

**REAL ID ACT:**

**A FEDERAL LAW'S IMPACT ON  
THE HUMAN AND CIVIL RIGHTS  
OF SAN FRANCISCANS**



A Report by:

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## I. INTRODUCTION

On May 11, 2005, President George W. Bush signed into law the REAL ID Act of 2005. The bill, which focused on emergency appropriations for military spending and tsunami relief, had been amended to include several immigration and asylum law provisions (referred to as the REAL ID Act) which had nothing to do with spending. Although the declared purpose of these provisions is to protect United States citizens and legal residents from terrorists, instead they have been viewed as eroding civil liberties, expanding the power of the executive branch, diminishing the power of the judiciary, and stigmatizing legal immigrants. As a result, human rights and immigrant rights organizations throughout the country lobbied against the law.

Proponents of the spending bill aimed to bypass full Congressional hearings on the immigration and asylum law provisions by forcing a swift vote on the bill as a whole. Many senators vigorously opposed attaching the REAL ID Act to the emergency legislation. Sen. Dianne Feinstein (D - Calif.) argued "an emergency supplemental is not the place for the Congress to enact substantive immigration provisions." Sen. Sam Brownback (R - Kan.) and Sen. John McCain (R - Ariz.) urged Senate Majority Leader Bill Frist to keep the broad "anti-immigration" proposal off the supplemental appropriations bill.

Despite this vocal opposition, majority leaders in the Senate pushed the provisions through without debate. Sen. Feinstein stated in a press release two days before the spending bill became law, "voices of opposition to the REAL ID Act were all but silenced." Organizations representing the full political spectrum expressed concern about the potentially dangerous aspects of many of the REAL ID Act's provisions:

**American Bar Association:** "The REAL ID Act would make broad-ranging changes to our immigration and asylum laws, which would, in many cases, adversely affect genuine refugees. In addition, these proposals have not had the benefit of congressional hearings or debate."

**Coalition of Asian Pacific American Organizations:** "Approximately 60% of the Asian Pacific American community was born outside the United States. We find it entirely inappropriate that a bill which will harm the Asian Pacific American community in so many ways has been attached to a bill that our community cares so much about [the Tsunami relief package]."

**Coalition of Faith-Based Organizations:** "We are deeply troubled that Section 101 [of the Act] could adversely affect such faith groups as Jews departing anti-Semitic persecution in parts of Europe and the former Soviet Union, Christians fleeing China, Burma and the Middle East, or Muslims seeking protection from dictatorial regimes in Africa."

Because it directly impacts San Francisco Bay Area residents, local advocates urged the San Francisco Human Rights Commission to hold a public hearing on the law and its impact on the local community. On May 26, 2005, the merits of the law were debated during a joint hearing before the Human Rights and Immigrant Rights Commissions.

## II. PUBLIC HEARING

The debate at the public hearing focused on four specific provisions of the legislation:<sup>1</sup>

- Provision 1: Retroactively expands the definition of terrorism to include pure speech and association, thereby rendering even lawful permanent residents deportable and ineligible to be legal citizens of the United States
- Provision 2: Makes it harder for applicants to gain asylum from repressive regimes and includes punitive immigration provisions.
- Provision 3: Violates privacy rights and discriminates against legal immigrants by creating national driver's license and identification card requirements that may be costly to implement and may lead to discrimination based on race and ethnicity.
- Provision 4: Gives the Department of Homeland Security unrestricted discretion to bypass federal and state labor laws and laws protecting the environment in order to expedite construction of border barriers and roads.

The hearing chamber was filled to standing room only. The Constitutional Rights Coalition mobilized a range of speakers representing a broad cross section of San Francisco's civil rights, trade unions, immigrant rights and human rights organizations. Individual citizens also voiced their concerns. Every effort was made to ensure that the Commissions heard debate on all sides of the issue by inviting representatives of the Office of the US Attorney, the Department of Homeland Security (DHS) and the Federal Bureau of Investigation (FBI). Nevertheless, no federal spokesperson testified at the hearing.

## III. EXCERPTS OF HEARING TESTIMONY

The following section summarizes the public testimony given at the hearing regarding the significance of the REAL ID Act and its potential impact on people in San Francisco. (Please see Appendix B for the Minutes of the hearing.)

### **Mark Silverman, Esq., Immigration Resource Law Center**

Mr. Silverman spoke of the Clear Act as a federal law that went through Congress. He explained that this law calls on state and local officials to work with federal agents to enforce the federal immigration laws. He stated that local officials face losing the trust and confidence of immigrant communities to fight crime effectively if they comply. Mr. Silverman said there is an erosion of public safety, and law enforcement's effort to

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<sup>1</sup> A full analysis of these four provisions is presented on pages 9-19 of this report.

protect citizens is placed in jeopardy. He also explained that if state and local officials fail to enforce the laws, they lose federal funding.

**Maxwell Pelt, Esq. Office of the San Francisco District Attorney**

Mr. Pelt addressed the national ID card. He stated that if the REAL ID Act passes, California will be forced over the next three years to convert to a federal standard. He explained that the number of identification cards will diminish, and that ID cards are essential to tracking down and locating suspects and for contacting witnesses and victims. He also explained that this will increase identity fraud. He noted that fewer people with valid drivers' licenses will mean more drivers on the road with no insurance and a higher incident of accidents. Mr. Pelt explained that fewer people will apply for general assistance because they won't have the needed official drivers' license or State issued ID.

**Jayne E. Fleming, Esq.**

Ms. Fleming described herself as an appellate attorney representing asylum seekers on a volunteer basis. Ms. Fleming stated that now, more than ever, asylum applicants need greater access to legal services to defend themselves. She asserted a need for greater transparency and more watchdogs. She illustrated how the REAL ID Act would limit the arguments she could use in asylum cases and how these same arguments have helped her succeed in similar cases she has litigated in the past. Ms. Fleming explained that the REAL ID Act would put individuals who are fleeing forced marriages and domestic violence in jeopardy because the law requires official private addresses of those applying for national IDs and provides no safeguards or security to prevent people from being hunted down by their abusers.

**Scott A. Mossman, Bay Area immigration attorney**

Mr. Mossman discussed how the REAL ID Act expands the Immigration and Nationality Act's definition of "engaging in terrorism" to encompass constitutionally protected speech and association. He explained that persons who meet the new definition of engaging in terrorism are subject to removal from the United States and a lifetime ban from returning. He added that the Act effectively ends the use of *habeas corpus* to challenge orders of removal from the United States.

**Julian Sharp, American Civil Liberties Union (ACLU) intern**

Mr. Sharp described the dangers posed by the Patriot Act if its provisions pass the sunset deadlines currently before the Congress. He encouraged the Commissions and members of the public to organize to oppose renewal of the Patriot Act.

**Supervisor Jake McGoldrick, San Francisco Board of Supervisors**

Supervisor McGoldrick said that in January 2004, San Franciscans voted to not cooperate with the Patriot Act. He explained that the voters did not want City employees to face criminal prosecution under threat of federal investigation and that the Mayor and Board of Supervisors provide a shield against prosecution.

**Margaret Zaknoen, Bay Area Immigration Rights Coalition**

Ms. Zaknoen said immigrants are now equated with terrorism. She added that the overall intent of the REAL ID Act is not national security but fomenting anti-immigration sentiment. She stated that the law will drive more immigrants to the shadows where they will be less likely to come forward to complain and more likely to put up with abuses.

