

Union Calendar No. 332

116TH CONGRESS
2D SESSION

H. R. 5581

[Report No. 116–412, Part I]

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

MARCH 5, 2020

Additional sponsors: Ms. ESHOO, Mr. LARSEN of Washington, Mr. BLUMENAUER, Mr. GARCÍA of Illinois, Ms. BARRAGÁN, Mr. CONNOLLY, Mrs. NAPOLITANO, Mr. GRIJALVA, Mr. HASTINGS, Ms. PRESSLEY, Mr. KHANNA, Mr. ENGEL, Ms. LEE of California, Mr. LEVIN of Michigan, Mr. KILDEE, Mr. GALLEG0, Mr. CICILLINE, Mr. POCAN, Ms. ESCOBAR, Mr. ESPAILLAT, Mr. TED LIEU of California, Mr. CORREA, Mr. LEWIS, Ms. DELAURO, Ms. SCANLON, Ms. GARCIA of Texas, Mrs. MURPHY of Florida, Mr. LOWENTHAL, and Mr. KENNEDY

MARCH 5, 2020

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

MARCH 5, 2020

Committee on Homeland Security discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on January 10, 2020]

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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Access to Counsel Act*
 5 *of 2020”.*

6 **SEC. 2. ACCESS TO COUNSEL AND OTHER ASSISTANCE AT**
 7 **PORTS OF ENTRY AND DEFERRED INSPEC-**
 8 **TION.**

9 *(a) ACCESS TO COUNSEL AND OTHER ASSISTANCE*
 10 *DURING INSPECTION.—Section 235 of the Immigration and*
 11 *Nationality Act (8 U.S.C. 1225) is amended by adding at*
 12 *the end the following:*

13 *“(e) ACCESS TO COUNSEL AND OTHER ASSISTANCE*
 14 *DURING INSPECTION.—*

15 *“(1) IN GENERAL.—The Secretary of Homeland*
 16 *Security shall ensure that a covered individual has a*
 17 *meaningful opportunity to consult with counsel and*
 18 *an interested party during the inspection process.*

19 *“(2) SCOPE OF ASSISTANCE.—The Secretary of*
 20 *Homeland Security shall—*

21 *“(A) provide the covered individual a*
 22 *meaningful opportunity to consult with counsel*
 23 *and an interested party not later than one hour*
 24 *after the secondary inspection process commences*
 25 *and as necessary throughout the inspection proc-*

1 *ess, including, as applicable, during deferred in-*
2 *spection;*

3 *“(B) allow counsel and an interested party*
4 *to advocate on behalf of the covered individual,*
5 *including by providing to the examining immi-*
6 *gration officer information, documentation, and*
7 *other evidence in support of the covered indi-*
8 *vidual; and*

9 *“(C) to the greatest extent practicable, ac-*
10 *commodate a request by the covered individual*
11 *for counsel or an interested party to appear in-*
12 *person at the secondary or deferred inspection*
13 *site.*

14 *“(3) SPECIAL RULE FOR LAWFUL PERMANENT*
15 *RESIDENTS.—*

16 *“(A) IN GENERAL.—The Secretary of Home-*
17 *land Security may not accept Form I-407*
18 *Record of Abandonment of Lawful Permanent*
19 *Resident Status (or a successor form) from a*
20 *lawful permanent resident subject to secondary*
21 *or deferred inspection without providing such*
22 *lawful permanent resident a reasonable oppor-*
23 *tunity to seek advice from counsel prior to the*
24 *submission of the form.*

1 “(B) *EXCEPTION.*—*The Secretary of Home-*
2 *land Security may accept Form I-407 Record of*
3 *Abandonment of Lawful Permanent Resident*
4 *Status (or a successor form) from a lawful per-*
5 *manent resident subject to secondary or deferred*
6 *inspection if such lawful permanent resident*
7 *knowingly, intelligently, and voluntarily waives,*
8 *in writing, the opportunity to seek advice from*
9 *counsel.*

10 “(4) *DEFINITIONS.*—*In this section:*

11 “(A) *COUNSEL.*—*The term ‘counsel’*
12 *means—*

13 “(i) *an attorney who is a member in*
14 *good standing of the bar of any State, the*
15 *District of Columbia, or a territory or a*
16 *possession of the United States and is not*
17 *under an order suspending, enjoining, re-*
18 *straining, disbarring, or otherwise restrict-*
19 *ing the attorney in the practice of law; or*

20 “(ii) *an individual accredited by the*
21 *Attorney General, acting as a representative*
22 *of an organization recognized by the Execu-*
23 *tive Office for Immigration Review, to rep-*
24 *resent a covered individual in immigration*
25 *matters.*

1 “(B) *COVERED INDIVIDUAL*.—The term ‘cov-
2 *ered individual*’ means an individual subject to
3 *secondary or deferred inspection who is—*

4 “(i) *a national of the United States;*

5 “(ii) *an immigrant, lawfully admitted*
6 *for permanent residence, who is returning*
7 *from a temporary visit abroad;*

8 “(iii) *an alien seeking admission as an*
9 *immigrant in possession of a valid unex-*
10 *pired immigrant visa;*

11 “(iv) *an alien seeking admission as a*
12 *non-immigrant in possession of a valid un-*
13 *expired non-immigrant visa;*

14 “(v) *a refugee; or*

15 “(vi) *an alien who has been approved*
16 *for parole under section 212(d)(5)(A), in-*
17 *cluding an alien who is returning to the*
18 *United States in possession of a valid ad-*
19 *vance parole document.*

20 “(C) *INTERESTED PARTY*.—The term ‘*inter-*
21 *ested party*’ means—

22 “(i) *a relative of the covered indi-*
23 *vidual;*

24 “(ii) *in the case of a covered indi-*
25 *vidual to whom an immigrant or non-im-*

1 *migrant visa has been issued, the petitioner*
2 *or sponsor thereof (including an agent of*
3 *such petitioner or sponsor); or*

4 *“(iii) a person, organization, or entity*
5 *in the United States with a bona fide con-*
6 *nection to the covered individual.”.*

7 *(b) EFFECTIVE DATE.—The amendment made by sub-*
8 *section (a) shall take effect 180 days after the date of the*
9 *enactment of this Act.*

10 *(c) SAVINGS PROVISION.—Nothing in this Act, or in*
11 *any amendment made by this Act, may be construed to*
12 *limit a right to counsel or any right to appointed counsel*
13 *under—*

14 *(1) section 240(b)(4)(A) (8 U.S.C.*
15 *1229a(b)(4)(A)),*

16 *(2) section 292 of the Immigration and Nation-*
17 *ality Act (8 U.S.C. 1362), or*

18 *(3) any other provision of law, including any*
19 *final court order securing such rights,*

20 *as in effect on the day before the date of the enactment of*
21 *this Act.*

Union Calendar No. 332

116TH CONGRESS
2D Session

H. R. 5581

[Report No. 116-412, Part I]

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.

MARCH 5, 2020

Reported from the Committee on the Judiciary with an amendment

MARCH 5, 2020

Committee on Homeland Security discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed