

House passes “Real ID Act”

US legislation targets immigrants, refugees in “terror war”

Bill Van Auken
16 February 2005

The US House of Representatives passed legislation February 10 that would intensify a repressive crackdown against immigrants and refugees under the pretext of combating terrorism.

The bill, known as the “Real ID Act,” would effectively slam the door in the face of refugees fleeing persecution, facilitate the deportation of both asylum seekers and legal residents and deny drivers’ licenses to the millions of undocumented immigrants living in the US. Another provision would grant the Secretary of Homeland Security extra-legal powers to complete the walling off of a section of the US-Mexican border.

This is the first major piece of legislation to be considered by the Congress since the beginning of the Bush administration’s second term, and it underscores the reactionary trajectory of both big business parties. The bill passed the House in a 261-161 voice vote, with 42 Democrats joining the Republican majority to support the measure.

The anti-immigrant initiative was originally attached to intelligence “reform” legislation approved last year, but was removed because of opposition within the Senate. Now it is expected that the bill will be attached to other “must pass” legislation, like the funding of the US war in Iraq.

The “Real ID Act” requires that states demand proof of legal immigration status in the US from anyone seeking a driver’s license. The legislation’s author, Republican Congressman James Sensenbrenner of Wisconsin, chairman of the House Judiciary Committee, claimed that it would “prevent another 9/11-type attack by disrupting terrorist travel.” He and other supporters of the bill pointed to the ability of the September 11 hijackers to obtain drivers’ licenses in several states.

In reality, the measure would do nothing to avert terrorist attacks, but would have the effect of reinforcing the pariah status of an estimated 10 million undocumented immigrant workers in a country where the ability to drive is often a precondition for finding work.

At present, 11 states issue licenses without requiring proof of legal residency, but a number of others are considering granting them to undocumented immigrants, rather than forcing millions of people to drive illegally and without accident insurance.

The other key component of the bill would impose insurmountable new hurdles for refugees seeking asylum in a system that—as a government-organized commission recently admitted—already treats those fleeing oppression as criminals.

Refugees would be compelled to bear an extraordinary burden of proof to establish their right to asylum. They would be required to produce corroborative evidence of their claims of persecution, and even then would have to prove that the intent of their persecutors was to punish them for their race, religion or political beliefs. These requirements constitute a clear breach of international treaties signed by Washington that govern the treatment of refugees.

Human rights activists have pointed out the obvious: those engaged in such persecution are not likely to issue documents explaining their actions, and proving the intent of those who carry out killings, torture and other abuse is next to impossible.

The bill further expands the arbitrary power of immigration officers and judges to reject asylum claims on entirely subjective grounds. Asylum could be denied based solely on their assessment of the “demeanor” of applicants, meaning that these officials could send people back to be murdered, tortured or imprisoned just because they didn’t like the look on their faces or the tone of their voices.

Another provision allows for denial of asylum based on any inconsistencies between written and oral statements “made at any time and whether or not under oath.” Such discrepancies are common among people fleeing state persecution, who fear retribution. Under this statute, a woman who reveals that she was raped by her persecutors can be sent back on the grounds that she did not provide details of her ordeal to the first immigration cop who interviewed her at the airport.

The US Commission on International Religious Freedom, which issued a report on the treatment of asylum seekers on February 8, found that records of such statements are, in any case, “unreliable and incomplete.”

The House legislation’s impact extends well beyond those seeking asylum. It allows for the summary deportation of immigrants who have been legally living and working in the US for decades for supposed offenses that include providing nonviolent, humanitarian assistance to organizations labeled “terrorist” by the US government. This penalty can be applied retroactively for contributions made to groups that were not designated as foreign terrorist organizations at the time and were therefore entirely legal.

Terrorism itself is defined to include not just acts of violence, but to “endorse or espouse” policies or positions with the aim of inducing others to “support a terrorist organization.” It thus abrogates the constitutional protection of free speech for immigrants.

The bill also specifically declares that “an alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this Act, to be engaged in a terrorist activity.” The US State Department has never officially defined the PLO as a foreign terrorist organization, and Washington hailed the recent election of its chairman Mahmoud Abbas to replace Yasser Arafat as president of the Palestinian Authority.

The penalty of deportation would apply not only to individuals charged with supposed support for terrorism, but also to their spouses and children.

Taken together, these clauses would allow the deportation of a Palestinian immigrant residing in the US legally for the “crime” of writing a newspaper article or an essay critical of the state of Israel and expressing sympathy for the PLO, or of a Colombian criticizing the state repression

against anti-government guerrillas in his or her country. Moreover, their entire families could be thrown out with them.

The bill also places severe new limits on the jurisdiction of courts to reverse rulings by immigration officials. The language is directed at overriding a 2001 US Supreme Court ruling in the case of *St. Cyr vs. the INS*, which affirmed that immigrants have the constitutional right to challenge their deportation and cannot be held without charges. The case, which involved the deportation of an immigrant for a minor criminal offense, was cited in the recent court ruling on the illegal detention of prisoners at the US Navy base in Guantanamo Bay, Cuba.

