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117TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
117–21

ACCESS TO COUNSEL ACT OF 2021

APRIL 16, 2021.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1573]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1573) 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, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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The amendments are as follows:
Strike all after the enacting clause and insert the following:

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 DURING 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 AT PORTS OF ENTRY AND DURING DEFERRED 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 remainder of 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.—Except as provided in subparagraph (B), the Secretary of Homeland Security may not accept a 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 first providing such lawful permanent resident a meaningful opportunity to seek advice from counsel.

"(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) an 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 nonimmigrant in possession of a valid unexpired nonimmigrant 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 a nonimmigrant 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.

Amend the title so as to read:

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.

Purpose and Summary

H.R. 1573, the "Access to Counsel Act of 2021," amends section 235 of the Immigration and Nationality Act (INA) to require the Department of Homeland Security (DHS) to ensure 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. H.R. 1573 does not create a "right" to counsel during the inspection process, nor does it impose any obligation on the federal government to pay for or otherwise provide counsel to individuals during CBP inspection proceedings. Instead, it will simply ensure that such individuals are not prohibited from communicating with outside parties—which may include counsel—or receiving the support and assistance of such parties during the inspection process.

Counsel and interested parties would be able to provide additional information and documentation to the inspecting officer to facilitate the inspection process and provide assistance and support to the applicant for admission. The bill also 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.

Background and Need for the Legislation

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.[1] Most individuals who are not U.S. citizens or LPRs, but who are in possession of proper documentation, are admitted to the United States after answering a few routine questions involving the intended purpose and length of their stay in the main queue known as "primary" inspection.[2] However, if CBP cannot verify the individual's identity or the validity of their documentation, or if there are questions regarding admissibility, the in-

[1] *See generally* 8 C.F.R. § 235.1.

[2] Lisa Seghetti, *Border Security: Immigration Inspections at Ports of Entry,* Cong. Research Serv., 10 (Jan. 26, 2015).

dividual may be referred to "secondary" or "deferred" inspection.[3] Secondary inspection occurs in designated areas at ports of entry where CBP can ask the individual additional questions and continue conducting background checks and research. A person may be scheduled for deferred inspection if a decision regarding immigration status cannot be made due to a lack of documentation.[4] In such cases, the individual is "paroled" into the United States and scheduled to appear at a deferred inspection site to present the requested documentation at a later date.[5]

The Immigration and Nationality Act (INA) provides individuals in removal proceedings with the right to representation, at no expense to the government.[6] Although the regulations extend this right to any individual subject to an immigration-related "examination," applicants for admission in primary or secondary inspection are specifically excluded, unless they "become the focus of a criminal investigation" and are "taken into custody."[7] Yet 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 O–1 nonimmigrant visa.[8] Individuals who are refused admission may be unable to reunite with their families, unable to receive critical medical care unavailable in their home country, or denied the opportunity to pursue higher education at a U.S. university. Although some individuals may be permitted to withdraw their applications for admission and return home without long term consequences, others may be ordered removed without a hearing or further review under "expedited removal" procedures.[9] An individual who receives an expedited removal order is barred from returning to the United States for five years.[10]

Due to the complexity of U.S. immigration law, it is not uncommon for CBP to have difficulty resolving some questions that arise during the inspection process. Such questions can involve individuals' citizenship status, the continuing validity of their LPR status, or whether the stated purpose of their visit is compatible with their visa. Most applicants for admission are unfamiliar with the nuances of our immigration laws, are often alone, and may not be proficient in English. As a result, individuals can remain in secondary inspection for hours, largely cut off from the world while undergoing questioning by CBP.

Complicating matters further, CBP provides no public guidance on an individual's ability to communicate with counsel and other individuals during the inspection process. In 2014, the American Immigration Council released a report summarizing the results of its request under the Freedom of Information Act for CBP policies

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[3] T. Alexander Aleinikoff et al., IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY 489 (8th ed. West 2016).

