

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY AND INTERNATIONAL LAW

Madam Chairwoman and Members of the Subcommittee:

My name is Michael Horowitz. I am a Fellow of the Hudson Institute, and I thank you for inviting me to testify at today's important hearings.

I testify as a person whose career has been significantly focused on the promotion of human rights and civil liberties. I taught civil rights law at the University of Mississippi Law School during its first years of racial integration, and have spent my life in opposition to the curse of racism in a country my immigrant father and grandparents regularly admonished me to regard as "the blessed land." During the past decade, I have helped organize coalitions that worked to pass such human rights laws as the International Religious Freedom Act, the Sudan Peace Act, the North Korea Human Rights Act, the Trafficking Victims Protection Act, the Prison Rape Elimination Act, the Advance Democracy Act and the Leahy-Wolf Internet Freedom Initiative. A Republican, my last Judiciary Committee appearance occurred when I testified before the Senate Judiciary Committee to condemn Bush administration constructions of the Real ID and Patriot Acts that treated terrorist victims as "material supporters" of terrorism. I am proud of the role I played at that time to ensure that rape victims obliged to launder the clothing of their predators would never be treated as terrorists for immigration or any other purpose.

In short, I come before the committee as a person who deeply believes that American interests are advanced when American values are honored.

These views, and my experience as a pro-immigration human rights advocate, lead me to express grave concerns about H.R. 1425, the Wartime Treatment Study Act.

I do so for such reasons as these:

- *The bill profoundly fails to take context into account – as evidenced by its failure to acknowledge that World War II was a desperate period in which America was fighting for its very*

survival, when the survival of freedom throughout the world hung in the balance and when America's success in this struggle was by no means assured.

- *The bill's findings – in particular the numbers it cites – do not reflect the consensus views of historians, and the bill thus runs the risk of legislating rather than reflecting history and doing so in the service of an effort to prejudge and condemn America's World War II conduct;*
- *The bill's tone, findings and imperatives reflect prejudgment of the issues that the Commission on the Wartime Treatment of European Americans whose establishment is the centerpiece objective of H.R. 1425 is ostensibly supposed to study. The bill clearly reads as a mandate to condemn the United States for its World War II treatment of German-American and Italian-American resident aliens.*
- *The bill's mandate that four of the seven members of its proposed Commission on Wartime Treatment of European Americans should “represent... the interests of” German-Americans and Italian-Americans is an outrageous invitation to if not literal guarantee of prejudgment, an invitation to demands for reparations and an invitation to distorted history. In not requiring all Commission members to be distinguished and expert historians, H.R. 1425 reveals a clear bias in favor of prejudgment rather than facts – all the more so because the long passage of time since the relevant events have taken place makes the need for the expert skills of historians imperative if truth and balance is to be achieved by the Commission.*
- *The bill attempts to blur clear differences that took place in the treatment of German-American and Italian-American citizens of the United States and German and Italian resident aliens who were citizens of countries with which the United States was at war. As such, the bill ignores the particular right of governments – particularly in moments of high crisis – to exercise particularly careful scrutiny towards the latter.*

- *The bill implicitly ignores the deep patriotism of most Italian-Americans and German-Americans, who saw nothing wrong in being made subject to heightened scrutiny when America was engaged in a life and death struggle against the Fascists who had taken over their home countries.*
- *The bill ignores the active and overt Nazi Bund and Italian Black Shirt organizations that had been flourishing in America prior to World War II and the fact that they had been intimidating and terrorizing many German-Americans and Italian-Americans.*
- *The bill ignores the efforts being made by the Hitler and Mussolini regimes to run spy networks and undermine America's capacity to win the war, and ignores America's right to regard the need to defeat such efforts as survival-based imperatives.*
- *The bill subtly but clearly seeks to blur the distinction between the large number of resident aliens who were subject to interrogation and, in context, not-unreasonable restrictions, and the relatively small number of German and Italian aliens who were actually incarcerated.*
- *The bill would subject the conduct of American officials during World War II to utopian standards, and would implicitly but clearly treat the common sense war concerns of those officials – and most Americans – as evidence of bigotry.*
- *The bill's utter lack of balance subtly legitimizes revisionist historians who reject the notion that America was decent, heroic and deeply principled in its act and manner of saving itself and the world from Nazi and Fascist aggression.*
- *The bill outrageously seeks to elide the well documented conduct of a handful of State Department officials who, in violation of American immigration laws, condemned European Jews to death by refusing to allow them to prove their loyalty to America, and the conduct of the officials who sought, during perilous times and under great pressure, to determine whether enemy citizens were loyal to America or posed dangers to our fragile wartime efforts.*

H.R. 1425's efforts to legislate history and to retroactively condemn America for seeking to exercise careful scrutiny towards citizens of countries with which we were in a desperate war for survival is ground enough to criticize it. So too is H.R. 1425's effort to link such conduct with America's failure to allow our own laws to be enforced towards people who sought nothing more than the right to come to America after their loyalties had been carefully scrutinized and fully proven. So too is the use the bill will be put, intendedly or otherwise, to reject the "last best hope of mankind" view of America that is and was deeply held by most Italian-Americans and German-Americans.

But there is more to the bill that I hope will be of grave concern to the Subcommittee – its likely and intended effect on current and future American crisis-period policies.

America is of course not perfect in what we are or have done; to state this is to state the obvious. But the tone, clear purport and almost certain takeaway outcome of H.R. 1425 can be best seen if its focus had been placed on an earlier war time period in American history, the Civil War. Then, President Lincoln's suspension of habeas corpus and his initiation of summary arrests and military justice were acts that were, at the least, questionably necessary violations of civil liberties. Distinguished American historians have long debated these acts – but have done so in the context of Lincoln's ultimate objective of, and success in, saving the Union and ending slavery. Respect for this context is nowhere to be seen in H.R. 1425's evident rush to condemn President Roosevelt for his treatment of alien citizens of Axis powers. It is possible – indeed necessary – for America to learn from our past, and from our past mistakes. But by being neither respectful of the challenges faced by the American people and its leaders during World War II, nor understanding of the imperatives involved when survival crises are faced by nations, H. R. 1425 will harm rather than help America to better confront our present and future crises.

I do not know whether America's World War II policies towards resident aliens who were citizens of Axis powers were the best they could have been, nor do I necessarily defend each of Franklin Roosevelt's efforts to protect the country against Nazi and Fascist acts of espionage and sabotage. What I do believe, and deeply believe, is that H.R. 1425 will neither be a useful means of examining these questions, nor a useful means of influencing current American anti-terrorism policies for the better.

H.R. 1425 would make its Olympian, after-the-fact standards for judging American officials and policies the basis for judging America's current anti-terrorism officials and policies. By so doing, the bill would:

- *condemn as bigoted the commonly held, common sense views of most Americans on how to deal with today's terrorism threats;*
- *help impose dangerously utopian standards of judgment on the American policies and officials now responsible for protecting America from terrorist attacks;*
- *legitimize zero tolerance of error standards for officials charged with making hard, day-to-day decisions about protecting American security interests;*
- *send clear signals to American public officials that they are at risk of being condemned for good faith, reasonable efforts to protect the American people from today's threats of terrorism; and*
- *help create powerful and highly dangerous incentives for such officials not to be proactive in protecting the country against terrorist threats, and reward officials who are laziest and most self-protective in the performance of their duties; and in the end and most dangerously.*

At root is the bill's definition of crisis-based, reasonable *concerns* based on citizenship, nationality or ethnicity as acts of bigotry. In fact, the bill's politically driven, politically correct effort to legislate away the common sense concerns of most Americans when confronted with severe threats to their security will lead to *increases* in the very bigotry the bill purports to limit and condemn.

With every fiber within me, I reject anti-Muslim bigotry and regard the need to curb its spread as essential. But I also reject – both in the service of enhancing American security in an age of Islamist terrorism and in the service of curbing anti-Muslim bigotry in America – the shrill cries of bigotry that arise every time American Muslims are treated in any way

differently from others. And it is for this reason as well that I am deeply troubled by H.R. 1425.

Here is what Jesse Jackson said in 1993 – reflecting a common sense view of the world that, because of its very honesty, was a powerful force against political correctness *and a powerful tool against racial bigotry*:

There is nothing more painful to me at this stage of my life than to walk down the street and hear footsteps and start thinking about robbery – then look around and see somebody white and feel relieved.

If a Jesse Jackson Commission of Inquiry had been convened to condemn his remarks as racist, would Americans have been more or less understanding of inner city poverty, more or less likely to condemn all black Americans when reading of racial disparities in crime rates, more or less likely to have elected an African-American President? To me, the answer is obvious.

That we are a nation of immigrants is our glory, and an essential element of America's strength. But this does not mean that each of us is alike the minute we come to America. It does not mean that if America finds itself at war with the countries from which we came that we should not be, *nor even want not to be*, subject to greater scrutiny than that faced by our fellow Americans. Not allowing this to happen, not recognizing that German-American aliens during World War II needed to be more closely watched than, say, African-Americans, would have ensured far greater acts of bigotry against German-Americans after German acts of sabotage against America had taken place.

These questions are pertinent as Congress considers H.R. 1425, and as it considers – as it must – how best to protect America from acts of terrorism *and* how best to curb the anti-Muslim bigotry certain to occur if, God forbid, Islamist terrorists commit another 9/11 atrocity. These are difficult issues that require balanced judgment, openness to fact-based reality and recognition of common sense wisdom. H.R. 1425 evidences none of these necessary qualities. The bill will thus disserve both its ostensible purpose and current, critical American interests.