

118TH CONGRESS
1ST SESSION

S. 342

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2023

Mr. PADILLA (for himself, Mr. BLUMENTHAL, Mr. BOOKER, Mr. CARDIN, Mr. COONS, Ms. CORTEZ MASTO, Ms. DUCKWORTH, Mr. DURBIN, Mrs. GILLIBRAND, Mr. HICKENLOOPER, Ms. HIRONO, Mr. LUJÁN, Mr. MARKEY, Mrs. MURRAY, Mr. SANDERS, Mr. VAN HOLLEN, Ms. WARREN, and Mr. WELCH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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

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 2023”.

1 **SEC. 2. ACCESS TO COUNSEL AND OTHER ASSISTANCE AT**
2 **PORTS OF ENTRY AND DURING DEFERRED**
3 **INSPECTION.**

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

8 “(e) ACCESS TO COUNSEL AND OTHER ASSISTANCE
9 DURING INSPECTION AT PORTS OF ENTRY AND DURING
10 DEFERRED INSPECTION.—

11 “(1) IN GENERAL.—The Secretary of Homeland
12 Security shall ensure that each covered individual
13 has a meaningful opportunity to consult with counsel
14 and an interested party during the inspection proc-
15 ess.

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

18 “(A) provide each covered individual with a
19 meaningful opportunity to consult (including
20 consultation by telephone) with counsel and an
21 interested party not later than 1 hour after the
22 secondary inspection process commences and as
23 necessary throughout the remainder of the in-
24 spection process, including, as applicable, dur-
25 ing deferred inspection;

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

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

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

14 “(A) IN GENERAL.—Except as provided in
15 subparagraph (B), the Secretary of Homeland
16 Security may not accept a Form I-407 Record
17 of Abandonment of Lawful Permanent Resident
18 Status (or a successor form) from a lawful per-
19 manent resident subject to secondary or de-
20 ferred inspection without first providing such
21 lawful permanent resident a meaningful oppor-
22 tunity to seek advice from counsel.

23 “(B) EXCEPTION.—The Secretary of
24 Homeland Security may accept a Form I-407
25 Record of Abandonment of Lawful Permanent

1 Resident Status (or a successor form) from any
2 lawful permanent resident subject to secondary
3 or deferred inspection if such lawful permanent
4 resident knowingly, intelligently, and voluntarily
5 waives, in writing, the opportunity to seek ad-
6 vice from counsel.

7 “(4) DEFINITIONS.—In this section:

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

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

17 “(ii) an individual accredited by the
18 Attorney General, acting as a representa-
19 tive of an organization recognized by the
20 Executive Office for Immigration Review,
21 to represent a covered individual in immi-
22 gration matters.

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

1 “(i) a national of the United States;

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

5 “(iii) an alien seeking admission as an
6 immigrant in possession of a valid unex-
7 pired immigrant visa;

8 “(iv) an alien seeking admission as a
9 nonimmigrant in possession of a valid un-
10 expired nonimmigrant visa;

11 “(v) a refugee;

12 “(vi) a returning asylee; or

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

18 “(C) INTERESTED PARTY.—The term ‘in-
19 terested party’ means—

20 “(i) a relative of the covered indi-
21 vidual;

22 “(ii) in the case of a covered indi-
23 vidual to whom an immigrant or a non-
24 immigrant visa has been issued, the peti-

1 tioner or sponsor thereof (including an
2 agent of such petitioner or sponsor); or

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

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

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

13 (1) section 240(b)(4)(A) of the Immigration
14 and Nationality Act (8 U.S.C. 1229a(b)(4)(A));

15 (2) section 292 of such Act (8 U.S.C. 1362); or

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

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

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