[4] U.S. Customs and Border Protection, *Deferred Inspection Sites,* https://www.cbp.gov/contact/ports/deferred-inspection-sites.

[5] 8 C.F.R. § 235.2.

[6] INA §§ 240(b)(4)(a), 292; 8 U.S.C. §§ 1229a(b)(4)(A), 1362.

[7] 8 C.F.R. § 292.5(b).

[8] O–1 visas are available to individuals with "extraordinary ability" in the sciences, arts, education, business, or athletics. *See generally* INA § 101(a)(15)(O)(i); 8 U.S.C. § 1101(a)(15)(O)(i).

[9] INA §§ 235(a)(4), (b)(1); 8 U.S.C. §§ 1225(a)(4), (b)(1).

[10] INA § 212(a)(9)(A)(i); 8 U.S.C. § 1182(a)(9)(A)(i).

on access to counsel.[11] According to the report, with respect to both secondary and deferred inspection, "CBP policies and practices on access to counsel vary from one office to another."[12] While some ports of entry "completely bar counsel in primary or secondary inspection," other ports provide specific procedures for interacting with counsel or provide the inspecting officer with broad discretion to decide whether and with whom to communicate.[13]

THE IMPLEMENTATION OF EXECUTIVE ORDER 13769

On January 27, 2017, President Trump issued Executive Order (EO) 13769, suspending the entry of nationals of seven Muslim majority countries—Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen—for at least 90 days.[14] As a result of the Trump Administration's quick rollout of EO 13769, widespread confusion unfolded at airports across the nation. Individuals arriving from covered countries were detained at airports for hours, and many were sent back to their home countries without the ability to contact their families or communicate with counsel.[15] In the days that followed, several courts issued orders blocking the federal government from continuing to implement the EO and mandating access to counsel for LPRs in secondary inspection.[16]

A DHS Inspector General report released on the one-year anniversary of the ban provided additional details regarding the restrictions placed on individuals due to the EO.[17] The Inspector General found that individuals held in secondary inspection were not afforded the opportunity to consult with counsel and, in some cases, were not permitted to make telephone calls at all.[18] Others had their phones confiscated by CBP.[19] Even after the court order mandating attorney access for LPRs was issued, CBP continued to refuse such access, arguing that the right to counsel only attaches once the inspection "becomes a custodial interrogation or a criminal investigation."[20] The Inspector General concluded that CBP's "highly aggressive stance in light of" the court orders was "questionable" and "troubling."[21]

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[11] 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.

[12] *Id.* at 1.

[13] *Id.* at 2-3. For example, in Nevada, "[w]hen an individual in secondary inspection states that his attorney is waiting in the entry area, the officer's only responsibility 'is to notify a relative or friend' if the individual is detained for more than two hours." *Id.*

[14] Exec. Order No. 13769, *Protecting the Nation from Foreign Terrorist Entry into the United States*, 82 Fed. Reg. 8977 (Feb. 1, 2017).

[15] Wesley Lowery & Josh Dawsey, *Early Chaos of Trump's Travel Ban Set Stage For a Year of Immigration Policy Debates,* WASH. POST (Feb. 6, 2018), https://www.washingtonpost.com/national/early-chaos-of-trumps-travel-ban-set-stage-for-a-year-of-immigration-policy-debates/2018/02/06/f5386128-01d0-11e8-8acf-ad2991367d9d_story.html; Abigail Williams & Adam Edelman, *Lawyers, Activists Gear Up for Travel Ban Airport Issues,* NBC NEWS (June 29, 2017), https://www.nbcnews.com/politics/donald-trump/u-s-defines-who-can-enter-under-travel-ban-n778031.

[16] *See e.g. Washington v. Trump,* 2017 U.S. Dist. Lexis 16012 (Feb. 3, 2017).