**Banafsheh Akhaghi, President and CEO of the National Legal Sanctuary for Community Advancement**

Ms. Akhaghi said that people who are deported because they violate immigration laws are sent back to their home country where they are detained, interrogated, held without bond and prosecuted for possible terrorist links and possibly sentenced to death. She explained that deportation from the United States based on terrorism could land a person in jail on terrorist charges. She called on the Department of Homeland Security and federal agencies to work with the community to discuss policies and procedures on enforcement.

**Dennis Mosgofian, Chair of the Constitutional Rights Coalition**

Mr. Mosgofian described the REAL ID Act as expanding the executive branch of the federal government, thus reducing the system of checks and balances. He asserted that this weakens our democracy. Mr. Mosgofian explained that under the REAL ID Act, machine-readable technology will be incorporated into drivers' licenses and identification cards. He stated that DMV clerks will be agents under the federal government, screening to identify potential individuals who look like "terrorists." He expressed concern that this would increase racial profiling and stated that the real purpose behind all of this is politics.

**Ramiz Rafeedie, American-Arab Anti-Discrimination Committee of San Francisco**

Mr. Rafeedie spoke of how Arabs are disproportionately affected by the passage of the REAL ID Act. He stated that the Arab community lives in America under a climate of fear where Islamic organizations are targeted and linked to terrorist organizations. He stated that the irony in this is that Arabs escaped their countries to avoid prosecution. Now under this new law, he explained, Arabs are the target of perceived threats as being terrorists.

**Dusty Araujo, International Gay and Lesbian Human Rights Commission**

Mr. Araujo spoke of the REAL ID Act as creating a chilling affect. He described how lesbian, gay, bisexual, transgender and HIV positive applicants already have a difficult time seeking asylum. He claimed that international law classifies people who escape the persecution of their country as refugees. He added that with the REAL ID Act, international law is violated. He described how those asylum seekers who suffer psychological effects of post traumatic stress disorder (PTSD) or are mentally challenged are faced with their applications being rejected based on their conduct when they are interviewed. Lastly, he explained how transgender asylum seekers have a strike against them because their gender is based on what is listed on their birth certificates.

**Elise De Larare, Northern California Legislative Coordinator, Amnesty International, USA**

Ms. De Larare raised concerns about the Patriot Act and how it negatively impacts asylum seekers. She stated that people are deportable under the Act if they cannot disprove their association with terrorism. Ms. De Larare explained that Amnesty International was not totally opposed to the Patriot Act. She explained that the organization condemned the attacks of 9/11 and understands that domestic security must be upheld. Lastly, she raised her concerns on three sections of the Patriot Act: search and seizure; the broad definition of domestic terrorism; and how non-citizens can be detained for minor violations of immigration policies.

**Julio Loyola, Day Laborers Program, La Raza Centro Legal**

Mr. Loyola spoke of the perilous dangers of crossing the boarder to come to this country. He explained that day laborers are exploited when they try to earn a living. He stated that there are no choices for day laborers but to stand on the street corners of Cesar Chavez Blvd. seeking work. Mr. Loyola described how day laborers need drivers' licenses to drive to work and cash their checks. He stated that employers often fail to pay day laborers.

**Tom Koppel, Merchant Seaman**

Mr. Koppel began by stating that the Coast Guard is a federal agency of the Department of Homeland Security. He explained that if a seaman has prior misdemeanors, their seamen papers can be taken away. He stated that many immigrant seaman face losing their livelihood if their seamen documents are seized or not renewed.

**Frank Riley, Member, ILWU Local 34**

Mr. Riley described himself as a union member who works on San Francisco docks loading and unloading cargo. He stated that ports are now supervised by the Department of Homeland Security. To gain access to a terminal, he said, a worker needs a drivers' license. He explained that warehousemen and truckers need drivers' licenses that can be swiped through a machine. Now that the Department of Homeland Security is overseeing the docks, there is fear of a dragnet to catch undocumented immigrant workers.

**Frank Martin Del Campo, Business Agent, SEIU Local 790 and Member, San Francisco Central Labor Council**

Mr. Del Campo echoed that the word "immigrant" is now being replaced by "terrorist." He stated that applications for asylum are being rejected and asylum seekers are being sent back to countries where they face persecution. Mr. Del Campo stated that the real terrorists are foreign dictators who come from brutal oppressive regimes to live in America as a safe haven. He stated that Labor stands proud to defend immigrants. When laws like REAL ID Act are illegal, he said, we must defy the law.

**Azalia Merrell, Carpenter and Member of the HRC Issues Committee**

Ms. Merrell stated that we are a nation of immigrants. She said that a serious undertone of anti-immigrant sentiment is in the law. She noted that under Section 102 of the law, the Department of Homeland Security's Secretary has sole discretion to expedite the construction of barriers and roads at the border. She also noted that the law curtails and limits existing labor laws.

**Brian McWilliams, Port worker**

Mr. McWilliams stated that the Department of Homeland Security has negatively impacted the waterfront through the REAL ID Act and Patriot Act by increasing operations costs. He stated that security measures must be paid for and this will greatly impose a burden on companies who do business in San Francisco. He explained that these escalating costs will force clients to relocate elsewhere and will result in layoffs of dock workers.

**Sandra Butler, Member of the Constitutional Rights Coalition**

Ms. Butler said that the illegal workers of today were considered legal workers in the 20<sup>th</sup> century. She explained that they are faced with low pay and a lower status in California. She described this as xenophobia and asserted that the REAL ID Act and Patriot Act smack of McCarthyism. She stated that history is repeating itself and this will destroy and tear up families in our society.

**Jerry Okendo, League of United Latin American Citizens (LULAC)**

Mr. Okendo voiced concern for Latino families that do not register their children in schools in California for fear of being deported. He explained that 17 and 18 year olds who graduate at the top of their high school classes are prevented from registering for colleges or universities because of their undocumented status. He noted that women put up with domestic violence at home and fail to report it to the police because they fear deportation. He expressed his gratitude for the public hearing.

**IV. EXPLANATIONS OF THE FOUR KEY PROVISIONS**

After the public hearing, a working group was convened to assist in the drafting of this report. The group was composed of Issues Committee members, attorneys practicing in the immigration and asylum areas and a representative from the American Arab American Discrimination Committee. The group focused on four key provisions of the Act.

The following pages provide a summary of each of the four key provisions, their ramifications on human rights and recommendations to public and private entities, nonprofit organizations, academic institutions, and community-based organizations.

**PROVISION 1: RETROACTIVE EXPANSION OF THE DEFINITION OF TERRORISM TO INCLUDE PURE SPEECH AND ASSOCIATION, THEREBY RENDERING EVEN LAWFUL PERMANENT RESIDENTS DEPORTABLE AND INELIGIBLE FOR ANY FORM OF RELIEF FOR PAST ACTIONS THAT WERE LEGAL AT THE TIME AND THAT CONTINUE TO BE LEGAL FOR CITIZENS OF THE UNITED STATES (SECTIONS 103, 104 & 105)<sup>2</sup>**

**Summary**

Both before and after the REAL ID Act, the Immigration and Nationality Act (INA) had broadly defined terrorism to include any use of a weapon not motivated solely by economic gain to endanger individuals or to substantially damage property. That would include even armed resistance to tyrannical dictators, such as that of the colonists against King George III or that of the Kurds against Saddam Hussein.

