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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R. —

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

Ms. JAYAPAL introduced the following bill; which was referred to the Committee on _____

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 2021”.

SEC. 2. ACCESS TO COUNSEL AND OTHER ASSISTANCE AT PORTS OF ENTRY AND DEFERRED INSPECTION.

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

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

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

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

“(A) provide the covered individual a meaningful opportunity to consult (including consultation via telephone) with counsel and an interested party not later than one hour after the secondary inspection process commences and as necessary throughout the inspection process, including, as applicable, during deferred inspection;

“(B) allow counsel and an interested party to advocate on behalf of the covered individual, including by providing to the examining immigration officer information, documentation, and other evidence in support of the covered individual; and

“(C) to the greatest extent practicable, accommodate a request by the covered individual for counsel or an interested party to appear in-person at the secondary or deferred inspection site.

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

“(A) IN GENERAL.—The Secretary of Homeland Security may not accept Form I-407 Record of Abandonment of Lawful Permanent Resident Status (or a successor form) from a lawful permanent resident subject to secondary or deferred inspection without providing such lawful permanent resident a meaningful opportunity to seek advice from counsel prior to the submission of the form.

“(B) EXCEPTION.—The Secretary of Homeland Security may accept Form I-407 Record of Abandonment of Lawful Permanent Resident Status (or a successor form) from a lawful permanent resident subject to secondary or deferred inspection if such lawful permanent resident knowingly, intelligently, and voluntarily waives, in writing, the opportunity to seek advice from counsel.

“(4) DEFINITIONS.—In this section:

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

“(i) any attorney who is a member in good standing of the bar of any State, the District of Columbia, or a territory or a possession of the United States and is not under an order suspending, enjoining, restraining, disbarring, or otherwise restricting the attorney in the practice of law; or

“(ii) an individual accredited by the Attorney General, acting as a representative of an organization recognized by the Executive Office for Immigration Review, to represent a covered individual in immigration matters.

“(B) COVERED INDIVIDUAL.—The term ‘covered individual’ means an individual subject to secondary or deferred inspection who is—

“(i) a national of the United States;

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

“(iii) an alien seeking admission as an immigrant in possession of a valid unexpired immigrant visa;

“(iv) an alien seeking admission as a non-immigrant in possession of a valid unexpired non-immigrant visa;

“(v) a refugee;

“(vi) a returning asylee; or

“(vii) an alien who has been approved for parole under section 212(d)(5)(A), including an alien who is returning to the United States in possession of a valid advance parole document.

“(C) INTERESTED PARTY.—The term ‘interested party’ means—

“(i) a relative of the covered individual;

“(ii) in the case of a covered individual to whom an immigrant or non-immigrant visa has been issued, the petitioner or sponsor thereof (including an agent of such petitioner or sponsor); or

“(iii) a person, organization, or entity in the United States with a bona fide connection to the covered individual.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 180 days after the date of the enactment of this Act.

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

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

(2) section 292 of the Immigration and Nationality Act (8 U.S.C. 1362), or

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

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