[17] U.S. Dep't of Homeland Sec., Off. of Inspector Gen., *DHS Implementation of Executive Order #13769 "Protecting the Nation From Foreign Terrorist Entry Into the United States" (January 27, 2017)*, at 5 (Jan. 18, 2018), www.oig.dhs.gov/sites/default/files/assets/2018-01/OIG-18-37-Jan18.pdf.

[18] *See, e.g. id.* at 76.

[19] *Id.* at 39.

[20] *Id.*

[21] *Id.* at 79.

DETENTION OF IRANIAN-AMERICANS IN SECONDARY INSPECTION AT THE NORTHERN BORDER

In January 2020, as tensions between Iran and the United States escalated, up to 200 individuals of Iranian descent were detained and questioned in secondary inspection at the Peace Arch Border Crossing in Blaine, Washington.[22] These individuals—many of whom were U.S. citizens or LPRs, including seniors and children—were held for several hours, with some reportedly held for up to 12 hours.[23] In one case, CBP held a family of four U.S. citizens for nearly five hours even though they were already designated as "Trusted Travelers" under CBP's NEXUS program.[24] Anecdotal reports indicate that attorneys who arrived on the scene to assist were refused admission, and at least some individuals were unable to make phone calls to family members and others.

ALLEGATIONS OF BIAS IN INSPECTION PROCEEDINGS

Immigrants and civil rights activists have also raised concerns that CBP appears to target individuals for inspection based on racial profiling, and often holds U.S citizens with proper documentation in secondary inspection without access to an attorney. For example, three Black CBP officers recently filed a lawsuit against DHS, alleging CBP routinely targets and harasses Black travelers at the Blue Water bridge between Port Huron and Sarnia on the Canada-Michigan border.[25] A March 25, 2021 report by the American Civil Liberties Union of Michigan examined CBP data on apprehensions at the Michigan-Canada border and corroborates these allegations. The report found that between 2012 and 2019, over 96% of the 13,000 documented apprehensions involved people of color, and one-third involved U.S. citizens.[26]

In another example, Tianna Spears, a Black U.S. citizen diplomat at the U.S. consulate in Ciudad Juarez, Mexico said that she was targeted regularly for inspection over a four month period, despite crossing the border daily, possessing a diplomatic passport and Global Entry approval, and having registered her car in the SENTRI system.[27] She states that during these encounters, she was unable to contact counsel or State Department colleagues who

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[22] Mike Baker & Caitlin Dickerson, *Iranian-Americans Questioned at the Border: 'My Kids Shouldn't Experience Such Things,'* N.Y. TIMES (Jan. 6, 2019), https://www.nytimes.com/2020/01/06/us/border-iranians-washington-patrol.html.

[23] Abigail Hauslohner, *Advocates Allege Delays at U.S. Border for Travelers Linked to Iran, a Claim the Government Denies*, WASH. POST (Jan. 6, 2020), https://www.washingtonpost.com/immigration/advocates-allege-delays-at-us-border-for-travelers-linked-to-iran-a-claim-the-government-denies/2020/01/06/5e7d0e3e-3093-11ea-a053-dc6d944ba776_story.html.

[24] Negah Hekmati, *I'm a U.S. Citizen. My Family Was Detained at the Border Because We're From Iran,* WASH. POST (Jan. 9, 2020), https://www.washingtonpost.com/outlook/2020/01/09/im-us-citizen-my-family-was-detained-border-because-were-iran/. NEXUS is a CBP "Trusted Traveler" program that allows approved individuals to enter the United States and Canada more quickly by using designated lanes and a radio frequency identification card. *See* U.S. Customs and Border Protection, *Benefits of NEXUS,* https://www.cbp.gov/travel/trusted-traveler-programs/nexus/benefits-nexus.

[25] Tresa Baldas, *Customs and Border Protection Officer Says Racism at Michigan-Canada Border Happens Daily: 'It Needs to be Exposed',* USA TODAY (Apr. 4, 2021) https://www.usatoday.com/story/news/nation/2021/04/04/cbp-officers-lawsuit-racial-profiling-issue-us-canada-border/7076949002/.