Finally, the legislation contains an extraordinary passage that grants the Secretary of Homeland Security the unilateral power to override all laws—federal, state and local—in order to complete construction of a security fence along a stretch of the US-Mexican border near San Diego, California.

“Notwithstanding any other provision of law, the Secretary of Homeland Security shall have the authority to waive, and shall waive, all laws such Secretary, in such Secretary’s sole discretion, determines necessary to ensure expeditious construction of the barriers and roads,” the legislation states. It adds that no court shall have any jurisdiction over the Secretary of Homeland Security’s actions and that no cases, either civil or criminal, may be heard in the matter.

Environmentalists had successfully stalled the building of the security barrier, on the grounds that it would wreak enormous ecological destruction to the area by walling off canyons in order to build an earthen berm to support the fence and a border patrol road.

The way in which the section is written, however, goes far beyond environmental codes. Theoretically, the Homeland Security secretary could order opponents of the project imprisoned or even shot to prevent any hindrance to fortifying the border.

This reactionary piece of legislation would only intensify the persecution of immigrants acknowledged in the 500-page report issued by the Commission on International Religious Freedom. This Republican-led body focused its investigation on the treatment of asylum seekers under the “expedited removal” procedures implemented as part of the 1996 “Illegal Immigration and Immigrant Responsibility Act,” signed into law by Democratic President Bill Clinton. For the first time, this act allowed immigration officers to order summary deportations, a power previously reserved for immigration judges.

The commission found that asylum seekers were treated like criminals. Nearly one third of them are jailed for 90 days or more, and the average detention is 64 days. Those claiming refugee status based upon persecution in their countries of origin are subjected to renewed persecution once they enter the US immigration system. They are incarcerated in facilities that include six county jails, housed together with criminal defendants and subjected to degrading conditions.

The refugees are routinely handcuffed, shackled and subjected to strip searches. Those who protest their treatment or commit minor infractions of prison discipline are thrown into solitary confinement. One section of the report warned that the treatment meted out to those seeking asylum was “painful and even traumatic,” causing potential long-term psychological harm. This brutal treatment is an integral part of a system designed to break the will of those seeking asylum so that they will give up and return to their own countries.

Describing his abuse in a US detention facility, one asylum seeker told commission investigators: “I fled my country because of this. When it happened here, I broke down and cried.”

The report likewise found that there was no consistency within the system, with wild variations in the rate of acceptance of asylum pleas from one jurisdiction to another and even between one judge and another in the same jurisdiction.

Moreover, while asylum seekers are supposed to have a right to legal

counsel, many lack representation. The study found that 25 percent of those who did have a lawyer gained asylum, while only 1 percent of those who did not were successful.

The conception underlying the new legislation—that terrorists would seek to enter the country by applying for asylum—is absurd on its face. Such an application amounts to turning one’s self in to be indefinitely detained while multiple government agencies conduct investigations into your background. It is the last route that anyone seeking to enter the US surreptitiously to carry out a terrorist act would consider.

There is no reason to believe that the findings of the commission will create a more humane US policy towards immigrants and asylum seekers.

As Bush’s nominee to head the Department of Homeland Security, Michael Chertoff will be in charge of immigration and asylum matters. He played a key role at the US Justice Department in the round-up and imprisonment without charges—and in the overwhelming majority of cases even minimal grounds for suspicion—of thousands of Muslim, Arab and South Asian immigrants in the aftermath of the September 11, 2001, terrorist attacks. It has been reported that Chertoff’s position was that immigration laws could be manipulated in order to hold these individuals without having to produce any evidence against them.

Subsequently, as a US federal appeals court judge, Chertoff “denied asylum, ordered deportation or otherwise ruled against foreigners in 14 out of 18 immigration cases he handled,” the Associated Press reported. In one such case, Chertoff denied asylum to a man who provided corroborative evidence that he was arrested and beaten by police after participating in a nonviolent political demonstration in Bangladesh.

Moreover, the White House itself has backed the new anti-immigrant legislation. The day before the House vote, it issued a statement declaring its “firm support” for the measure. Bush’s backing for this reactionary proposal gave the lie to the US president’s feigned sympathy for immigrants, expressed in his State of the Union speech, in which he decried “laws that punish hardworking people who want to provide for their families.”

Immigration has proven a divisive issue within the Republican Party. White House support for the “Real ID Act” was widely seen as a means to drum up reluctant Republican support for Bush’s proposed “guest worker” program that was floated in the run-up to the 2004 election in a bid to attract votes from the country’s growing Latino minority.

With the election over, even the guest worker proposal, which would create a category of super-exploited immigrant labor with only temporary rights to remain in the country, has taken on a more reactionary cast. The Bush White House is accommodating its proposal to its extreme right-wing base, which is inculcated with xenophobia and racism, opposes the guest worker scheme as an “amnesty” for “illegals,” and favors mass deportations.

House Republican leader Tom DeLay indicated that Republican support for any such proposal would be conditioned upon onerous amendments, including a requirement that undocumented workers residing in the US go back to their countries of origin to apply for readmission under the program, and that they leave their families behind there. Such prerequisites would almost certainly ensure that only a handful of the millions of undocumented immigrants already in the US would participate.



To contact the WSW and the
Socialist Equality Party visit:

wsws.org/contact