

115TH CONGRESS
1ST SESSION

S. 349

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 SENATE OF THE UNITED STATES

FEBRUARY 9, 2017

Ms. HARRIS (for herself, Mr. BLUMENTHAL, Mr. BOOKER, Mr. CARPER, Mrs. GILLIBRAND, Mr. MARKEY, and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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. CLARIFICATION OF RIGHT TO COUNSEL.**

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

1 **“SEC. 292. RIGHT TO COUNSEL.**

2 “(a) IN GENERAL.—In any removal, exclusion, or de-
 3 portation proceeding or inspection under section 235(a),
 4 235(b), 236, 238, 240, or 241, the person subject to such
 5 proceeding shall be entitled to representation (at no ex-
 6 pense to the Government) by such authorized counsel as
 7 the person may choose.

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

17 “(c) RECORD OF ABANDONMENT OF LAWFUL PER-
 18 MANENT RESIDENT STATUS OR WITHDRAWAL OF APPLI-
 19 CATION FOR ADMISSION.—A person held or detained at
 20 a port of entry may not submit a valid Record of Abandon-
 21 ment of Lawful Permanent Resident Status or Withdrawal
 22 of Application for Admission if such person has been de-
 23 nied access to counsel in accordance with this section.

24 “(d) DEFINITIONS.—In this section:

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

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

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

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

20 **SEC. 2. TREATMENT OF INDIVIDUALS HELD OR DETAINED**
 21 **AT PORTS OF ENTRY OR AT ANY CBP OR ICE**
 22 **DETENTION FACILITY.**

23 (a) IN GENERAL.—The holding or detention of indi-
 24 viduals at a port of entry or at any holding or detention

1 facility overseen by U.S. Customs and Border Protection
2 or U.S. Immigration and Customs Enforcement—

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

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

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

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