

Real ID Act: Congress takes another step toward a police state

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When President Bush signed into law earlier this month the \$82 billion bill to fund ongoing operations in Iraq and Afghanistan, incorporated within it was a second piece of legislation known as the REAL ID Act. When implemented three years from now, it will enable the government to follow the daily comings and goings of every US resident, citizen and non-citizen alike.

The law mandates state uniformity of driver's licenses, in a manner to be determined by the Department of Homeland Security. It will require machine-readable electronic devices to be embedded so that an electronic swipe will reveal the location and business of all persons, whenever they do almost anything. At the same time, state databases will be interlinked to provide instantaneous checking of data. Every police stop could well incorporate not only arrest records, but also immigration status, and more.

The effect will be a profound transformation of daily life in America, as the driver's license becomes tantamount to a national identity card. The card will nominally be issued by each of the 50 states, but if any state should not go along with the federal standards, its residents will not be allowed use their licenses to board an airplane or to enter a federal building. Without an approved card, it will be impossible to open a bank account, collect Social Security payments, or use virtually any other government services.

The final bill passed by a 368-58 vote in the House of Representatives on May 5. The Senate passed it unanimously on May 10, and President Bush signed it the next day. Even as Bush was taking this step in establishing the legal framework for a police state at home, he issued a prepared statement hailing the "new democracies ... taking root in Iraq and Afghanistan."

The REAL ID Act was finally approved following several previous attempts by its supporters to enact it stumbled. Its leading proponent, Representative James Sensenbrenner (Republican of Wisconsin), only agreed reluctantly to withdraw similar provisions from an earlier bill to create the position of intelligence "czar" when the Republican leadership promised that he could introduce REAL ID as a stand-alone bill later in the session.

As a separate bill, the REAL ID Act passed the House in February by a 261-161 margin, but it faced an uncertain future in the Senate. The Bush administration then agreed to attach it to the \$82 billion earmarked for the US occupations. Tagged the Emergency Supplemental Appropriation Act for Defense, the Global War on Terror, and Tsunami Relief Act of 2005, it was rightly judged that the big business politicians in Congress would swallow it whole, no matter what else was included.

The REAL ID Act moved through Congress on the coattails of the military appropriation bill—which was pitched as a means of

"supporting the troops"—without so much as a debate in the Senate, let alone any hearings.

In reality, this legislative maneuver only confirmed that the turn towards militarism abroad is inseparable from the drive to destroy democratic rights at home. Moreover, the overwhelming margins in favor of the bill in both houses of Congress demonstrate the bipartisan character of this policy.

The need for wholesale changes to the system of licensing drivers in the country was sold as a measure to forestall some future terrorist attack by preventing the licensing of undocumented immigrants. One of the recommendations of the so-called independent commission set up to investigate September 11 was the establishment of federal guidelines for identification, including uniform standards for birth certificates and driver's licenses.

Security experts have long questioned whether a national identity card would make anyone more secure. All but one of the 19 hijackers on September 11, 2001, had some form of official US identification, some of it fraudulent.

The rhetoric in favor of the bill was laced with anti-immigrant chauvinism. In the much-abbreviated debate in the House, Sensenbrenner said the bill was needed to "hamper the ability of terrorist and criminal aliens to move freely about our society."

Many of the bill's provisions are especially hard on immigrants. States will not be allowed—as 11 of them currently do—to issue driver's licenses without proof of "lawful presence" in the country. Immigration advocates, supported by many local law enforcement officials, argue that since the undocumented are going to drive anyway, even if only to get to work, it is in the interests of society that they be subject to the basic standards required for getting a license. This argument was not even given a hearing before Congress.

Only valid US visas and passports from other countries will be accepted to show "lawful presence." Licenses will have to expire on the same date as the applicant's visa, even if they meet all legal requirements for their stay.

The 50 state departments of motor vehicles will be required to verify documents submitted to prove identity, legal name and date of birth. Foreign documents, including birth certificates issued outside of the United States, are not acceptable. This alone will make it impossible for many immigrants to qualify for licensing.

Apart from these burdens, a whole new raft of measures against immigrants has also been passed. Among the most dictatorial is the one that grants the secretary of homeland security, at his sole discretion, the right to waive *all* legal requirements that he deems necessary to expedite the construction of security fences and barriers at the border.

Lawsuits filed against the erection of the barriers, which have to date held up their construction on environmental grounds, are specifically removed from the jurisdiction of state courts and must be heard in federal courts.

