

REMOVING THE AFRICAN NATIONAL CONGRESS FROM
TREATMENT AS A TERRORIST ORGANIZATION

MAY 5, 2008.—Ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 5690]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5690) to exempt the African National Congress from treatment as a terrorist organization for certain acts or events, provide relief for certain members of the African National Congress regarding admissibility, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

CONTENTS

	Page
The Amendment	2
Purpose and Summary	2
Background and Need for the Legislation	3
Hearings	4
Committee Consideration	4
Committee Votes	4
Committee Oversight Findings	4
New Budget Authority and Tax Expenditures	5
Congressional Budget Office Cost Estimate	5
Performance Goals and Objectives	6
Constitutional Authority Statement	7
Advisory on Earmarks	7
Section-by-Section Analysis	7
Changes in Existing Law Made by the Bill, as Reported	7

THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. EXEMPTION OF AFRICAN NATIONAL CONGRESS FROM TREATMENT AS TERRORIST ORGANIZATION FOR CERTAIN ACTS OR EVENTS.

Section 691(b) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (division J of Public Law 110-161; 121 Stat. 2365) is amended by inserting “the African National Congress (ANC),” after “the Karenni National Progressive Party,”.

SEC. 2. RELIEF FOR CERTAIN MEMBERS OF THE AFRICAN NATIONAL CONGRESS REGARDING ADMISSIBILITY.

(a) EXEMPTION AUTHORITY.—The Secretary of State, after consultation with the Attorney General and the Secretary of Homeland Security, or the Secretary of Homeland Security, after consultation with the Secretary of State and the Attorney General, may determine in such Secretary’s sole unreviewable discretion that paragraphs (2)(A), (2)(B), and (3)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply to an alien with respect to activities undertaken in opposition to apartheid rule in South Africa.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that the Secretary of State and the Secretary of Homeland Security should immediately exercise in appropriate instances the authority in subsection (a) to exempt the anti-apartheid activities of aliens who are current or former officials of the Government of the Republic of South Africa.

SEC. 3. REMOVAL OF CERTAIN AFFECTED INDIVIDUALS FROM CERTAIN UNITED STATES GOVERNMENT DATABASES.

The Secretary of State, in coordination with the Attorney General, the Secretary of Homeland Security, the Director of the Federal Bureau of Investigation, and the Director of National Intelligence, shall take all necessary steps to ensure that databases used to determine admissibility to the United States are updated so that they are consistent with the exemptions provided under section 2.

PURPOSE AND SUMMARY

Due to their broad scope, certain security-related provisions within the Immigration and Nationality Act (INA) currently require the United States to consider the African National Congress (ANC) a terrorist organization. These provisions also require the U.S. to consider as “terrorist activities” many actions taken in opposition to apartheid rule in South Africa. The Department of State and Department of Homeland Security are required by law to deny admission to persons who trigger these provisions, including many current and former members of the government of the Republic of South Africa.

H.R. 5690 removes the ANC from treatment as a terrorist organization, and grants the Secretary of State and the Secretary of Homeland Security the discretionary authority to determine that certain criminal and security-related grounds of inadmissibility do not apply to an alien with respect to activities undertaken in opposition to apartheid rule in South Africa. The bill also requires the Secretary of State, in coordination with other agencies, to take all necessary steps to ensure that databases used to determine admissibility to the United States are updated so that they are consistent with the exemptions provided in the bill.

BACKGROUND AND NEED FOR THE LEGISLATION

In the wake of the attacks of September 11, 2001, Congress enacted the USA PATRIOT Act of 2001¹ and the REAL ID Act of 2005.² Among other things, these measures sought to exclude and remove known and suspected terrorists from the United States by broadening the security-related grounds of inadmissibility—especially those related to terrorism—within the INA.

These measures, however, broadened the security-related grounds of inadmissibility to such an extent that they were triggered by numerous groups and individuals whom Congress did not intend to affect. These groups and individuals included freedom-fighters, such as the Hmong and Montagnards in southeast Asia, who fought side-by-side with U.S. military units or were otherwise supported by the U.S. Government. They included persons who used armed resistance to defend themselves against brutal and repressive regimes, such as the Castro regime in Cuba or the military government in Burma. They even included women who were raped and enslaved by armed militia in Liberia; victims of extortion forced to pay armed rebels in Colombia to protect their lives and those of their families; and nurses and missionaries who were kidnapped, assaulted, and forced to provide medical treatment to guerilla fighters. These provisions have had severe consequences for non-citizens of all types, including refugees, asylum seekers, lawful permanent residents, and foreign government officials. Among other things, the provisions have resulted in a significant drop in the number of resettled refugees for fiscal years 2006 and 2007, as well as denials or delays of thousands of asylum and permanent residence applications. They have also resulted in embarrassing denials of visas for foreign heads of state, as well as other foreign government officials and dignitaries.

