



LEGISLATIVE ANALYSIS

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

REAL ID Act of 2005¹ (A Division of Public Law No: 109-13)

TITLE I (Titled: “Amendments to Federal Laws to Protect Against Terrorist Entry”)

Section 101 (Titled: “Preventing Terrorists from Obtaining Relief from Removal”)

- **Motive:** It requires all applicants for asylum to prove that “*at least one central reason*” behind their persecution is one of the following: the applicant’s race, religion, political opinion, nationality, or membership in a particular social group. (Previously, the law required that persecution be based on one of the five grounds but did not have the “central reason” requirement).
- **Credibility:** “Considering the totality of the circumstances and all relevant factors,” the bill allows judges to base credibility determinations on the applicant’s demeanor, candor, responsiveness, or inconsistency with any statement made at any time to anyone, “whether or not under oath and considering the circumstances under which the statements were made.”

Judges can base credibility determinations on any of the above factors “without regard to whether an inconsistency, inaccuracy or falsehood goes to the heart of the applicant’s claim.”

There is no presumption of credibility. However, if the immigration judge does not explicitly find that an applicant or witness is not credible, there is a presumption in favor of credibility on appeal. The government will have the burden to rebut this presumption which means the government must prove that an applicant or witness is not credible.

- **Corroboration:** Judges can deny asylum or withholding of removal based on the lack of documentary or “corroborating” evidence even if the applicant presents specific, detailed, and credible testimony, “unless the applicant demonstrates that the applicant does not have the evidence and cannot reasonably obtain the evidence.” It bars judicial reversal of decisions that were based on the availability (or lack of availability) of corroborating evidence, unless a judge is “compelled to conclude that such corroborating evidence is unavailable.”
- **Credibility and corroboration standards applied to all applications for relief:** The above standards (credibility, corroboration, and judicial reversal bar) extend to other applicants for relief from removal or protection, including cancellation of removal, 212(c) discretionary waiver, suspension of deportation, and many others.
- **Discretion:** It bars courts from reviewing discretionary judgments, decisions and actions, including those made in non-removal contexts.

¹ This summary is not exhaustive and is intended to provide a brief explanation about the REAL ID Act for advocates, community members, and interested organizations. This summary is not a substitute for legal advice.

- **Removal of Cap on Adjustment of Status for Asylees:** It eliminates the cap on asylees who are eligible to receive lawful permanent resident (“green card”) status. (Previously, only 10,000 asylees per year could adjust to permanent resident status.)
- **Removal of Cap on Asylum for Persons Resisting Coercive Population Control Methods:** It eliminates the cap on persons who may be admitted as a refugee or granted asylum based on their resistance to coercive population control methods (i.e., involuntary sterilization). (Previously, the cap was 1,000 per year)
- **GAO Study on Asylum:** It repeals the requirement in the recently-passed intelligence reform bill for a GAO study on terrorists and the asylum system.

Section 102 (Titled: “Waiver of Laws Necessary for Improvement of Barriers at Borders”)

This section gives the DHS Secretary discretionary authority to waive all “legal requirements” necessary to ensure expeditious construction of barriers and roads along the nation’s border. Federal district courts would have the “exclusive jurisdiction” to review claims only if there is an alleged constitutional violation. Claims must be filed within 60 days after the date or action of the DHS Secretary.

Section 103 (Titled: “Inadmissibility Due to Terrorist and Terrorist-Related Activities”)

Section 105 (Titled: “Removal of Terrorists”)

- **Definition:** It expands the already broad definitions of “terrorist organization” and “engage in terrorist activity,” and makes it easier to make inadmissible and deportable non-citizens who fit these definitions.
- **Guilt by Association:** The bill creates broad “guilt by association” grounds for deporting or barring individuals who are involved with any political group that uses violence, even if the association is in the form of peaceful protest or donation.
- **Standard of Evidence:** It raises the defense to a “clear and convincing evidence” standard for proving that one did not know and should not have reasonably known that an organization fits this overly broad definition of “terrorism.”
- **Retroactivity:** It makes it possible to deport long-term lawful residents accused of involvement in any political group that uses violence, even if the association occurred years ago, and was legal at the time.
- **Spouses and Minor Children:** It extends punishment to many spouses and minor children of people meeting the above criteria, even if they had no knowledge of the association.
- **Definition of “Material Support” to Terrorism:** The bill expands the definition of “material support” to terrorism, making an alien inadmissible, deportable, barred from asylum, and barred from withholding of removal if she had provided "material support" to any terrorist organization. There is no requirement that the support be related to terrorist activity.