[26] American Civil Liberties Union of Michigan, *The Border's Long Shadow: How Border Patrol Uses Racial Profiling and Local and State Police to Instill Fear in Michigan's Immigrant Communities* (Mar. 25, 2021), https://www.aclumich.org/en/publications/borders-long-shadow.

[27] Tianna Spears, *I Was a U.S. Diplomat. Customs and Border Protection Only Cared That I Was Black,* POLITICO (Aug. 3, 2020), https://www.politico.com/news/magazine/2020/08/30/black-us-diplomat-customs-border-protection-cbp-detained-harassed-325676.

could verify her identity. After four months of regular apprehensions, she began to develop symptoms of PTSD, and was forced to transfer to a different post. She later resigned from the State Department.[28]

OTHER ISSUES WITH LIMITED ACCESS TO COUNSEL

Complications in the inspection process can arise in response to sweeping changes in immigration policy or shifting world events. But the greatest impact on individuals on a day-to-day basis comes from the consistent lack of access to counsel and other assistance at ports of entry. For example, in 2017, Henry Rousso, a French historian and Holocaust scholar, was held in secondary inspection at George Bush Intercontinental Airport in Houston, Texas for more than 10 hours.[29] Mr. Rousso came to the United States to speak at an academic conference hosted by Texas A&M University. Upon questioning, Mr. Rousso was referred to secondary inspection, where CBP made a preliminary determination that he had violated the law by receiving a $2,000 honorarium to speak at the conference. When Mr. Rousso failed to meet the driver who had been sent to the airport to pick him up, representatives from the university contacted an attorney.[30] The attorney was able to explain to CBP that Mr. Rousso's receipt of an honorarium was proper under the immigration laws, as section 212(q) of the INA expressly allows individuals admitted to the United States on visitor visas to accept honorarium payments and associated incidental expenses for certain academic activities.[31] Due to the assistance of the attorney, Mr. Rousso was eventually admitted into the United States.[32]

Mr. Rousso was fortunate for two reasons. First, as a well-known scholar supported by faculty at an American university, he had ready access to a lawyer. Second, CBP officials in Houston were amenable to allowing counsel to assist Mr. Rousso. Most individuals, however, are not so lucky. Because access to counsel during the inspection process is not required, most applicants for admission who are referred to secondary inspection are unable to communicate with counsel or others who might be able to provide useful information relevant to admission. Rather than having the opportunity to vindicate their rights and lawfully enter the country, most are instead refused admission or issued an expedited removal order.

Hearings

For the purposes of clause 3(c)(6) of House Rule XIII, the following hearing was used to develop H.R. 1573: "The U.S. Immigration System: The Need for Bold Reform," held on February 11, 2021, before the House Committee on the Judiciary, Subcommittee on Immigration and Citizenship. The Subcommittee heard testimony from:

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[28] *Id.*
[29] Erin McCann, *French Historian Says He was Threatened with Deportation at Houston Airport,* N.Y. TIMES (Feb. 26, 2017), https://www.nytimes.com/2017/02/26/us/french-historian-detained-immigration-henry-rousso.html.
[30] *Id.*
[31] *Id*; INA § 212(q).
[32] *Id.*

- Ms. Marielena Hincapié, Executive Director, National Immigration Law Center;
- Dr. Jennifer Hunt, Professor of Economics, Rutgers University;
- Mr. John Lettieri, President and CEO, Economic Innovation Group; and
- Mr. Peter Kirsanow, Partner, Benesch, Friedlander, Coplan & Aronoff LLP.

The hearing explored the need for immigration reform, including the Access to Counsel Act.