Over the last 2 years, Congress has recognized the unintended consequences of the terrorism provisions and has begun to take corrective action. Most recently, Congress created a series of exemptions to the terrorism provisions in the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (“Foreign Operations Act”).³ In this Act, Congress automatically removed numerous groups from treatment as terrorist organizations, including:

The Karen National Union/Karen Liberation Army (KNU/KNLA), the Chin National Front/Chin National Army (CNF/CNA), the Chin National League for Democracy (CNLD), the Kayan New Land Party (KNLP), the Arakan Liberation Party (ALP), the Mustangs, the Alzados, the Karenni National Progressive Party, and appropriate groups affiliated with the Hmong and the Montagnards.

Congress also gave the Secretary of State and the Secretary of Homeland Security discretionary authority to determine that the security-related grounds of inadmissibility do not apply to an individual or group with respect to certain actions.

¹Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107–56).

²Division B of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (Public Law 109–13).

³Section 691, Division J of Public Law 110–161.

Despite these corrective actions, further legislation is necessary to correct the unintended application of the terrorism provisions to the ANC and its members. Current law continues to regard the ANC as a terrorist organization, and to deny entry to members based solely on their affiliation to the ANC, because the ANC used armed force as part of its ultimately successful political effort to overturn the repressive apartheid system in South Africa. The law also requires the U.S. to deny entry to South Africans for their activities in opposition to apartheid rule and for convictions related to such activities.

These residual restrictions in the INA are an affront to relations between the United States and the Republic of South Africa. Today, South Africa is an ally in the war on terror and the leading trading partner of the United States on the African continent, yet South African officials and dignitaries are often denied visas or forced to obtain special waivers when seeking admission to the United States. Even former President Nelson Mandela must seek a waiver to enter the United States due to his anti-apartheid activities and a 1962 conviction for sabotage.

H.R. 5690 would remove the ANC from treatment as a terrorist organization, and allow the Secretary of State and Secretary of Homeland Security to admit individuals irrespective of any activities undertaken in opposition to apartheid rule in South Africa. The bill would also require the Secretary of State, in coordination with other agencies, to take all necessary steps to ensure that databases used to determine admissibility to the United States are updated so that they are consistent with the exemptions provided in the bill.

HEARINGS

The Committee on the Judiciary held no hearings on H.R. 5690.

COMMITTEE CONSIDERATION

On April 30, 2008, the Committee met in open session and ordered the bill H.R. 5690 favorably reported with an amendment, by voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 5690.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 5690, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 2, 2008.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5690, a bill to exempt the African National Congress from treatment as a terrorist organization for certain acts or events, provide relief for certain members of the African National Congress regarding admissibility, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

PETER R. ORSZAG,
Director.

Enclosure.

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 5690—A bill to exempt the African National Congress from treatment as a terrorist organization for certain acts or events, provide relief for certain members of the African National Congress regarding admissibility, and for other purposes

CBO estimates that implementing H.R. 5690 would have no significant cost to the Federal Government. Enacting the bill could affect direct spending, but CBO estimates that any such effects would not be significant in any year. In addition, we estimate that enacting H.R. 5690 could increase revenues by less than \$500,000 a year over the 2009–2018 period. This legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The bill would broaden the authority of the Department of State and the Department of Homeland Security (DHS) to permit certain members of the African National Congress to enter the United States.

The Department of State collects fees from persons who apply for immigrant and nonimmigrant visas from overseas. Under current law, some application and issuance fees for visas are deposited in

the Treasury as revenues (applicants for immigrant visas pay a \$355 fee and South African citizens who receive certain non-immigrant visas pay an \$85 issuance fee). Based on information from the Department of State, CBO estimates that, under the bill, the department would process few additional applications annually and that enacting H.R. 5690 would increase revenues by less than \$500,000 a year over the 2009–2018 period.

The Department of State also charges individuals entering the country other visa fees: a \$131 application fee for nonimmigrant visas, a \$45 security surcharge for immigrant visas, and depending on the type of visa petition, additional fees for fingerprinting or affidavits of support. In addition, DHS would collect fees ranging from \$100 to \$500 to process visa applications from most individuals affected by H.R. 5690. All of those fees are classified as offsetting collections (for the Department of State) or offsetting receipts (for DHS) and are retained and spent by the departments. CBO estimates that the net budgetary effect of those increased collections would be less than \$500,000 a year.

Finally, some of the individuals admitted under this legislation could become eligible for certain Federal benefits, but CBO expects that any increase in direct spending for benefit programs would not be significant over the 2009–2018 period.

The CBO staff contacts for this estimate are Mark Grabowicz (for DHS's costs), and Sunita D'Monte (for the Department of State's costs). This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5690 is intended to ensure that the African National Congress is not considered a foreign terrorist organization under the Immigration and Nationality Act (INA), and that members of the ANC are not inadmissible solely because of their affiliation to the organization. The bill also provides the Secretary of State and the Secretary of Homeland Security with the discretionary authority to determine that an individual's acts in opposition to apartheid rule in South Africa do not trigger the bars to admissibility in sections 212(a)(2) or 212(a)(3) of the INA. Once such a determination is made, it should be reflected in all relevant databases used to determine admissibility to the United States so that subsequent attempts to enter do not require exercise of such discretion. Congress intends that the Secretary of State will coordinate with all relevant Federal departments and agencies to ensure that such database changes are made. Finally, as is expressed in the sense of Congress, Congress intends that the Secretary of State and Secretary of Homeland Security immediately begin to exercise their discretionary authority on behalf of current and former officials of the government of the Republic of South Africa. Congress expects that this new authority will be exercised *sua sponte* and without petition from such government officials, so that upon application for entry to the United States, the relevant determination has already been made.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clause 4 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5690 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Sec. 1. Exemption of African National Congress from Treatment as Terrorist Organization for Certain Acts or Events. This section revises section 691(b) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008 (division J of Public Law 110-161) by adding the African National Congress (ANC) to a list of organizations that shall not be considered terrorist organizations on the basis of past acts or events. Pursuant to this amendment, members of the ANC will no longer trigger security-related bars to admission under the immigration laws merely by virtue of their membership in or affiliation to the ANC.

Section 2. Relief for Certain Members of the African National Congress Regarding Admissibility. Subsection (a) of this section provides discretionary authority to the Secretary of State and the Secretary of Homeland Security to determine that certain criminal and security-related grounds of inadmissibility do not apply to an alien with respect to acts in opposition to apartheid rule in South Africa. Subsection (b) of this section states the sense of Congress that such discretionary authority should immediately be exercised in appropriate circumstances with respect to the anti-apartheid activities of current or former officials of the government of the Republic of South Africa.

Section 3. Removal of Certain Affected Individuals from Certain United States Government Databases. This section instructs the Secretary of State, in coordination with the Department of Justice, the Department of Homeland Security, the Federal Bureau of Investigation, and the Director of National Intelligence, to take all necessary steps to ensure that databases used to determine admissibility to the United States are updated so that they are consistent with the exemptions provided in section 2 of the bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SECTION 691 OF THE DEPARTMENT OF STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS APPROPRIATIONS ACT, 2008

(Division J of Public Law 110–161)

SEC. 691. (a) * * *

(b) AUTOMATIC RELIEF FOR THE HMONG AND OTHER GROUPS THAT DO NOT POSE A THREAT TO THE UNITED STATES.—For purposes of section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)), the Karen National Union/Karen Liberation Army (KNU/KNLA), the Chin National Front/Chin National Army (CNF/CNA), the Chin National League for Democracy (CNLD), the Kayan New Land Party (KNLP), the Arakan Liberation Party (ALP), the Mustangs, the Alzados, the Karenni National Progressive Party, *the African National Congress (ANC)*, and appropriate groups affiliated with the Hmong and the Montagnards shall not be considered to be a terrorist organization on the basis of any act or event occurring before the date of enactment of this section. Nothing in this subsection may be construed to alter or limit the authority of the Secretary of State or the Secretary of Homeland Security to exercise his discretionary authority pursuant to section 212(d)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(3)(B)(i)).

* * * * *

ADDITIONAL VIEWS

The African National Congress played a significant role in history. Nelson Mandela and the ANC for many years fought against the unjust apartheid system in South Africa. Through a largely peaceful transfer of power, apartheid is a thing of the past and South Africa now has a representative democratic government. Many ANC officials are now officials of South Africa's government. South Africa provides hope that genuine reconciliation between historically at-odds groups can be achieved.

H.R. 5690 adds the ANC to the list of groups that are not considered terrorist organizations under the Immigration and Nationality Act.¹ Such a list was created in order to shield certain organizations from the overbreath of the Immigration Act of 1990. As discussed below, under the 1990 legislation, any guerilla group would find itself encompassed within the definition of terrorist organization. The groups currently on the exempt list include Hmong and Montagnard guerillas that fought alongside U.S. soldiers in the Vietnam War and groups that are fighting against the repressive Burmese government. It is understandable that the ANC be added to this list.