Section 104: (Titled: “Waiver for Certain Grounds of Inadmissibility”)

- **Waivers:** In the Secretary of State’s or Secretary of Homeland Security’s unreviewable sole discretion, he may waive certain grounds of inadmissibility. The Secretary of State may not exercise this discretion once the immigrant is in removal proceedings. The Secretary of State and Secretary of Homeland Security should provide Congress with a report on the numbers of immigrants who are granted a waiver under this section.

Section 106 (Titled: “Judicial Review of Orders of Removal”)

- **Restrictions on Judicial Review:** The provision restricts judicial review to “questions of law” or “constitutional claims.” Non-citizens will have a more difficult time challenging their removal orders before a federal judge.
- **Restrictions on Habeas Corpus:** The bill bars habeas corpus review in cases where “judicial review” and “jurisdiction to review” are already barred under the immigration statute. Non-citizens will lose their ability to raise statutory and constitutional challenges in federal district court. For many, habeas was the only avenue of relief.
- **Transfers Cases to Federal Courts of Appeal:** Cases challenging a removal order that are currently pending in federal district court will be transferred to the court of appeals.

TITLE II (Titled “Improved Security for Driver’s Licenses and Personal Identification Cards”)

Section 202 (Titled: “Minimum document requirements and issuance standards for federal recognition”)

- **Repeals the Driver’s License Provision that Passed with the Intelligence Reform Law in 2004:** The just-passed intelligence reform law set up a process whereby states, the federal government, and interested parties would make recommendations for establishing minimum federal standards for IDs. The REAL ID Act eliminates this stakeholder process.
- **Curtails States’ Rights:** The REAL ID Act outlines and imposes federal standards for issuance of drivers’ licenses and IDs; if states don’t comply, their drivers’ licenses and IDs can’t be accepted as proof of identity by federal agencies.
- **Creates a Legal Presence Requirement:** The bill makes proof of legal immigration status a requirement for obtaining a driver’s license or state-issued ID (but not every legal immigration status will qualify).
- **Creates a Two Class System:** The bill sets up a tiered system where some legal non-citizens will receive “temporary” driver’s licenses and others will receive “regular” ones. This opens the door for a third class: “driving certificates” for undocumented drivers.

- **Stringent and Bureaucratic Document Requirements:** Documents required to support an application are outlined in great detail, and are both highly limited (i.e., the only foreign document that can be used is a passport) and may be impossible to obtain in some circumstances.
- **Verification of Documents:** Requires verification of each document supporting an application with the issuing entity—an extremely burdensome if not impossible task even for US-issued documents, much less foreign passports. For example, if someone presents a utility bill to a DMV official to prove residence in accordance with a driver’s license application, the DMV officer will have to contact the utility company and verify the completeness and accuracy of the utility bill. Cumulatively, DMV officers will have to verify thousands if not millions of documents with the issuing agencies before accepting them as part of a driver’s license application.

Section 204 (Titled: “Trafficking in Authentication Featured For Use in False Identification Documents”)

This provision requires DHS to enter the background information of any person convicted of using a false driver’s license for the purpose of boarding an airplane into the appropriate aviation security screening database.

TITLE III (Titled: “Border Infrastructure and Technology Integration”)

Section 301 (Titled: “Vulnerability and Threat Assessment”)

Section 302 (Titled: “Use of Ground Surveillance Technologies for Border Security”)

Section 303 (Titled: “Enhancement of Communications Integration and Information Sharing on Border Security”)

These provisions require the Department Homeland Security (DHS) to study the technology, equipment and personnel needed to address security within the US and to submit a report to Congress which includes recommendations for improvement. Second, they require DHS to develop a pilot program on ground surveillance and to identify surveillance technologies that will improve border security. Third, they require DHS to develop a plan for improved communication and information sharing across government levels and to report findings with a plan for implementation.

Title IV (Titled “Temporary Workers”)

Section 402: (Titled: “Numerical Limitations on H-2B Workers”)

Section 403 (Titled: “Fraud Prevention and Detention Fee”)

Section 404 (Titled: “Sanctions”)

Section 405 (Titled: “Allocation of H-2B Visa or H2-B Non-Immigrant Status During a Fiscal Year”)

Section 406: (Titled: “Submission of Congress of Information Regarding H-2B Non-Immigrants”)

Section 407 (“Exemption from Administrative Procedures Act”)

Among other things, this part of the bill lifts the cap on the number of H-2B visas for temporary non-agricultural seasonal workers.

Title V: (Titled “Other Changes to Provisions Governing Non-Immigrant and Immigrant Visas)

Section 501 (Titled: “Reciprocal Visas for Nationals of Australia”)

Section 502 (Titled: “Visas for Nurses”)

This part of the bill increases the number of immigrant visas available to nurses and physical therapists. It also increases the number of temporary visas available for highly skilled Australian workers.