The Immigration and Nationality Act pre-REAL ID made any non-citizen who had engaged in terrorist activity both inadmissible to, and deportable from, the United States. “Engaged in terrorist activity” included material support and solicitation of funds or members, as well as planning or executing terrorist attacks. Additionally, the INA prohibited the admission of any non-citizen who was a representative of a terrorist organization, who had used his or her position of prominence to incite terrorist activity, and also any non-citizen who simply was a spouse or child of a person who had engaged in terrorism. The latter grounds, however, would not result in the deportation of a person already admitted to the United States.

REAL ID Act erased the distinction between non-citizens seeking admission to the United States and those already admitted. Thus, an array of activities and relationships that formerly only prohibited admission to the United States may now result in the deportation of long-time lawful permanent residents.<sup>3</sup> These activities and relationships are not crimes and would not result in legal consequences for a citizen of the United States. For example, a citizen could not be convicted or deported for being the spokesperson or attorney (in other words, “representative”) of a Kurdish group that engaged in “terrorist” activities against Saddam Hussein’s government. Nor would adverse legal consequences flow from simply being the U.S. citizen spouse or child of a Kurdish fighter.

REAL ID Act also enlarges the definition of a “terrorist organization” to include any organization that has a subgroup of two or more individuals who have engaged in terrorist activities. Thus, a legitimate group that does not engage in terrorism and that provides no support for terrorism would be a “terrorist organization” if any two of its members together planned or carried out any of the activities that meet the definition of

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<sup>2</sup> Scott Mossman, Esq., was the principle author of this section.

<sup>3</sup> Lawful permanent residency, or having a “green card,” is an immigration status that allows non-citizens to reside in the United States.

terrorism. Relief from designation as a terrorist organization due to the activities of a subgroup requires extraordinary action by either the Secretary of Homeland Security or Secretary of State, acting in consultation with one another; and a special report to Congress within one week of such action.

Without extraordinary action by the Secretary of Homeland Security or State, the consequences of having a subgroup that has engaged in terrorism are severe. All members of the legitimate group and anyone who supported the legitimate group would be inadmissible to the United States for life and deportable as well; they also would be ineligible for any discretionary benefit under the INA, such as asylum. Thus, a lawful permanent resident of twenty years would be deportable for donating money to a legitimate Sri Lankan tsunami relief fund if two of the board members of the fund had supported the Tamil insurgency in Sri Lanka. She would be deportable even if not a single cent of her money supported terrorism.

Among the most commented on changes to the terrorism provisions, the REAL ID Act also expanded the grounds of inadmissibility and deportability to encompass pure speech. Now, a non-citizen may be deported and barred from admission for life for “endorsing or espousing” terrorist activity or a terrorist group. Since the INA already covered persons who actually “incited” terrorist activity, endorse and espouse must carry their normal meaning: to express public approval or support of something. Thus, a non-citizen living under apartheid in South Africa who spoke out in support of the African National Congress (which undeniably met the definition of a terrorist group) would forever be barred from coming to the United States and would be deportable if here already. She would be inadmissible and deportable even if no one paid attention to her and her speech in favor of the ANC incited nothing.

All of the changes to the terrorism grounds of inadmissibility and deportability are retroactive without limitation. (Only the separate provisions that relate to driver’s licenses have a three year grace period before taking effect.) This retroactivity means that lawful actions taken before enactment of the REAL ID Act could now be considered a basis for deportation or for denial of admission. Under the examples given above, the Kurdish spokesperson, the person who donated to the Sri Lankan tsunami fund, and the woman who spoke out in favor of the ANC during apartheid all would be subject to deportation, ineligible for discretionary relief from deportation, and barred for life from return. They would be inadmissible and deportable even if their actions occurred years before REAL ID Act became law.

### **Ramifications**

Long-time lawful permanent residents of San Francisco may now be deported based on past activities that were legal at the time, such as pure speech in favor of armed resistance to a government. In particular, the law is likely to affect San Franciscans who have obtained asylum based on civil conflicts, such as those in Central America, South Asia, and Africa.

Awareness of the new grounds for inadmissibility and deportability would have a chilling effect on lawful permanent residents by muting their speech and by discouraging donations to charities or other association activity.

Regarding deportation of a lawful permanent resident for past activities, the most likely trigger for deportation proceedings would be a file review during the naturalization process where earlier disclosures in asylum or permanent residency applications might come back to haunt the person. The ramification of this is that lawful permanent residents may be reluctant to apply for citizenship.

Based on past experience, the new terrorism grounds will be selectively enforced based on the non-citizen's political opinion, nationality, ethnicity, or religion. For example, Central Americans who have tortured, killed, and bombed on behalf of the United States in guerrilla wars against communist governments have remained lawfully in the United States with the knowledge of the federal government. On the other hand, Sikhs from India have been denied asylum and deported under the narrower terrorism grounds that previously existed for simply providing a night of food and shelter to militant separatists. Under the new broader definition of "terrorism," lawful permanent residents may be selectively deported merely for political opinions expressed in the United States, particularly for expressed approval of the Iraqi insurgency and other similar opinions.

### **Recommendations**

1. Educate San Franciscans, particularly non-citizens and persons who provide immigration services to non-citizens, about the expanded deportability and inadmissibility grounds. Flyers with a brief description of the new law and a summary of the ramifications could be distributed to local organizations that work with immigrants, service unions that have large immigrant constituencies, etc.
2. Investigate and report on any chilling effect that the new deportability grounds have on non-citizen speech and associational activity. Collaborate with local nonprofit organizations (including community organizing groups) in doing so.
3. Investigate and report on deportation proceedings that result from speech or associational activity. In particular, assess whether any discrete groups (such as Muslims or South Asians) suffer disproportionately from these proceedings. Collaborate with the Northern California Chapter of the American Immigration Lawyers Association and the San Francisco Chapter of the National Lawyers Guild in doing so.

## **PROVISION 2: THE ASYLUM PROVISIONS OF THE REAL ID ACT ARE RESTRICTIVE AND PUNITIVE (SECTION 101)<sup>4</sup>**

### **Summary**

The REAL ID Act makes it harder for people to gain asylum from repressive regimes and includes punitive immigration provisions.

An individual fleeing persecution or torture may establish eligibility for asylum by showing a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. An applicant who has established past persecution is entitled to a rebuttable presumption that she has a well-founded fear of future persecution.

The REAL ID Act makes it harder for individuals fleeing persecution to establish eligibility for protection. The Act permits immigration judges to deny relief to victims who cannot produce corroborating evidence of the persecution they experienced, who provide inconsistent testimony on minor facts irrelevant to their claim, or whose demeanor is inconsistent with a judge's expectations of how one who has suffered beatings or torture should behave. In addition, the Act requires an individual seeking asylum to prove that her protected characteristic was "central" to her persecutor's decision to inflict harm. Thus, if someone living in the former Soviet Union is attacked, told to "go to Israel" and then robbed, that individual must prove that at least a central reason for the attack was bias rather than robbery.

### **Ramifications**

It is unreasonable to expect an asylum applicant to recount the horrors of her experience in flawless detail, especially when she has suffered trauma, incarceration, or other ill effects of persecution. Asylum case law supports the idea that poor date recollection is often particularly evident in the culturally diverse and trauma-filled setting of refugee claim adjudication. It is equally unfair to require an individual who has fled persecution to produce documentary evidence in support of her claim. It is often impossible for an asylum applicant to obtain corroborating evidence from his home country.

Imposing a "centrality" requirement is also a major step backwards in evolving jurisprudence, which recognizes that direct proof of a prosecutor's motive is often unavailable.

