



# HOUSE COMMITTEE ON THE JUDICIARY

CHAIRMAN JERROLD NADLER

## Support H.R. 1573, the “Access to Counsel Act of 2021”

H.R. 1573, the “Access to Counsel Act of 2021,” ensures that certain individuals who are subjected to prolonged inspection by U.S. Customs and Border Protection (CBP) at ports of entry have a meaningful opportunity to communicate with counsel and other interested parties.

### WHAT THE BILL DOES

**Access to Support and Assistance During Inspection Proceedings.** H.R. 1573 amends section 235 of the Immigration and Nationality Act (INA) to require the Department of Homeland Security (DHS) to ensure that certain individuals can communicate with counsel and other interested parties if they are subjected to prolonged inspection by CBP. The protections afforded by H.R. 1573 would apply to individuals who possess valid travel documents, but who are pulled out of the “primary” inspection line and referred to “secondary” inspection for extended processing. If such individuals are held in secondary inspection for at least one hour, they must be permitted to communicate with counsel and other interested parties. Counsel and interested parties would be able to provide information and documentation to the inspecting officer to facilitate the inspection process and offer support and assistance to the individual subject to inspection.

**No Blanket Prohibition on In-Person Appearances.** The bill permits counsel and interested parties to appear in person at the port of entry, but also gives DHS and CBP enough discretion to determine—based on operational and other practical limitations—how the consultation takes place.

**Added Protections for Green Card Holders.** The bill provides extra protection for lawful permanent residents (LPRs) by prohibiting DHS from accepting a Record of Abandonment of Lawful Permanent Resident Status from an LPR without first providing the LPR a reasonable opportunity to consult with counsel.

### ORGANIZATIONAL SUPPORT

Organizations supporting the **Access to Counsel Act of 2021** include the American Immigration Lawyers Association (AILA), America’s Voice, Amnesty International, Asian Americans Advancing Justice | AAJC, Asian Pacific Institute on Gender-Based Violence, Center for Gender & Refugee Studies, Church World Service, Community Change Action, Council on American-Islamic Relations (CAIR), Families Belong Together, HIAS, Human Rights Watch, Immigration Equality Action Fund, Kids in Need of Defense, Muslim Advocates, National Center for Transgender Equality, National Iranian American Council Action, National LGBTQ Task Force Action Fund, National Partnership for New Americans, Southeast Asia Resource Action Center, United We Dream, Asian Counseling and Referral Service, Brooklyn Defender Services, Coalition for Humane Immigrant Rights (CHIRLA), Entre Hermanos, Northwest Immigrant Rights Project, OneAmerica, U.S. Conference of Catholic Bishops (USCCB).

## WHY MEMBERS SHOULD SUPPORT THE ACCESS TO COUNSEL ACT OF 2021

**The Stakes Can be High for a Person Wrongfully Refused Admission.** The consequences of being denied admission to the United States can be significant. A U.S. research institution may lose the opportunity to employ a next generation cancer researcher if that researcher is denied admission despite possessing a valid nonimmigrant visa. Individuals who are refused admission may be unable to reunite with their families, receive critical medical care unavailable in their home country, or pursue higher education at a U.S. college or university. Although some individuals may be permitted to withdraw their application for admission and return home without long term consequences, others may be ordered removed without a hearing or further review under “expedited removal.” An individual who receives an expedited removal order is barred from returning to the United States for five years.

**Communication Protocols are Inconsistent Across Ports of Entry.** CBP provides no public guidance on an individual’s ability to communicate with counsel and other individuals during the inspection process. According to an American Immigration Council report, “CBP policies and practices on access to counsel vary from one office to another.”<sup>1</sup> While some ports of entry “completely bar counsel in primary or secondary inspection,” others provide specific procedures for interacting with counsel or provide the inspecting officer with broad discretion to decide whether and with whom to communicate.<sup>2</sup>

**H.R. 1573 Ensures that No One is Cut Off from the World.** Due to the previous Administration’s hasty and mismanaged rollout of the Muslim ban, widespread chaos unfolded at airports across the nation. Affected individuals were detained at airports for hours, and many were sent back to their home countries without the ability to contact their families or receive the assistance of counsel. Reports of similar treatment surfaced in January 2020, as tensions between Iran and the United States escalated and up to 200 individuals of Iranian descent were detained and questioned in secondary inspection at the Peace Arch Border Crossing in Blaine, Washington. These individuals—*many of whom were U.S. citizens or permanent residents*, including seniors and children—were reportedly held for up to 12 hours. A March 25, 2021 ACLU report further revealed that between 2012 and 2019, over 96% of the 13,000 documented apprehensions on the Michigan-Canada border involved people of color, and *one-third* involved U.S. citizens.

Although complications in the inspection process can arise in response to sweeping changes in immigration policy or shifting world events, the greatest impact on individuals comes from the consistent lack of access to counsel and other assistance at ports of entry on a day-to-day basis. All individuals—including U.S. citizens—who seek to lawfully enter the United States are subject to inspection by CBP officers at ports of entry. Without access to counsel and other parties, many individuals are refused admission or issued an expedited removal order instead of being provided the chance to vindicate their rights and lawfully enter the country. The Access to Counsel Act will ensure individuals who are seeking to lawfully enter the United States are treated fairly and with dignity.

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<sup>1</sup> American Immigration Council, *CBP Restrictions on Access to Counsel*, [https://www.americanimmigrationcouncil.org/sites/default/files/other\\_litigation\\_documents/final\\_cbp\\_access\\_to\\_counsel\\_foia\\_factsheet\\_2\\_1.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/other_litigation_documents/final_cbp_access_to_counsel_foia_factsheet_2_1.pdf).

<sup>2</sup> *Id.*