The following hearing in the 116th Congress was also used to develop H.R. 1573: "Oversight of the Trump Administration's Muslim Ban," held on September 24, 2019 before the House Committee on the Judiciary, Subcommittee on Immigration and Citizenship and the House Foreign Affairs Committee, Subcommittee on Oversight and Investigations. The Subcommittees heard testimony from:

- Edward J. Ramotowski, Deputy Assistant Secretary for Visa Services, Bureau of Consular Affairs, U.S. Department of State;
- Elizabeth Neumann, Assistant Secretary for Threat Prevention and Security Policy, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security;
- Todd Hoffman, Executive Director of Admissibility and Passenger Programs (APP), Office of Field Operations (OFO), U.S. Customs and Border Protection, U.S. Department of Homeland Security;
- Dr. Abdollah "Iman" Dehzangi, Assistant Professor at Morgan State University in Baltimore, Maryland;
- Ismail Ahmed Hezam Alghazali, a U.S. citizen born in Yemen who left his job to travel to Djibouti to be with his pregnant wife;
- Farhana Khera, President and Executive Director, Muslim Advocates; and
- Andrew Arthur, Resident Fellow in Law and Policy, Center for Immigration Studies.

The hearing explored the initial implementation of the ban, including the chaos that unfolded at airports around the country, which stemmed, in part, from the lack of access to counsel.

Committee Consideration

On April 14, 2021, the Committee met in open session and ordered the bill, H.R. 1573, favorably reported with an amendment in the nature of a substitute, by a rollcall vote of 24 to 16, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R. 1573.

1. A motion to table an appeal of the ruling of the Chair on the germaneness of an amendment by Mr. Biggs to require the Secretary of Homeland Security to return non-covered individuals who arrive at the border from a foreign contiguous territory to such territory while removal proceedings are pending, was agreed to by a rollcall vote of 21 to 15.

Roll Call No. 8 **Date:** 4/14/21

COMMITTEE ON THE JUDICIARY

House of Representatives
117th Congress

Subject: Motion to Table the Appeal of the ruling of the Chair on the germaneness of the Biggs Amendment

[X] PASSED
[ ] FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	X		
Zoe Lofgren (CA-19)	X		
Sheila Jackson Lee (TX-18)	X		
Steve Cohen (TN-09)	X		
Hank Johnson (GA-04)	X		
Ted Deutch (FL-22)	X		
Karen Bass (CA-37)	X		
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)	X		
Eric Swalwell (CA-15)			
Ted Lieu (CA-33)	X		
Jamie Raskin (MD-08)	X		
Pramila Jayapal (WA-07)	X		
Val Demings (FL-10)			
Lou Correa (CA-46)	X		
Mary Gay Scanlon (PA-05)	X		
Sylvia Garcia (TX-29)	X		
Joseph Neguse (CO-02)			
Lucy McBath (GA-06)	X		
Greg Stanton (AZ-09)	X		
Madeleine Dean (PA-04)	X		
Veronica Escobar (TX-16)	X		
Mondaire Jones (NY-17)	X		
Deborah Ross (NC-02)	X		
Cori Bush (MO-01)	X		
	AYES	NOS	PRES
Jim Jordan (OH-04)		X	
Steve Chabot (OH-01)			
Louie Gohmert (TX-01)		X	
Darrell Issa (CA-50)		X	
Ken Buck (CO-04)		X	
Matt Gaetz (FL-01)		X	
Mike Johnson (LA-04)		X	
Andy Biggs (AZ-05)		X	
Tom McClintock (CA-04)		X	
Greg Steube (FL-17)		X	
Tom Tiffany (WI-07)		X	
Thomas Massie (KY-04)			
Chip Roy (TX-21)		X	
Dan Bishop (NC-09)			
Michelle Fischbach (MN-07)		X	
Victoria Spartz (IN-05)		X	
Scott Fitzgerald (WI-05)			
Cliff Bentz (OR-02)		X	
Burgess Owens (UT-04)		X	
	AYES	NOS	PRES.
TOTAL	21	15	

2. An amendment by Mr. Issa to delay the effective date of the legislation until the Secretary of Homeland Security certifies that the Department of Homeland Security has sufficient resources to accommodate access to counsel in secondary inspection, and that the implementation of the legislation would not cause a substantial negative impact on lawful trade and travel to the United States, was defeated 16 to 23.

