom may have proper defenses in their removal proceedings, would be denied fundamental due process rights. Furthermore, our nation's judges and immigration authorities would be robbed of their discretion to determine and oversee bond conditions. For all these reasons, MALDEF strongly urges Congress to vote against this provision of the *REAL ID Act*.

Asylum Provisions

MALDEF Opposes REAL ID's Further Devolution of Judicial Authority and Decreasing Access to Legal Protection for Deserving Asylum Seekers

Section 105 of REAL ID, *Restrictions on Immigrants' Access to Federal Courts*, would 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.³⁵ 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 United States.

Section 101, *Restrictions on Asylum*, was passed by the House with the justification that it would make America safer, when in fact, it would not. Terrorists are already subject to mandatory detention³⁶ and ineligible for asylum.³⁷ An asylum denial is not subject to judicial review if "there are reasonable grounds for regarding alien as a danger to the security of the United States."³⁸ Moreover, 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.³⁹ Better utilization of fingerprints and other data indicative of individualized suspicion would better protect America, rather than making asylum more difficult for all applicants, including deserving asylum seekers who would be turned away under H.R. 418.

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. For these reasons, over 40 faith-based and human rights groups from across the spectrum, including American Jewish Committee, Anti-Defamation

Louisiana, California, and West Virginia require a license. Only 12 states require any formal training prior to becoming a bail bond agent. Only 15 States Prohibit Individuals Convicted of a Felony or Crime of Moral Turpitude from Entering the Profession—Some states require fingerprints, references of good character, and background checks. In Indiana, a person can become a bonding agent 10 years after a felony conviction and 5 years after a misdemeanor conviction. Colorado allows said individuals to become bounty hunters 15 years after conviction, guilty plea, or *nolo contendere*. 21 States Have Codified Qualifications for Individuals Desiring to Become bounty hunters, But 17 States Have No Statutory Licensing Requirements—These states are Alaska, Hawaii, Idaho, Kansas, Maine, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, North Dakota, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and Wyoming. (*Citations on file with MALDEF.*)

³⁵ §105, *REAL ID Act*.

³⁶ §236A, *Immigration and Nationality Act* (INA)(8 U.S.C. §1226A).

³⁷ See, e.g., §208(b)(2)(A)(*Exceptions (to Asylum)*).

³⁸ §208(b)(2)(D)(*No judicial review*).

³⁹ See, e.g., DOJ/INS *Form I-589*, OMB No. 1115-0086 (Rev. 10/18/01).

League, B'nai B'rith International, Church Alliance for a New Sudan, Hebrew Immigrant Aid Society, Institute on Religion and Public Policy, Jesuit Refugee Service USA, Jewish Council for Public Affairs, Jewish Labor Committee, Jubilee Campaign (a Catholic program), Lutheran Immigration and Refugee Service, September 11th Families for Peaceful Tomorrows, United States Conference of Catholic Bishops, and World Relief (a program of the National Association of Evangelicals) oppose *REAL ID*.⁴⁰

The bipartisan U.S. Commission on Religious Freedom recently issued a report recommending ending across-the-board detention of asylum seekers and “expedited removal,” in order to increase due process protections, and avoid unnecessary detentions and mistaken deportation of legitimate asylum-seekers fleeing religious persecution.⁴¹ *REAL ID* would do the opposite, by making the already difficult asylum system even more stringent.

The asylum system has already undergone tremendous reform that eliminates any possible false incentives to apply for asylum, such as being allowed to claim asylum at an airport and be released into the general public.⁴² The U.S. government is now required to detain any person who asks for asylum at an airport. In fact, under current law DHS has the sole discretionary authority to determine an asylum seeker’s eligibility for parole.⁴³ 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. 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.

Sections 103 and 104, *Expansion of Inadmissibility/Removal Provisions*, would also prevent judges from providing asylum or other forms of immigration relief to many deserving immigrants. *REAL ID* would completely eliminate any requirement of a link between a person’s conduct or associations and any actual terrorist activity.⁴⁴ It would even make an immigrant deportable who is innocent of any wrongdoing based on the actions of his or her spouse or parents.⁴⁵

⁴⁰ *Letter to Congress Opposing REAL ID* (Feb. 9, 2005).

⁴¹ Human Rights First, “New Homeland Security Secretary Should Make Reforms for Refugees—U.S. Commission on International Religious Freedom Recommends Changes,” *Asylum Protection News* 36 (Feb. 24, 2005).

⁴² *See*, §303(b)(3)(B), *Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)*, 8 U.S.C. §1226; *See also* Doris Meissner, “FORUM: Not Broke, Don’t Fix,” *Washington Times* (Feb. 20, 2005); Editorial, “National ID Party,” *Wall Street Journal* (“Mr. Sensenbrenner’s claims that tougher asylum provisions will make us safer are also dubious. The last thing a terrorist would want to do is apply for asylum. Not only would he be bringing himself to the attention of the U.S. government -- the first step is being fingerprinted -- but the screening process for applicants is more rigorous than for just about anyone else trying to enter the country. In the past decade, perhaps a half-dozen individuals with some kind of terrorists ties have applied for asylum. All were rejected.”)

⁴³ *Id.*

⁴⁴ §103(b), *REAL ID Act*.

⁴⁵ §103(a)(IV)(bb), *REAL ID Act*.

Border Provisions

MALDEF Urges Congress to Oppose Suspension of Federal Laws in Order to Complete Additional Military Fencing Along the Southwestern Border

Section 102 of *REAL ID* 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.⁴⁶ 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. Environmental groups are united in opposing *REAL ID*,⁴⁷ and MALDEF opposes the attempt at complete devolution of judicial oversight inherent in Section 102.

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. Specifically, the General Accounting Office (GAO) acknowledged that increased border enforcement has led to increased deaths, and it has not slowed the rate of undocumented immigration.⁴⁸ Furthermore, the situation is leading to increased human trafficking, in which victims are forced by smugglers into prostitution, peonage, or to work in sweatshops, in violation of new U.S. laws against human trafficking.⁴⁹ In addition, the number of children arriving unlawfully in the United States has risen strikingly in the last few years.⁵⁰ 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. Fences and militarization of the border are a symptom of our broken immigration system, rather than a solution.

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For all these reasons, MALDEF opposes and urges Congress not to enact any of the provisions of the *REAL ID Act*. For further information, contact Katherine Culliton, Esq. in our D.C. office at (202) 293-2828 x14, or Tisha Tallman, Southeast Regional Counsel, in our Atlanta office at (678) 559-1071 x16, or call toll free at 1-877- 4 MALDEF (1-877-462-5333).

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⁴⁶ §102, *REAL ID Act*.

⁴⁷ See, e.g., Kimberly Edds, "Fencing Sought to Reinforce the Border Faces Opposition From Environmentalists," *Washington Post* (March 10, 2005).

⁴⁸ GAO, *INS' Southwest Border Strategy*, GAO-0/1-842 (August 2001).

⁴⁹ U.S. Dept. of State, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report* (June 14, 2004); *Trafficking Victims' Protection Act of 2000* (TVPA), Pub. L. 106-386 (Oct. 28, 2000); as amended by *Trafficking Victims Protection Reauthorization Act of 2003*, Pub. L. 108-193 (Dec. 19, 2003).

⁵⁰ See, e.g., Nina Bernstein, "Child Immigrants in Legal Limbo," *New York Times* (March 28, 2004).