

Asylum Reform: Sorting Fact from Fiction

H.R. 418, with 140 cosponsors, passed the House of Representatives February 10, 2005, on a strong, bipartisan vote of 261-161. Known as the REAL ID Act, this bill contains provisions that would make the U.S. asylum system parallel the rest of the U.S. justice system and provide uniform standards for asylum adjudication across the country. Certain special interest groups have targeted these provisions for elimination. However, their assertions cannot withstand scrutiny.

Fiction: H.R. 418 would limit asylum applicants' due process and result in legitimate asylees' being returned home to persecution.

> **Fact:** H.R. 418 retains all the current steps in the asylum process for asylum applicants. This legislation was crafted to ensure that legitimate asylum seekers may continue to seek relief. Asylum applicants retain access to federal appellate courts under this bill.

Fiction: The only cases where terrorists have exploited our asylum system occurred before 1996.

> **Fact:** It is true that terrorists such as Mir Aimal Kansi, who murdered two CIA employees, and Ramzi Yousef, who masterminded the first World Trade Center attack while free after applying for asylum, abused the asylum system prior to 1996 reforms to the system. However, the asylum process remains vulnerable to exploitation. For example, Nuradin Abdi, a Somali al Qaeda operative indicted in June 2004 for plans to blow up an Ohio shopping mall, applied for and received asylum in 1999. Abu Mezer, who was responsible for the August 1997 New York City subway plot, had been arrested in Washington State in January 1997 for entering illegally for the third time and applied for asylum the next month.

> **Fact:** The 9th Circuit currently grants asylum to applicants who claim that their own government would "persecute" them because of the "political opinions" of the terrorist organization to which the applicant belongs. H.R. 418 would put an end to this dangerous distortion of the law.

Fiction: Asylum applicants already face too great a chance of being returned to persecution. Tightening the process further will make this situation worse.

> **Fact:** Actually, 98 percent of aliens claiming to have "credible fear of persecution" pass the "credible fear" test and are screened into the United States. In FY03, 60 percent of affirmative asylum claims (those filed voluntarily by aliens who are not in DHS custody) were ultimately granted asylum; that year, 26 percent of defensive asylum claims (those filed by aliens who are in custody as a way to forestall deportation) won asylum. The REAL ID Act simply brings the existing system in line with our overall legal system. It would:

- Reiterate the existing standard that the person making the claim bears the burden of proof in the proceeding (just as is the case in every other U.S. court proceeding);
- Allow judges to assess the witness's credibility (just as judges or jurors do in every other U.S. court proceeding, including capital punishment cases);
- Require claimants to either produce or explain the absence of evidence to corroborate their claims (just as is expected in every other U.S. court proceeding).

> **Fact:** Current U.S. law (and international law) defines asylees as those with a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." H.R. 418 requires that one of these five grounds be "a central reason" for the persecution, since it may be difficult to establish the motivations of a persecutor.

Fiction: The 9th Circuit rulings only affect a small number of cases.

> **Fact:** In reality, the 9th Circuit decides more cases than all the other circuits combined. This is beside the point, though. America has always strived for a system in which justice is blind and the law is applied uniformly. H.R. 418 moves us one step further toward that goal by setting uniform standards for asylum proceedings nationwide, rather than allowing individual courts to make their own rules. This is simple common sense at a time when the erroneous decision of one court could put the lives of countless Americans in jeopardy.