Roll Call No. 9 **Date:** 4/14/21

COMMITTEE ON THE JUDICIARY

House of Representatives

117th Congress

Amendment # 2 ( ) to ANS HR 1573 offered by Rep. Issa

☐ PASSED

☒ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		X	
Zoe Lofgren (CA-19)		X	
Sheila Jackson Lee (TX-18)		X	
Steve Cohen (TN-09)		X	
Hank Johnson (GA-04)		X	
Ted Deutch (FL-22)		X	
Karen Bass (CA-37)		X	
Hakeem Jeffries (NY-08)		X	
David Cicilline (RI-01)		X	
Eric Swalwell (CA-15)		X	
Ted Lieu (CA-33)		X	
Jamie Raskin (MD-08)			
Pramila Jayapal (WA-07)		X	
Val Demings (FL-10)			
Lou Correa (CA-46)		X	
Mary Gay Scanlon (PA-05)		X	
Sylvia Garcia (TX-29)		X	
Joseph Neguse (CO-02)		X	
Lucy McBath (GA-06)		X	
Greg Stanton (AZ-09)		X	
Madeleine Dean (PA-04)		X	
Veronica Escobar (TX-16)		X	
Mondaire Jones (NY-17)		X	
Deborah Ross (NC-02)		X	
Cori Bush (MO-01)		X	
	AYES	NOS	PRES
Jim Jordan (OH-04)	X		
Steve Chabot (OH-01)	X		
Louie Gohmert (TX-01)	X		
Darrell Issa (CA-50)	X		
Ken Buck (CO-04)	X		
Matt Gaetz (FL-01)	X		
Mike Johnson (LA-04)	X		
Andy Biggs (AZ-05)			
Tom McClintock (CA-04)	X		
Greg Steube (FL-17)	X		
Tom Tiffany (WI-07)	X		
Thomas Massie (KY-04)			
Chip Roy (TX-21)	X		
Dan Bishop (NC-09)	X		
Michelle Fischbach (MN-07)	X		
Victoria Spartz (IN-05)	X		
Scott Fitzgerald (WI-05)			
Cliff Bentz (OR-02)	X		
Burgess Owens (UT-04)	X		
	AYES	NOS	PRES.
TOTAL	16	23	

3. An amendment by Mr. Roy to exclude from the definition of "interested party," a person or organization that the immigration officer has reasonable suspicion to believe is involved in a criminal conspiracy with the covered individual was defeated 16 to 23.

Roll Call No. 10 **Date:** 4/14/21

COMMITTEE ON THE JUDICIARY

House of Representatives
117th Congress

Amendment # 3 ( ) to ANS HR 1573 offered by Rep. Roy

☐ PASSED
☒ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		X	
Zoe Lofgren (CA-19)		X	
Sheila Jackson Lee (TX-18)		X	
Steve Cohen (TN-09)		X	
Hank Johnson (GA-04)		X	
Ted Deutch (FL-22)			
Karen Bass (CA-37)		X	
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)		X	
Eric Swalwell (CA-15)		X	
Ted Lieu (CA-33)		X	
Jamie Raskin (MD-08)		X	
Pramila Jayapal (WA-07)		X	
Val Demings (FL-10)		X	
Lou Correa (CA-46)		X	
Mary Gay Scanlon (PA-05)		X	
Sylvia Garcia (TX-29)		X	
Joseph Neguse (CO-02)		X	
Lucy McBath (GA-06)		X	
Greg Stanton (AZ-09)		X	
Madeleine Dean (PA-04)		X	
Veronica Escobar (TX-16)		X	
Mondaire Jones (NY-17)		X	
Deborah Ross (NC-02)		X	
Cori Bush (MO-01)		X	
	AYES	NOS	PRES
Jim Jordan (OH-04)	X		
Steve Chabot (OH-01)	X		
Louie Gohmert (TX-01)	X		
Darrell Issa (CA-50)	X		
Ken Buck (CO-04)	X		
Matt Gaetz (FL-01)	X		
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)			
Tom McClintock (CA-04)	X		
Greg Steube (FL-17)	X		
Tom Tiffany (WI-07)	X		
Thomas Massie (KY-04)			
Chip Roy (TX-21)	X		
Dan Bishop (NC-09)	X		
Michelle Fischbach (MN-07)	X		
Victoria Spartz (IN-05)	X		
Scott Fitzgerald (WI-05)	X		
Cliff Bentz (OR-02)	X		
Burgess Owens (UT-04)	X		
	AYES	NOS	PRES.
TOTAL	16	23	