Two cases illustrate the real world impact the REAL ID Act will have on refugees. Reina Garcia-Martinez fled Guatemala after soldiers arrived in her village and gang-raped her and other women. During her asylum hearing, the government argued the soldiers systematically raped women to satisfy their "violent carnal desire." In a published

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<sup>4</sup> Jayne E. Fleming, Esq. was the principle author of this section.

opinion, the Ninth Circuit reversed the asylum denial, remarking that Ms. Garcia-Martinez had "survived atrocities that most of us experience only in our worst nightmares" and that "persecution is stamped on every page of this record."

The opinion recognized several key principles that went a long way in protecting the rights of women victims of persecution. The REAL ID Act erodes several of those principles.

Another refugee, Farah Taha, fled Sudan after he was tortured by government officials because of his political views. During Mr. Taha's asylum hearing, the Immigration Judge made little effort to hide her feelings, remarking Mr. Taha was in "comic land" when he testified about forced starvation of children by the Sudanese government. Mr. Taha submitted photographs of scars on his body, visible evidence of scars, a physician's letter documenting torture, and country condition reports describing the Sudanese government's use of torture to subjugate political opponents. The Judge ignored this objective evidence and found Mr. Taha lacked credibility because his hearing testimony was more detailed than his asylum application. The Ninth Circuit reversed, stating that omissions in an asylum application cannot doom an applicant's claim. The Court recognized that individuals who have fled persecution often lack legal representation, do not speak English, and find it difficult to reveal the humiliating details of torture in an initial application. The REAL ID Act allows immigration judges to deny asylum based on minor inconsistencies between an asylum application and hearing testimony.

As these cases illustrate, the practical effect of the REAL ID Act will be to facilitate deportation of genuine persecution victims to countries where they may be killed or tortured.

### **Recommendations**

1. Facilitate access to free legal services for immigrants seeking protection under international and national human rights laws.
2. Facilitate access to free mental health services for victims of torture, persecution and other forms of abuse.
3. Conduct discussion forums to educate immigrants about their legal rights.
4. Work to change discriminatory and stigmatizing attitudes about immigrants and refugees through on-going education, training and positive media coverage.
5. Promote a culture of opposition to all forms of torture, persecution and discrimination against immigrants and refugees.
6. Advocate for open administrative proceedings and oversight of border control systems to ensure transparency and accountability.
7. Educate immigration officers, border control agents and judges about the cause and effect of post traumatic stress disorder; promote sensitivity training to ensure

victims of domestic violence and rape are not further traumatized during the asylum process.

8. Advocate for the ratification of core human rights treaties including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

### **PROVISION 3: THE NATIONAL ID AND DRIVERS' LICENSES PROVISIONS OF THE REAL ID ACT VIOLATE PRIVACY RIGHTS AND DISCRIMINATE AGAINST LEGAL IMMIGRANTS (SECTIONS 202, 203 & 205)<sup>5</sup>**

#### **Summary**

The REAL ID Act requires that drivers' licenses include a wide and standardized set of personal data such as name and address, date of birth, a biometric identifier, and unique ID number; and that the data be made available not only on the front of the card, but also on an undefined "machine-readable technology" that would be on the back of the card. The REAL ID Act forces states to link their drivers' databases (databases that contain every licensed driver's detailed personal information) with other states and the Federal Government. This creates, in effect, one huge national database, so that all of the private data in motor vehicle records is instantly available to a wide range of state, local, and federal officials. In essence, the Real ID Act will make drivers' licenses into *de facto* national ID cards.

Congress passed the Real ID Act with no review or hearings and over the objections of not only a broad cross section of community organizations, but the National Governors' Association (NGA) and the National Conference of State Legislatures (NCSL). This preempted a formal process of "negotiated rule making" that could have created a more secure drivers license and helped to maintain significant civil liberties protections. Instead, as written, the Act allows the Department of Homeland Security to impose its provisions unilaterally.

#### **Ramifications**

Implementing this Act will be extraordinarily costly and present an enormous administrative burden. It constitutes a complete change to every facet of the process for issuing a drivers' license. All source documents for licenses, such as birth certificates, must be verified with local municipalities; physical drivers' licenses and the database supporting it must be standardized; and local officials must ascertain every applicant's citizenship or immigration status. These provisions will cost state governments billions of dollars to implement and maintain. Requiring that information be stored in a machine-readable format and that all state department of motor vehicle (DMV) databases be linked will require the purchase of new equipment and computer

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<sup>5</sup> Barry Steinhardt, Esq. Chris Calabrese, Esq., Valerie Small Navarro, Esq., and Nicole A. Ozer, Esq. are ACLU attorneys and principle authors of this section.

systems, the retraining of existing employees and the hiring of new ones. It will also create burdens for individual citizens including drivers' license fees – in effect a Real ID tax – and dramatically longer lines at the DMV.

Because DMV employees will be required to verify citizenship and immigration status, the DMV may be suspicious or subject people who 'look or sound' foreign to greater scrutiny and suspicion. Note that the nonpartisan General Accounting Office study on the effects of employer sanctions found a "widespread pattern of discrimination" on the basis of national origin and "on the basis of foreign appearance or accent...and on the basis of citizenship status." Furthermore, unlike the employer sanctions law that required an evaluation of discrimination and included penalties for discriminatory action, the Real ID Act has no such requirement or redress.

The database of every person in the U.S. with a drivers' license or a government-issued ID card called for by the Act is supposed to contain continually updated identifying information. It will likely contain many errors, any one of which could render someone unemployable and possibly much worse until they get their "file" straightened out. And once that database is created, its use will almost certainly expand. Law enforcement and other government agencies will soon ask to link to it, while employers, landlords, credit agencies, mortgage brokers, direct mailers, private investigators, civil litigants, and a long list of other parties will also begin seeking access. The database, and indeed, the cards, will be subjected to not only outside thievery, but also insider fraud. Unfortunately, our nation's motor vehicle departments have routinely been the victims of insider fraud – data has been stolen and fraudulent drivers' licenses have been provided to many. This includes, it appears, some of the 9/11 terrorists.

A national ID card is also an irresistible tool for forgers and identity thieves. The Federal Trade Commission estimates that 10 million Americans are victims of identity theft annually. California has the third highest rate of identity theft in the nation. The drivers' license contains valuable information for an identity thief including date of birth, gender, driver's license or identification card number, digital photograph, address and signature. The machine-readability requirement means that data on the IDs can be easily harvested, catalogued, and sold by any person or entity with what will soon become inexpensive and universally available readers. Identity thieves recognize this and are increasingly targeting state motor vehicle departments.<sup>6</sup> The REAL ID Act will make drivers' license information accessible from tens of thousands of locations across the country.

In addition to widespread use by the public sector, the cards will be used and abused by the private sector. The private sector will soon routinely demand the ID – when making a bank transaction, renting an apartment, or buying a soda. And these businesses will not only store the information, but will sell it to commercial data brokers such as Choice Point and Acxiom, who will create parallel and even more richly detailed national

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<sup>6</sup> For a survey of press reports documenting this problem see Center for Democracy and Technology, "Unlicensed Fraud: How bribery and lax security at state motor vehicle offices nationwide lead to identity theft and illegal driver's licenses," January 2004, pp. 5-7.

identification databases. It is not clear how federal regulations will impact existing California state law protecting drivers' license data.

The REAL ID Act requires the capture of a digital photograph that lays the groundwork for a sophisticated biometric system that allows for electronic storage and easy comparison against other facial images. Unfettered access by a law enforcement agency to records held by the DMV for purposes unrelated to driver's licenses or identification cards may not have posed much of a privacy danger when all the DMV was gathering a photograph and a thumbprint that many times was unusable or blurred (California Vehicle Code section 1810.5). However the new system envisioned under the REAL ID Act warrants a rethinking of this open access by law enforcement.