However, we have to recognize that real terrorist acts were committed as part of the struggle against apartheid. There were deadly bombings of civilians.² There were so-called "necklacings," in which car tires were put around persons's necks and set on fire.

It is not a simple matter of stating that this bill is only directed at members of the ANC. Terrorist acts were carried out in the name of the ANC and supported by at least some ANC officials. Let me quote from the New York Times from 1988:

Leaders of the ANC have for the first time accepted responsibility for some recent bombing attacks on civilians and said they have taken the first steps to prevent a recurrence. . . . [A] score of bombing attacks appear to have been deliberately aimed at civilian targets like amusement arcades, fast-food outlets, sports stadiums and shopping centers in and near Johannesburg and Pretoria. The [ANC] had avoided either taking or denying responsibility. Criticism reached a climax with a car-bomb explosion outside a Johannesburg stadium early last month, in which 2 people died and 67 were hurt. The attacks have been widely condemned by anti-apartheid leaders and church groups normally sympathetic to the ANC. . . . [The removal of an ANC political commissar] was widely regarded as something of an exercise in damage control. . . . [He] had pub-

¹This list was established in the fiscal year 2008 omnibus appropriations bill (Pub. L. No. 110-161).

²See, e.g., U.S. Department of Defense, *Terrorist Group Profiles* 129 (1988).

licly spoken in favor of striking at civilian targets, arousing debate within the organization over military tactics.³

The ends do not justify the means. As unjust as apartheid was, that was not a rationale to carry out terrible crimes. Therefore, I could not support that part of the bill as introduced under which members of the ANC are not considered inadmissible on the basis of any anti-apartheid activities in which they engaged no matter what their nature. However, the bill as reported by the Judiciary Committee provides appropriate relief to the ANC without excusing the perpetrators of terrorist acts. I appreciate the willingness of Mr. Conyers, Mr. Berman and Ms. Lofgren to address my concerns.

I must respond to the characterizations of the REAL ID made in the Committee Report. The REAL ID Act modified the grounds of inadmissibility and deportability for contributing funds or other material support to terrorist organizations.⁴ The Immigration and Nationality Act as it existed before the enactment of the REAL ID Act provided that if aliens provided funding or other material support to a terrorist organization that for whatever reason had not yet been designated by the Secretary of State as a terrorist organization (pursuant to section 219 of the Immigration and Nationality Act), the aliens were only inadmissible or deportable if they knew that the support would further the organization's terrorist activities, i.e., to buy a bomb. However, money given to terrorist organizations is fungible. As Senator Dianne Feinstein has stated:

Some have raised the objection that certain groups, that may conduct terrorist operations, also run humanitarian or social service operations, like schools and clinics. But I simply do not accept that so-called humanitarian works by terrorist groups can be kept separate from their other operations. I think the money will ultimately go to bombs and bullets, rather than babies, or, because money is fungible, it will free up other funds to be used on terrorist activities.

Based on this understanding of how terrorist organizations work, the REAL ID Act provided that aliens who provide funds or other material support to any organization that commits terrorist acts would be inadmissible and deportable—unless they did not know, and should not reasonably have known, that the organization was a terrorist organization. Similar changes were made in the context of aliens who were members or representatives of terrorist groups that had not been designated as such by the Secretary of State.

The definition of what is considered a terrorist act under the Immigration and Nationality Act was written in the Immigration Act of 1990. The definition was written broadly so as to give maximum flexibility to the Immigration and Naturalization Service and because of the difficulty of precisely defining terrorism. Essentially, any armed attack other than for mere personal monetary gain with intent to endanger the safety of one or more individuals or to cause substantial damage to property is considered a terrorist act.⁵ Because such a broad definition of terrorist act would in certain in-

³John Battersby, *A.N.C. Acts to Halt Civilian Attacks*, New York Times, August 21, 1988.

⁴Section 103 of Title 1 of Division B of Pub. L. No. 109-13.

⁵Section 212(a)(3)(B)(iii) of the Immigration and Nationality Act.

stances encompass armed groups that did not target civilians and thus should not be considered terrorist organizations, the REAL ID Act included a provision allowing the Administration to waive the material support bar on admissibility and deportability in appropriate cases.⁶ As discussed above, Congress decided to establish a statutory list of organizations to be deemed not terrorist organizations for immigration purposes in the fiscal year 2008 omnibus appropriations bill. H.R. 5690 adds the ANC to this list, and is thus consistent with the goals of the REAL ID Act.

LAMAR SMITH.



⁶Section 104 of Title 1 of Division B of Pub. L. No. 109-13.