



The REAL ID Act and the Latino Community

The REAL ID Act became law in May 2005. It is expected to have a broad impact on the Latino community and on all Americans who apply for driver's licenses. While there are still several questions regarding how and when the REAL ID Act will be implemented, the following is a brief summary of its main provisions.

Driver's Licenses

The REAL ID Act forces all 50 states and the District of Columbia to completely overhaul their driver's license laws and procedures. Beginning three years after the law is enacted, driver's licenses from those states which do not comply with the new federal standards cannot be used to access federal buildings, board airplanes, enter nuclear power facilities, or for any other purposes designated by the Department of Homeland Security.

The law will require states to satisfy minimum standards including fraud and tamper-resistant features, biometric identifiers, and information about each applicant's name, age, Social Security number (SSN), proof of identity, proof of state residency, and proof of legal presence in the U.S. States will have to verify with the issuing agency the documents presented by all applicants. In other words, the Department of Motor Vehicles will have to verify all birth certificates with the hospitals or agencies that issued them, all immigration documents with the DHS, all SSNs with the Social Security Administration, all utility bills or bank statements or similar documents with companies that issued them, etc. In addition, states will have to save copies of all of the documents received for a period of several years.

All applicants for new licenses and renewals will have to prove that they are U.S. citizens or legal immigrants (unfortunately, the law is poorly written so that not every category of legal immigrant will qualify).

The REAL ID Act requires states to create a multitiered system for driver's licenses. U.S. citizens, lawful permanent residents (green card holders), and asylees and refugees would have one type of license. Immigrants on temporary visas, persons with Temporary Protected Status (TPS), and other noncitizens who are in the U.S. legally will receive another type of license that expires when their visas expire (or after one year if the visa has no expiration date).

A state could also decide to issue an alternative document to people who cannot prove legal presence, but these documents will have to be distinct from all other licenses and would need to clearly indicate that they are not to be used for identification purposes.

The REAL ID Act also limits the types of documents that foreign-born persons could use to prove their identity. Only passports are permitted; immigrants could not use their national IDs, foreign-issued birth certificates, foreign driver's licenses, *matrículas*, or any other foreign-issued documents to obtain a driver's license.

The Department of Homeland Security, in consultation with the Department of Transportation and representatives of the 50 states, will have to issue final regulations to implement this bill. These provisions take effect three years after the law is enacted.

Asylum

The REAL ID Act will make it much more difficult for people fleeing persecution to obtain asylum in the U.S. It requires asylum applicants to document and prove that race, religion, nationality, membership in a particular social group, or political opinion was one "central reason" for their persecution. The immigration judge can then require the asylum applicant to provide additional corroborating evidence. In other words, this means that asylum applicants must prove their torturer's motives – which will be nearly impossible in many cases – and must be prepared to provide additional evidence to prove they were persecuted. These asylum provisions go into effect immediately.

Due Process

The REAL ID Act bars federal courts from reviewing virtually all discretionary actions of the Department of Homeland Security in the immigration arena, no matter how erroneous or groundless the decisions may be.

The REAL ID Act will also further restrict federal courts' ability to review the detention or deportation of immigrants by eliminating federal court jurisdiction for habeas corpus claims for immigrants in removal proceedings and by restricting the types of claims that immigrants can raise in federal court. In essence, the REAL ID Act cuts off the last remaining avenue of federal court review for certain immigrants.

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