Under the Real ID Act, the states will have three years to conform their drivers' licenses to the uniform standards to be issued by the Department of Homeland Security, or their residents will be marginalized in American society, unable to board a plane, open a bank account, or engage in any other of the routine activities for which the uniform ID will increasingly be required. The process of establishing these standards and issuing hundreds of millions of new ID cards will be time consuming and expensive. It will also create a window of opportunity in which public officials, opinion makers, and the general public can be mobilized to call for its repeal.

### **Recommendations**

1. Send a general letter and request meetings with the Bay Area Members of the California Congressional delegation, the Governor, and California State Legislators urging them to assume a leadership role to reopen and repeal Title II of the Real ID Act.
2. Educate the general public about the privacy and identity theft risks as well as the costs and burdens to them as taxpayers and to the state as a whole. Include the [www.realnightmare.org](http://www.realnightmare.org) website on all materials and encourage people to go to the California site within the "In the States" page for information and suggested actions they can take.
3. Educate undocumented immigrants about the risks of the "driving certificate" including the increased risk of arrest, implementation problems, discrimination in non-police settings, and the increased probability that local law enforcement will make arrests based on federal immigration grounds for which they lack enforcement authority.
4. Educate citizens and immigrants that because DMV employees will be required to verify citizenship and immigration status, the DMV may be suspicious or subject people who 'look or sound' foreign to greater scrutiny and suspicion.
5. In the event that California law authorizes driving privileges for undocumented immigrants, but requires them to carry a driver's license or certificate that is

marked in some unique way to identify them as an undocumented immigrant, pass a San Francisco Administrative Code ordinance and work with law enforcement entities and the Attorney General to ensure that law enforcement is prohibited from requesting that people turn over these cards for inspection or using the information on these documents for purposes other than to determine whether the person is authorized to drive. (See, San Francisco, CA., Admin. Code Ch. 12H, §12H.2.)

**PROVISION 4: UNREVIEWABLE DISCRETION OF THE SECRETARY OF HOMELAND SECURITY TO WAIVE GENERALLY APPLICABLE LAWS TO CONSTRUCT BORDER BARRIERS AND ROADS (SECTION 102)<sup>7</sup>**

**Summary**

The REAL ID Act grants the Secretary of Homeland Security the authority to waive any or all legal requirements in order to expeditiously construct barriers (fences) and roads at the international borders of the United States. The Act also grants the Secretary sole discretion to determine which laws to waive. The waiver is effective upon publication of notice in the Federal Register.

In addition, the REAL ID Act requires that all legal claims that arise from the waiver of a legal requirement be brought in the district courts of the United States (rather than state courts). It further limits claims to allegations of constitutional violations. Appellate review of a decision of the district court may only be had if the United States Supreme Court grants a discretionary petition for *certiorari*; there is no automatic right to appeal.

**Ramifications**

The Secretary of Homeland Security may now ignore any state or federal law, including environmental, health and safety, and labor laws, if doing so will facilitate the expeditious construction of a barrier or road at an international border.

The Secretary could interpret this power as broadly as he wishes without legal consequences because no court has the authority to review his determination that waiver of a law would facilitate the expeditious construction of a border barrier or road. Of course, political consequences may result if he interprets the power too broadly.

The courts may only review claims of constitutional violations. The only clear constitutional claim that might arise would be if waiver of a legal requirement resulted in a taking of private property without just compensation in violation of the Fifth Amendment. Other possible constitutional claims would be highly speculative.

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<sup>7</sup> Scott Mossman, Esq. was the principle author of this section.

Successful passage of this waiver provision may encourage other similar ones. Federal agencies might receive authority to waive legal requirements to construct federal buildings, expand airports, operate federal prisons, etc.

Waiver of legal requirements for other types of projects and activities could affect San Franciscans employed by or residing near them.

### **Recommendations**

1. Monitor the Secretary of Homeland Security's use of the waiver authority and how it affects border communities.
2. Be prepared to conduct hearings and to investigate the impact on San Francisco residents if waiver proposals arise for other types of federal projects or activities.

### **V. CONCLUSION**

The joint public hearing held by the San Francisco Human Rights and Immigrant Rights Commissions on May 26, 2005 on the impact of the REAL ID Act highlighted numerous and serious concerns held by residents and advocacy groups in San Francisco. These concerns include:

- The continued erosion of civil liberties under the guise of homeland security, and the Bush Administration's "War on Terror."
- The REAL ID Act's chilling effect on freedoms of speech and association, particularly with respect to immigrant communities and people of color.
- The Act's punitive effect on immigrants and asylum seekers.
- The lack of public debate in Congress prior to the Act's enactment.
- The Act's erosion of checks and balances in governmental decision-making.
- The discriminatory and scapegoating effect the Act will have on immigrants, asylum seekers, and persons of color, including increased racial profiling by local, state and federal employees.
- The onerous administrative burdens the Act will impose on state and local governments, without any clear indication of addressing the purported national security issues.

While the Act's ostensible purpose is to increase national security, the testimony and analysis received by both Commissions, as outlined in this report, strongly indicate that such goals are not furthered by the Act; and come at a significant and unwarranted

expense to our civil liberties, particularly to those of immigrants, asylum seekers, and people of color.

The Human Rights Commission and the Immigrant Rights Commission were established in 1964 and 1997, respectively. The purpose of the Immigration Rights Commission is to improve, enhance and preserve the quality of life and civic participation of all immigrants while the Human Rights Commission's mission is to provide leadership and advocacy to secure, protect and promote human rights for all people.

Due to the overwhelming concerns received at our public hearing, the Human Rights Commission and Immigrant Rights Commission encourage the San Francisco Board of Supervisors to urge Congress to reopen and repeal the REAL ID Act. Additionally, we recommend that Congress be urged to responsibly carry out debate and analysis of current and forthcoming legislation that addresses issues related to national security and to oppose similar punitive legislation that compromises basic freedoms guaranteed by the US Constitution.

Although this report focuses on the REAL ID Act of 2005, it is important to note that concurrent with the release of this report, Congress is debating the most sweeping overhaul of US immigration law in two decades. While the Senate (S. 2611) and House (H.R. 4437) bills differ in some significant ways, both bills include provisions that are punitive in nature, including mandatory detention along the border, and expedited removal of asylum seekers. These proposed bills do not undo or soften any provisions of the REAL ID Act, nor make the recommendations contained in this report any less important or relevant. If anything, the proposed Congressional legislation builds upon the REAL ID Act provisions to expose asylum seekers and immigrants to even greater risk of harm.

## APPENDIX A

### Contributing Authors

**Jayne E. Fleming, Esq.** is an appellate attorney in the Oakland office of the international law firm Reed Smith LLP. She devotes several hundred hours per year to pro bono work and has successfully represented asylum seekers from Africa, Latin America, Eastern Europe, and South East Asia.

**Scott A. Mossman, Esq.** is a Bay Area immigration attorney. His emphasis is defense of asylum clients facing deportation. He represented the Bay Area Immigration Rights Coalition in the Constitutional Rights Coalition. He has spoken and written for the media.

**Barry Steinhardt, Esq.** is the Director of the American Civil Liberties Union's Technology and Liberty Program, and former Associate Director of the ACLU for ten years. He has spoken and written widely on privacy and information technology both here and abroad.

**Chris Calabrese, Esq.** is Program Counsel for the ACLU's Technology and Liberty Program.

**Valerie Small-Navarro, Esq.** is the Senior Legislative Advocate for the ACLU's Sacramento Legislative Office.

**Nicole A. Ozer, Esq.** is the Director of the ACLU of Northern California's Technology and Civil Liberties Program.

### Human Rights Commission

Malcolm A. Heinicke, Chair, Khaldoun A. Baghdadi, Vice Chair, Cecilia Chung, Carlota del Portillo, Yoel H. Kahn, Faye Woo Lee, Pat Norman, Ellouise Patton, Sandra E. Sohcot

### Immigrant Rights Commission

Diana Lau, Chair, Deborrah Escobedo, Vice Chair, Gilberto J. Alexander, Jamal Dajani, Phu Nguyen, Elahe Enssani, Vera Haile, Solomon Abraham Jones, Ivy Lee, Felix Levy, Samira Causevic McCoy, Sonia Melara, Sam (Kok-Po) Ng

### **Human Rights Commission Issues Committee**

Commissioner Sandra Sohcot, Chair, Commissioner Carlotta del Portillo, Vice Chair, Commissioner Ellouise Patton, Vice Chair, Michael Berke, Leticia-Upton Brown, Sarah Ching-Ting Wan, Alex de Guzman, Alice Fialkin, John H. Freeman, Bill J. Johnson, Guillermo Mayer, Azalia M. Merrell, Reginald Smith, April A. Veneracion

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Commissioner Sandra Sohcot, Chair, Emil A. De Guzman, Rayan El Amine, Alice Fialkin, Jayne E. Fleming, Esq., Guillermo Mayer, Esq, Azalia Merrell, Scott Mossman, Esq, Dang Pham.

### **Human Rights Commission Staff**

Emil A. De Guzman, Melinda Kanios, Carmen Smith

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## APPENDIX B

### May 26, 2005 Special Joint Hearing (notes from HRC website: <http://www.sfgov.org/site/sfhumanrights>)

#### SPECIAL JOINT HEARING WITH THE IMMIGRANT RIGHTS COMMISSION

##### 1. Call to Order and Roll Call

Chair Heinicke called the meeting to order at 4:34 p.m.

##### Commissioners Present

Cecilia Chung  
Carlota Del Portillo  
Malcolm Heinicke  
Yoel Kahn  
Faye Woo Lee  
Ellouise Patton  
Sandra Sohcot

##### Commissioners Excused

Khaldoun Baghdadi  
Mark Dunlop  
Pat Norman

##### HRC Staff Present

Virginia Harmon, Executive Director, Toni Delgado, Commission Secretary, Frank Anderson, Larry Brinkin, Ed Illumin, Zula Jones, Melinda Kanios, Sophia Simpliciano, Mindy Lee, and Andrea Fazel, HRC Intern

##### Guests Present

Jayne Fleming (law firm of Reed Smith), Scott Mossman (Immigration Attorney), Banafsheh Akhlaghi, Esq. (NLSCA), Tom Koppel (Sailor's Union of the Pacific), Frank Riley (Longshore Union ILWU), Tim Paulson (SF Labor Council), Elsie De Laere (Amnesty International), Azalia M. Merrell (LCLAA), Julio Loyola (Day Labor Program), Susanna Bogue (IAUC), Brian McWilliams (ILWU), Frank Martin Del Campo (SF Labor Council, AFL-CIO), Sandra Butler (Constitutional Rights Coalition), and Jerry Okendo (LULAC, League of United Latin American Citizens), Ramiz Rafeedie, American Arab Anti-Discrimination Committee

A quorum was present.

##### 2. Joint Public Hearing on the Real I.D. Act of 2005:

Chair Heinicke welcomed fellow Commissioners and Chair Diana Lau and Immigrant Rights Commissioners for the Special Joint Meeting.

Toni Delgado gave an overview of the Real I.D. Act of 2005 that was passed by the Senate on May 10, 2005. She thanked the Immigrant Rights Commission for co-sponsoring the Joint Hearing and welcomed IRC Commission Chair Diana Lau, Commissioner Gilberto Alexander, Commissioner Richard Ow, and Commissioner Sam Ng. She thanked Emil DeGuzman, Carmen Smith, Melinda Kanios and IRC Commission Secretary, Winnie Loy, for their hard work in putting the Hearing together.

Ms. Delgado noted that the packet included an outline on how the hearing was formed, the Resolution from the Board of Supervisor regarding the U.S.A. Patriot Act, and a summary of the Real I.D Act. Every effort was made to create a balanced hearing via outreach to different organizations both in support and against this legislation. Invitations were extended to the ACLU, Bay Area Immigrant Rights Coalition, Congresswoman Nancy Pelosi, Department of Homeland Security, Federal Bureau of Investigation, Federation for American Immigration Reform, Lawyer's Committee for Civil Rights, San Francisco Board of Supervisors, District Attorney's Office, San Francisco Police Department, Senators Barbara Boxer and

Diane Feinstein, U.S. Attorney's Office, and U.S Department of Justice. Federal agencies contacted declined to participate.

Chair Heinicke welcomed the invited speakers and the public. The Real I. D. Act is a charged issue that has raised emotional feelings for many people. This Hearing will provide the Commissioners and members of the public a better understanding of some of the issues and concerns raised by the Real I.D. Act and how to proceed from there. Invited speakers began the presentation.

The House of Representatives passed the Real I.D. Act without any meaningful debate because it was tied to the War Appropriations Bill. Mr. Silverman explained that what has already happened with the Real I.D. Act is already connected to something worse on the horizon—a provision of what was the Clear Act. This provision will force police nationwide to enforce immigration laws or risk losing law enforcement funding from the federal government. It will place an affirmative obligation to pursue possible immigration violations when contact is made with people. (He does not have a problem with existing obligations such as felony obligations.)

This immigration issue becomes a public safety issue when it destroys the ability of police to fight crime effectively in the immigrant communities where they will lose the confidence and trust of possible crime witnesses. Support is needed from police chiefs and groups dealing with domestic violence. Mr. Silverman believes we are facing an era of potential terror in the immigrant communities and that these anti-immigrant measures based on myths, illusions, and lies about how they are fighting terrorism that we need to oppose are being strategically pushed through without debate.

Commissioner Richard Ow pointed out that there is a City Ordinance, perhaps the Sanctuary Ordinance from the 1980's, which prohibits police officers and most officials from affirmatively reporting people to the INS. If people are in jail, the police and sheriff have to respond to the INS with information. All of that will be completely eliminated if this law passes unless San Francisco wants to lose millions of dollars in funding.

Maxwell Peltz (Assistant District Attorney) explained the three titles of the Real I.D. Act that concern 1) border structure, 2) asylum, and 3) identification. Addressing the third title, he stated that a short-term effect will be the reduction of people in California and San Francisco with DMV issued licenses and identification. That may change if state legislatures decide to issue or authorize issuance of identifications that would be accepted for the purposes of driving or identification but would not comply with Real I.D. and not be recognized by Federal Agencies.

The reduction of identification will impact law enforcement. Identification is central to not only identifying, locating, and tracking down suspects but also identifying and contacting witnesses and victims both for the police and prosecutors during the investigation prosecution of cases. Other concerns include the increase of unlawful, uninsured drivers and accidents and identity fraud.

Mr. Peltz pointed out that several ordinances in San Francisco require applicants to present valid picture identification to apply for and receive General Assistance and certain types of social services. Some people will have less access to social services under the new law.

