

116TH CONGRESS
2D SESSION

H. R. 5581

To clarify the rights of all persons who are held or detained at a port of entry or at any detention facility overseen by U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 10, 2020

Ms. JAYAPAL (for herself, Mr. NADLER, Ms. BONAMICI, Ms. JUDY CHU of California, Ms. CLARKE of New York, Mr. DEUTCH, Ms. NORTON, Mr. JOHNSON of Georgia, Mr. KILMER, Ms. LOFGREN, Mr. MCGOVERN, Mr. QUIGLEY, Mr. RASKIN, Ms. ROYBAL-ALLARD, Mr. RUSH, Ms. SCHAKOWSKY, Mr. SCHIFF, Mr. SCHNEIDER, Mr. SMITH of Washington, Mr. SWALWELL of California, Mrs. WATSON COLEMAN, and Ms. WASSERMAN SCHULTZ) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To clarify the rights of all persons who are held or detained at a port of entry or at any detention facility overseen by U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Access to Counsel Act
3 of 2020”.

4 **SEC. 2. CLARIFICATION OF RIGHT TO COUNSEL.**

5 (a) RIGHT TO COUNSEL IN IMMIGRATION PRO-
6 CEEDINGS.—Section 292 of the Immigration and Nation-
7 ality Act (8 U.S.C. 1362) is amended to read as follows:

8 **“SEC. 292. RIGHT TO COUNSEL.**

9 “(a) IN GENERAL.—In any removal, exclusion, de-
10 portation proceeding, or inspection under section 235(a),
11 235(b), 236, 238, 240, or 241, the person subject to such
12 proceeding shall be entitled to representation (at no ex-
13 pense to the Government) by such authorized counsel as
14 the person may choose.

15 “(b) REDRESS OPTIONS.—If counsel cannot person-
16 ally meet with a person subject to holding, detention, or
17 inspection at a port of entry, U.S. Customs and Border
18 Protection or U.S. Immigration and Customs Enforce-
19 ment, as appropriate, shall provide redress options
20 through which counsel may communicate remotely with
21 the held or detained person during the first hour and
22 thereafter of such holding or detention, regardless of the
23 day or time when such holding or detention began.

24 “(c) RECORD OF ABANDONMENT OF LAWFUL PER-
25 MANENT RESIDENT STATUS OR WITHDRAWAL OF APPLI-
26 CATION FOR ADMISSION.—A person held or detained at

1 a port of entry may not submit a valid Record of Abandon-
2 ment of Lawful Permanent Resident Status or Withdrawal
3 of Application for Admission if such person has been de-
4 nied access to counsel in accordance with this section.

5 “(d) DEFINITIONS.—In this section:

6 “(1) INSPECTION.—The term ‘inspection’ does
7 not include primary inspection (as defined in the
8 policies of the Department of Homeland Security).

9 “(2) PERSON.—The term ‘person’ has the
10 meaning given the term in section 101(b)(3).”.

11 (b) RIGHT TO COUNSEL OR REPRESENTATION.—Sec-
12 tion 555(b) of title 5, United States Code, is amended by
13 adding at the end the following: “The right to be accom-
14 panied, represented, and advised by counsel or other quali-
15 fied representative under this subsection shall extend to
16 any person subject to a proceeding, examination, holding,
17 or detention described in section 292 of the Immigration
18 and Nationality Act (8 U.S.C. 1362).”.

19 (c) SAVINGS PROVISION.—Nothing in this section, or
20 in any amendment made by this section, may be construed
21 to limit any preexisting right to counsel under section 292
22 of the Immigration and Nationality Act (8 U.S.C. 1362),
23 as in effect on the day before the date of the enactment
24 of this Act, or under any other law.

1 **SEC. 3. TREATMENT OF INDIVIDUALS HELD OR DETAINED**
2 **AT PORTS OF ENTRY OR ANY CBP OR ICE DE-**
3 **TENTION FACILITY.**

4 (a) IN GENERAL.—The holding or detention of indi-
5 viduals at a port of entry or at any holding or detention
6 facility overseen by U.S. Customs and Border Protection
7 or U.S. Immigration and Customs Enforcement—

8 (1) shall be limited to the briefest term and the
9 least restrictive conditions practicable and consistent
10 with the rationale for such holding or detention; and

11 (2) shall include access to food, water, and rest-
12 room facilities.

13 (b) SAVINGS PROVISION.—Nothing in this Section
14 may be construed to limit agencies from complying with
15 other legal authorities, policies, or standards with respect
16 to treatment of individuals held or detained at ports of
17 entry or at any holding or detention facility overseen by
18 U.S. Customs and Border Protection or U.S. Immigration
19 and Customs Enforcement.

○