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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

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

SEC. 2. CLARIFICATION OF RIGHT TO COUNSEL.

(a) Right to Counsel in Immigration Proceedings.—Section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) is amended to read as follows:

“SEC. 292. RIGHT TO COUNSEL.

“(a) In General.—In any removal, exclusion, deportation proceeding, or inspection under section 235(a), 235(b), 236, 238, 240, or 241, the person subject to such proceeding shall be entitled to representation (at no expense to the Government) by such authorized counsel as the person may choose.

“(b) Redress Options.—If counsel cannot personally meet with a person subject to holding, detention, or inspection at a port of entry, U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement, as appropriate, shall provide redress options through which counsel may communicate remotely with the held or detained person during the first hour and thereafter of such holding or detention, regardless of the day or time when such holding or detention began.

“(c) Record of Abandonment of Lawful Permanent Resident Status or Withdrawal of Application for Admission.—A person held or detained at
a port of entry may not submit a valid Record of Abandon-
ment of Lawful Permanent Resident Status or Withdrawal
of Application for Admission if such person has been de-
nied access to counsel in accordance with this section.

“(d) DEFINITIONS.—In this section:

“(1) INSPECTION.—The term ‘inspection’ does
not include primary inspection (as defined in the

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

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

(c) SAVINGS PROVISION.—Nothing in this section, or
in any amendment made by this section, may be construed
to limit any preexisting right to counsel under section 292
of the Immigration and Nationality Act (8 U.S.C. 1362),
as in effect on the day before the date of the enactment
of this Act, or under any other law.
SEC. 3. TREATMENT OF INDIVIDUALS HELD OR DETAINED AT PORTS OF ENTRY OR ANY CBP OR ICE DETENTION FACILITY.

(a) IN GENERAL.—The holding or detention of individuals at a port of entry or at any holding or detention facility overseen by U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement—

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

(2) shall include access to food, water, and restroom facilities.

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