Other measures make it much easier to target immigrants for deportation. Inclusive new definitions of terrorists and terrorist activity have been incorporated for this purpose. A terrorist organization, in addition to those named on the attorney general's list, includes any "two or more individuals, whether organized or not," who engage in prohibited activities.

Prohibited activities, besides planning or engaging in violent acts of terrorism, include "circumstances indicating an intention to cause death or serious bodily harm." Under this definition, a careless statement made in the heat of an argument could lead to deportation as a terrorist!

Persuading others to espouse terrorist activity and support for a terrorist organization are both deportable offenses, meaning that someone writing or speaking in defense of the Palestinian people or the Turkish Kurds could be prosecuted. Also on the list is gathering information on "potential targets for terrorist activity," and soliciting funds "or other things of value" for "terrorist activity." Even spouses and children of those defined as terrorists will be subject to deportation with limited ability to appeal.

To avoid deportation, those deemed terrorists must meet the virtually impossible task of presenting "clear and convincing evidence" that "the alien did not know, and should not reasonably have known, that the organization was a terrorist organization." Any findings of corroborating evidence by immigration judges are considered "findings of fact" rather than judgments, and are thereby eliminated from higher judicial review.

Similarly, judgments, decisions or actions deemed "discretionary" may not be appealed. Among these, immigration judges are allowed to consider the defendant's "demeanor" in adjudicating deportation hearings, a notoriously unreliable indicator, especially when dealing with people who have been subjected to torture in their home countries.

The possibilities of judicial review of deportation decisions have been curtailed. All challenges to final deportation orders now pending in federal district courts have been transferred under the new law to the Court of Appeals. Likewise, the higher court is designated as the sole judicial arbiter of claims for asylum brought under the United Nations Convention Against Torture. Appeals for asylum in the United States on the basis of persecution, and even the threat of execution, in the country of origin, will also be sharply curtailed.

In one of the most sweeping attacks on immigrant rights in particular and democratic rights in general, the new law eliminates habeas corpus, the right to petition against unlawful detention, in those cases otherwise excluded from judicial review. As a statement on the REAL ID Act by the American Immigrant Lawyers Association explained, "By eliminating habeas, this provision gives the immigration agency unchecked power to deport and detain many longtime residents of this country. Such draconian measures have nothing to do with enhancing our security..."

Under the guise of fighting the "war on terror," immigrants are being stripped of some of the few rights they now have. Already at the mercy of INS judges, agents and their jailers, undocumented immigrants have been subjected to beatings and indefinite detentions, in many cases after being picked up for only minor visa violations.

Those who have come to the United States to escape desperate

conditions at home, and who work very hard at low pay, are automatically considered potential terrorist suspects in the eyes of the government.

The attacks on immigrants embodied in the REAL ID Act, however, are not merely an attempt to victimize the foreign-born. By spreading unfounded fear of the immigrant "menace," politicians of both the Republican and Democratic parties have enacted the legal basis for establishing unprecedented state control over citizens and non-citizens alike.

One of the requirements of the act is that each state provide electronic access to information in their motor vehicle databases to all 49 other states. Security experts have warned of the high risk of privacy intrusions and identity theft inherent in integrating data from a variety of different systems. Security standards are not addressed in the legislation, but are left up to the Homeland Security and Transportation departments of the federal government.

Also left to the same cabinet secretaries are future requirements for the machine-readable component of the driver's license. Digital fingerprints, photographs and retinal scans encoded on computer chips are all possibilities. Even DNA information could be included down the road.

The cost of these license modifications has been left as an unfunded mandate to state governments. The program will require the re-issuance of every driver's license across the country. The cost of this alone, even without the document verification requirement, the database interlocks, and the new machine-readable mechanisms, will be a burden on already deficit-ridden state governments.

The National Conference of State Legislatures estimates a cost of \$750 million to implement the REAL ID requirements, including \$80 million to create the links among state databases and other costs to purchase equipment to collect, code and store the necessary data onto the licenses.

Besides the state legislature group, the National Governors Association, the Council of State Governments and the American Association of Motor Vehicle Administrators, among others, all came out in opposition to the REAL ID Act.

Neither this opposition—nor that of the American people, to the extent that they are aware of these new measures—was able to outweigh the determination of both Republican and Democrats in Congress to support US war abroad and intensified repression at home.



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