

June 20, 2016

Dear Senator:

**The undersigned organizations write to urge you to oppose Senator Cruz's Amendment No. 4718 to the Commerce, Justice, Science, and Related Agencies Appropriations Act.**

The amendment would add Senator Cruz's Expatriate Terrorist Act (ETA) to the CJS Appropriations bill. Several of our groups have written previously to discuss the constitutional problems with the ETA.<sup>1</sup> All of us write now to emphasize the practical dangers that Amendment No. 4718 poses. Because Congress has never held a hearing on the ETA, the Senate has not considered the full potential impact of the legislation, including harms that may not be obvious from a quick reading of the ETA's text.

**With prominent politicians openly and repeatedly calling to deny Muslims entry into the United States, Congress cannot ignore the risk that a future administration would use the ETA to strip U.S. citizenship from Americans without fair process, and those Americans might never make it into court to challenge the government's findings.**

The ETA would make providing material support or resources to a foreign terrorist organization grounds for loss of citizenship. The legislation does not require a criminal conviction or any other judicial process. In practice, denaturalization<sup>2</sup> would only require a written finding by a government official that an American had provided material support or resources to a terrorist group with the intent of relinquishing his or her citizenship.<sup>3</sup>

For example, an American who travels outside the country to provide humanitarian assistance or medical care, or to conduct peace building in a troubled region, could be mistakenly accused by a consular officer of providing material support or resources to terrorists. If the State Department approved this finding, it would issue a certificate of loss of nationality, and attempt to mail a copy to the individual whose citizenship was being stripped.<sup>4</sup> The State Department would also likely revoke the individual's passport.<sup>5</sup> All of this could occur without the citizen having any

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<sup>1</sup> A previous coalition letter on the ETA is available at <http://www.constitutionproject.org/wp-content/uploads/2015/12/Coalition-Letter-ETA-Dec2015.pdf>.

<sup>2</sup> "Denaturalization" refers to the loss of citizenship by both U.S.-born and naturalized citizens, and the ETA applies to Americans regardless of how they originally acquired citizenship.

<sup>3</sup> See 22 C.F.R. § 50.40: ("... A person who affirmatively asserts to a consular officer, after he or she has committed a potentially expatriating act, that it was his or her intent to relinquish U.S. citizenship will lose his or her U.S. citizenship. *In other loss of nationality cases, the consular officer will ascertain whether or not there is evidence of intent to relinquish U.S. nationality.*") (Emphasis added).

<sup>4</sup> The State Department would also forward a copy of the certificate to the United States Citizenship and Immigration Services. See 8 U.S.C. § 1501; 22 C.F.R. § 50.40 (e).

<sup>5</sup> See 22 C.F.R. § 51.62 (b) (State Department "may revoke a passport when the Department has determined that the bearer of the passport is not a U.S. national, or the Department is on notice that the bearer's certificate of citizenship or certificate of naturalization has been canceled"); 22 C.F.R. §§ 51.60(C)(4), 51.62 (State Department has the authority to deny or revoke a passport to anyone whose "activities abroad are causing or are likely to cause serious damage to the national security or the foreign policy of the United States.") The ETA would also mandate passport denial or revocation for anyone the Secretary of State determined "is a member, or is attempting to become a member" of a foreign terrorist organization.

opportunity to confront the evidence against him or have an independent court review the executive branch's decision.<sup>6</sup>

In a war-torn or remote region, it is not clear how denaturalized persons would even receive notice of the State Department's decision, let alone successfully challenge it in court. They might only learn at a foreign border crossing or airport that State Department officials had stripped them of their U.S. citizenship and passport. Beyond the practical difficulties of getting to safety and finding an attorney, it is unclear whether there is a statutory basis for judicial review of the State Department's decision.<sup>7</sup>

Applicable federal regulations would not prohibit this scenario. Current State Department practice would, but those policies could be changed by a future administration with the stroke of a pen. Even under current law, there have been credible reports of citizens having passports mistakenly confiscated by the U.S. embassy in Sanaa, Yemen, and effectively denied their government's protection in a war zone.<sup>8</sup> If the ETA is signed into law, the risk of similar incidents will dramatically increase. American citizens working overseas in unstable regions could lose both the protection of the United States government and the ability to exit a dangerous country, based solely on the decision of an unnamed State Department official.

Of course, the ETA cannot change the 5<sup>th</sup> and 6<sup>th</sup> Amendments, which forbid stripping Americans of their citizenship as punishment for any act "without a prior criminal trial and all its incidents."<sup>9</sup> It also cannot change the 14<sup>th</sup> Amendment, which the Supreme Court has held gives every American "a right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship."<sup>10</sup> But the bill is ripe for abuse, and could be implemented in a manner that jeopardizes American citizens' constitutional rights.

For these reasons, we respectfully urge you to stand up for the Constitution and oppose Amendment No. 4718.

Sincerely,

American Civil Liberties Union  
The Constitution Project

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<sup>6</sup> According to a 2013 report by the United Nations secretary-general, "International law ... obliges States to provide for an opportunity for the meaningful review of nationality decisions, including on substantive issues." This means that if citizenship is revoked, "lodging an appeal should suspend the effects of the decision, such that the individual continues to enjoy nationality – and related rights – until such time as the appeal has been settled." See [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/25/28](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/25/28).

<sup>7</sup> See 18 U.S.C. § 1503(a) ("any person who is within the United States" and is denied the rights and privileges of citizenship may sue under the Declaratory Judgment Act); 18 U.S.C. § 1503(b) (individuals outside the United States must apply to consular officials "for a certificate of identity for the purpose of traveling to a port of entry in the United States and applying for admission"). But see *Kahane v. Secretary of State*, 700 F.Supp. 1162, 1165 n.3 (D.D.C. 1988); *Icaza v. Schultz*, 656 F.Supp. 819, 822 n.5 (D.D.C. 1987) (district court decisions allowing individuals outside the United States to sue under 18 U.S.C. § 1503(a)).

<sup>8</sup> E.g., [http://www.nytimes.com/2015/05/28/nyregion/yemeni-americans-thrust-into-limbo-say-us-embassy-unfairly-revokes-passports.html?\\_r=1](http://www.nytimes.com/2015/05/28/nyregion/yemeni-americans-thrust-into-limbo-say-us-embassy-unfairly-revokes-passports.html?_r=1); <http://www.theguardian.com/world/2014/jul/22/yemeni-americans-us-embassy-sanaa-passports>; <http://www.npr.org/sections/thetwo-way/2016/02/17/467135957/court-state-department-wrongfully-revoked-passport-of-american-in-yemen>.

<sup>9</sup> *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 165-68 (1963).

<sup>10</sup> *Afroyim v. Rusk*, 287 U.S. 253, 268 (1967). See also *Vance v. Terrazas*, 444 U.S. 252, 260 (1980).

Appeal for Justice  
Asian American Legal Defense and Education Fund  
Bill of Rights Defense Committee/Defending Dissent Foundation  
Center for Constitutional Rights  
Center for Victims of Torture  
Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)  
Council on American-Islamic Relations  
Detention Watch Network  
Free Speech Coalition  
Friends Committee on National Legislation  
Human Rights First  
Human Rights Watch  
NAFSA: Association of International Educators  
National Immigration Law Center  
National Korean American Service and Education Consortium  
National Religious Campaign Against Torture  
NETWORK, a National Catholic Social Justice Lobby  
OpenTheGovernment.org  
South Asian Americans Leading Together (SAALT)  
United We Dream  
We Belong Together  
Win Without War