Mr. Peltz responded to Commissioner Aw that it is not too late to influence the rule making. There will presumably be a rule making by the Department of Homeland Security and under Federal rule making, public input is accepted.

Commissioner Lee asked what the penalty would be against a state that does not comply. He answered that state's citizens would be penalized because their driver's licenses/IDs would not be valid to board airplanes, enter federal buildings or nuclear sites, etc. It is such a prohibitive penalty that it is highly unlikely that a state would not comply.

Jayne Fleming (appellate lawyer with Reed Smith) works extensively with and represents asylum applicants on a pro bono basis. She highlighted the concern about privacy of personal addresses for victims of domestic violence or for women fleeing “honored killings” or forced marriages. The security of their personal home address is a life or death matter. This piece of the legislation requires an individual to turn over their personal home address and proof of residency in order to obtain a federal ID card at which point their personal information is no longer secure. She is hopeful that there will be a lot of advocacy to make sure that state and local jurisdictions implement some safeguard to protect victims during the regulatory period.

Ms. Fleming stated that with respect to the asylum provision, an applicant has to prove that he or she was persecuted on account of one of the innumerable grounds of the Immigration and Nationality Act. The victim has to prove that their story is believable. The reality is that victims of trauma often have difficulty relaying their experiences in flawless, perfect detail. Furthermore, individuals must prove a nexus or link between their persecutorial harm on one of the grounds in the Immigration and Nationality Act. It is and will be extremely important that individuals are well represented and have access to legal service. If they don't, they will not prevail and will be sent back to countries where they will be tortured.

Individuals can get help from the Lawyer's Committee For Civil Rights and get legal representations.

Commissioner Kahn questioned if the Act changes the threshold of gaining entry into the country. Ms. Fleming answered that it has made it difficult because someone captured at the border can be detained and interviewed at that point. Unsatisfactory requirements or stories with “gaps” made during the interview can be used against an individual and may deny them asylum in the future.

Ms. Fleming pointed out that there was extensive communication with Senator Feinstein's office and Senator Boxer's office and she tracked commentaries and press releases from Senator Leiberman's office, Senator Murray's office, and Representative Sensenbrenner's office. It was clear that it passed legislation because it was attached to a War Bill which, had it not passed, would deprive troops of desperately needed funds. Senators went on record to say that they hated that part of the Bill, which they would have rather debated on. Ms. Fleming noted that Wisconsin Representative James Sensenbrenner, the primary author of the legislation, rationalized that the United States must be protected against terrorism.

The provisions that relate to asylum, terrorism, and to the border patrol fence are all immediately effective and that there is going to be lots of litigation about the retroactivity of those provisions. The provisions related to the driver's licenses have to be implemented by 2008.

Chair Heinicke acknowledged Ms. Fleming being honored as California Attorney of the Year. (Written testimony was submitted by Ms. Fleming.)

Scott Mossman (immigration attorney practicing in Oakland) focused his testimony on the expanded definition of terrorism, elimination of habeas corpus, and the Secretary of Homeland Security being allowed to waive any law in order to build border barriers and fences.

In summary, Mr. Mossman noted that the terrorism provision transforms pure expression of opinion and association, and since it is retroactive, places non-citizens who are lawful residents in San Francisco in jeopardy of deportation for past actions that were legal at the time. With the habeas, some non-citizens may fall through the cracks and aggravate the backlog of cases at the U.S. Court of Appeals in San Francisco. The provision of the border and fences may lead to similar laws waiving applicable legal requirements for federal projects in San Francisco.

Mr. Mossman stated hearsay evidence is invincible in deportation proceedings and a judge can consider it/weigh the evidence. If so, the immigrant must gather evidence to prove the negative that it does not apply to them.

Commissioner Ow questioned the budgetary consideration for the Real I.D Act. He answered that he is not familiar with the budgetary consideration. He does know it was passed as part of an appropriation bill.

(Written testimony was submitted by Mr. Mossman.)

Supervisor Jake McGoldrick, author of the Resolution opposing the USA Patriot Act, spoke about how this provision may violate the Constitution and the rights and civil liberties of San Francisco residents. The Board of Supervisors adopted the Resolution on January 21, 2003 and an amended Resolution of the USA Patriot Act was adopted on February 24, 2004.

Supervisor McGoldrick stated that on March 2, 2004 election under Section 16.124, the San Francisco voters adopted and authorized the Board of Supervisors, by resolution, to designate as the "watch law" any state or federal law or regulation that calls for, authorizes, or requires the production by any City officer, employee, agency, department, or office of information, records, or other tangible things held by the City, the disclosure of which could violate the rights of any individual under the State or Federal Constitutions.

Supervisor McGoldrick also pointed out that a Resolution was sent to Senator Barbara Boxer, Senator Dianne Feinstein, and Representative Nancy Pelosi urging them to oppose any attempts to expand the Patriot Act, to prevent the reauthorization of any Patriot Act provisions, and to allow Patriot Act provisions to expire.

Julian Sharp (Patriot Act intern with the American Civil Liberties Union) stated that the USA Patriot Act was enacted 45 days after the 9/11 attacks with no debate and discussion. This Act will expire on December of 2005, but members of the Congress are considering expanding and making the legislation permanent. The legislation should be brought back in line with the Constitution by letting the Act sunset. He stated that all people should advocate for safety and freedom and that the Patriot Act should not be expanded and not be made permanent.

Margaret Zaknoen (Bay Area Immigrant Rights Coalition) addressed the Real I.D. Act's impact on San Francisco immigrant communities. The Real I.D. Act has spread a sense of fear and has had a chilling effect within the immigrant communities. The Coalition she represents is made up of about 50 organizations that serve immigrant communities across the Bay Area that advocate for immigrant rights and empower immigrants to be active and engaged citizens. She feels Representative Sensenbrenner's bill was not intended for national security but for advancing an anti-immigrant agenda.

She is glad the discussion began with the Clear Act amendment because the reason that the Real I.D. Act was attached to the supplemental spending bill for the war in Iraq and the way it passed through Congress indicates how the anti-immigrant legislation will continue to be partial and be attached to other things and therefore not be debated on nor passed in Congress.

States such as Alabama and Tennessee that already restrict driver's licenses based on immigration status report a host of problems. Documented immigrants are targeted and become vulnerable to discrimination and racial profiling.

Banafsheh Akhlaghi is an attorney and President for the National Legal Sanctuary for Community Advancement (NLSCA), a pro bono office that she started after 9/11, which represents Muslims, Middle Easterners, and South Asians living locally and across the country. She represents primarily men, ages 9 through 84 years old who find themselves to first be characterized as terrorists and then as innocents.

Working with the Department of Homeland Security has been a challenge since 9/11. The laws are

passed, placed into effect with little to no training, the mandates are constantly changed, and the procedures are changed as the flaws are seen. Many of her clients who come to the states seeking refuge face death in their countries. This is a very serious problem that goes beyond San Francisco and these laws have a ripple effect globally. The thinking is that if the United States deported someone, they must be at fault.

Ms. Akhlaghi noted that we need to enforce some form of credibility for what the Commission and what San Francisco stands for. She urged everyone to stand against the Real I.D. Act and have San Francisco be the first city to do so. She stated that we could call for the Department of Homeland Security to be accountable for its measures and its mandates and ask to let organizations such as the NLSCA and other organizations that are assisting for immigrant rights be part of the debates and discussions on how to enforce this law.

It is Ms. Akhlaghi's hope that this hearing be the first of more to discuss solutions for the City and Country as a whole.

Denis Mosgofian (San Francisco Labor Council and Chair of the Constitutional Rights Coalition) pointed out that seven states have passed ordinances, resolutions, and laws against the Patriot Act including the conservative state of Wyoming (and Colorado).

There is an article about how the word terrorism is used in a way that is applied to people who resist ordinary oppression and tyranny in their own countries and under circumstances that we believe are perfectly appropriate ways to resist and which the founders of the USA actually engaged in.

Mr. Mosgofian spoke about the expansion of executive authority, the threat in the driver's license case, and the dictatorial powers granted to the Secretary of the Homeland Security and what those impacts would be both in the larger context and here in San Francisco. He pointed out that the premise of our constitutional mandated due process is innocence until proven guilty for everyone in America.

Mr. Mosgofian was invited to the next IRC Commission Meeting on June 13, 2005 at 5:00 p.m. to brief the Commissioners on the seven states that are against the Patriot Act.

Mr. Ramiz Rafeedie (San Francisco Chapter of the American Arab Anti Discrimination Committee) believes that Real I.D. Act has a disproportionate impact on people from the Arab world (primarily immigrants.) Since 9/11, the Arab community has lived in a climate of fear in this country that can largely be attributed to Federal legislation (such as the Patriot Act) and actions by the Federal government (such as special registration requiring Arab men between the ages of 15 through 60 to go the INS to fall into collection traps and be deported.) These acts have chilled free speech and are viewed as an attempt to dissuade Arabs from attempting to seek asylum in this country.

The irony of all ironies is that this legislation memorializes the very type of governmental conduct that many Arabs have come to the United States to escape. Things like arbitrary decisions by a judge that are not subject to judiciary review, the lack of judiciary review, and the persecution based on political belief. It is ironic that a country that prides itself on bringing in people seeking persecution has now institutionalized persecution.

He feels the term terrorist has become so corrupted as to be almost worthless in terms of discourse. He commented that the problem is not that "my freedom fighter is your terrorist, but the Real I.D. Act says my terrorist is whoever the DHS says it is or whoever Congress feels to target at a particular moment and label as a terrorist organization." The ramifications are real to the immigrants because these immigrants cannot participate in a discourse under the Real I.D. Act to persuade Americans that what Congress has done is wrong because under this act, they can be perceived as having espoused terrorism.

Dusty Araujo (Asylum Coordinator with the International Gay and Lesbian Human Rights Commission) spoke about the asylum issue that impacts the population that he serves.

The Real I.D. Act includes provisions that make it more difficult for asylum and hold up renewal applicants to prove that their race, religion, national origin, political opinion, or membership in a particular social group was a central motivation for their persecution. The present law only requires that applicants show that their persecution was at least in part based upon these grounds including membership in a particular group through which lesbian, gay, bisexual, transgender, and HIV positive asylum seekers seek protection.

Sexual orientation asylum seekers who have been persecuted by their country are often targeted with violations of such laws as indecency or debauchery that serve as smokescreens for the targeting of gay, lesbians, and transgender individuals.

Ms. Fleming clarified that someone who is applying for protection because they are gay or transgender who will be persecuted fall into a particular social group, which is readily identifiable. All they would have to prove is that they would suffer harm because they are a member of that group. Social group is a protected class but now they have the burden of proving the central issue was because they are gay or transgender and not a mixed-motive analysis.

Julio Loyola (Member, Day Laborer Program/Azalia M. Merrell served as his Spanish interpreter) spoke as a person who lives the consequences of the Real I.D. Act. He spoke of how he and other immigrant day laborers seeking honest work are mistreated and how their dreams and lives are broken by laws such as this that make them vulnerable and impede their natural development.

### 3. Public Comment on Items Not on the Agenda

Tom Koppel (Sailor's Union of the Pacific) informed the Commission that to apply for or renew a Merchant Mariners document, one becomes subject to what seems like unconstitutional questions having to do with habits and character, seaman's papers can be taken away without reason, and he feels that terrorism is now an excuse to go after (its) own citizens.

Frank Riley (Longshore Union ILWU, Local 34) stated that it is their job to receive and deliver the cargos coming across the docks, which now fall under the security of DHS. There are perimeter intrusion systems in place requiring identification card or driver's license swipes to gain information. A process is still being put into place where the information obtained is monitored because there are still third parties involved in that monitoring. They have many immigrant workers and hope that the City craft some language to create a voice in how their information is processed and monitored.

Elsie De Laere (Legislative Coordinator, Amnesty International U.S.A. in California) mentioned that there are more than 300, 000 members in the U.S. with a substantial amount of those members living here in the Bay Area. She addressed and submitted a brief on the Safe Act. They are concerned for persons being forced to plead their innocence for deeds they were unaware of. They are also concerned about immigrants and refugees ineligible for asylum based on the actions of their spouses or parents. It is critically important for everyone to understand the other nations are being influenced.

(A brief by Amnesty International was submitted by Ms. De Laere.)

Frank Martinez Del Campo for Tim Paulson (San Francisco Labor Council, AFL CIO) feels the term immigrant is being replaced with terrorist and that we are stopping people seeking asylum from governments that we finance. He further commented on immigration reforms and stated that the Labor stands proudly and defends immigrant workers from all countries because we know that our own freedom as free workers with the right to join unions and the right to associate with other workers is inextricably bound with those workers.

Azalia M. Merrell (Member, United Brotherhood of Carpenters, Local 22 and Member, Labor Council for Latin American Advancement) is familiar with the hardships of being an immigrant and not feeling welcome here. The Real I.D. Act will further exploit workers and overburden the City's systems—immigrants will not just disappear. This legislation pushes labor law back a hundred years.

Brian McWilliams (ILWU and the San Francisco Labor Council) is a port worker here in the City and did serve on the Port Commission. The DHS mandated port security programs impact Maritime operations in a negative way. Personally speaking, the cost and staff in running the programs falls directly on the Port, which has no means of meeting the expenses without laying off workers, cutting maintenance programs, etc. Some ports now face the potential loss of maritime traffic to larger ports better able to handle and absorb the costs. Employment opportunities must be protected.

Sandra Butler (Constitutional Rights Coalition) pointed out that many of the people now called illegal workers were legal workers right here in California and across the border for many, many years until an earlier bout of xenophobia in the 20th Century when they were declared illegal. They still worked but they had no rights, less money, and no protection. Every time a law is enacted to protect us from extremes, it immediately becomes misused in the most trivial, vis-a- vis the Three Strikes Act. The United States must be returned to its people and not to a privileged few.

Jerry Okendo (League of United Latin American Citizens) commended Julio Loyola for speaking earlier. Mr. Okendo stated that there are Latino families across the state who are not registering their children to go to school for fear of deportation. There are youth who have turned 18 and are still waiting for their residency and cannot get their driver's license or a social security number to go onto college even with high GPAs. There are women who continue to live with domestic violence who will not report it for fear of deportation.

DMV was asked to enforce immigration laws. Now the police are being asked to enforce immigration laws. Will our schools then be asked to enforce these laws? He commends the Commission for having the hearing because this is the only way the issue is heard.

Commissioner Heinicke thanked the speakers and public. He is hopeful that the Commission will further explore the issue and continue the discussion.

IRC Commissioner Lau applauded the speakers and public that came forward to speak on the issue. She is glad the Commissions were able to join together and be educated on the issue together.

There being no further business, the meeting was adjourned at 7:41 p.m.

4. Adjournment

**APPENDIX C**  
**REAL ID ACT BROCHURE**