4. A motion to table an appeal of the ruling of the Chair on the germaneness of an amendment by Mr. Roy to change the asylum eligibility requirements for individuals who transit through at least one country other than their country of citizenship, nationality, or last habitual residence while en route to the United States, was agreed to 23 to 16.

Roll Call No. 11 **Date:** 4/14/21

COMMITTEE ON THE JUDICIARY

House of Representatives
117th Congress

Subject: Motion to table the appeal of the ruling of the chair on the germane of the Roy Amendment

☑ PASSED
☐ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	X		
Zoe Lofgren (CA-19)	X		
Sheila Jackson Lee (TX-18)	X		
Steve Cohen (TN-09)	X		
Hank Johnson (GA-04)	X		
Ted Deutch (FL-22)	X		
Karen Bass (CA-37)	X		
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)	X		
Eric Swalwell (CA-15)	X		
Ted Lieu (CA-33)	X		
Jamie Raskin (MD-08)			
Pramila Jayapal (WA-07)	X		
Val Demings (FL-10)	X		
Lou Correa (CA-46)	X		
Mary Gay Scanlon (PA-05)	X		
Sylvia Garcia (TX-29)	X		
Joseph Neguse (CO-02)	X		
Lucy McBath (GA-06)	X		
Greg Stanton (AZ-09)	X		
Madeleine Dean (PA-04)	X		
Veronica Escobar (TX-16)	X		
Mondaire Jones (NY-17)	X		
Deborah Ross (NC-02)	X		
Cori Bush (MO-01)	X		
	AYES	NOS	PRES
Jim Jordan (OH-04)		X	
Steve Chabot (OH-01)		X	
Louie Gohmert (TX-01)		X	
Darrell Issa (CA-50)		X	
Ken Buck (CO-04)		X	
Matt Gaetz (FL-01)		X	
Mike Johnson (LA-04)		X	
Andy Biggs (AZ-05)		X	
Tom McClintock (CA-04)		X	
Greg Steube (FL-17)		X	
Tom Tiffany (WI-07)			
Thomas Massie (KY-04)			
Chip Roy (TX-21)		X	
Dan Bishop (NC-09)		X	
Michelle Fischbach (MN-07)		X	
Victoria Spartz (IN-05)		X	
Scott Fitzgerald (WI-05)			
Cliff Bentz (OR-02)		X	
Burgess Owens (UT-04)		X	
	AYES	NOS	PRES.
TOTAL	23	16	

5. An amendment by Mr. Issa to render sections 1 and 2 of the legislation ineffective if a federal court holds that a covered individual is to be afforded counsel at the expense of the government was defeated 17 to 22.

Roll Call No. 12 **Date:** 4/14/21

COMMITTEE ON THE JUDICIARY

House of Representatives
117th Congress

Amendment # 5 ( ) to ANS 1573 offered by Rep. Issa

☐ PASSED
☒ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		X	
Zoe Lofgren (CA-19)		X	
Sheila Jackson Lee (TX-18)		X	
Steve Cohen (TN-09)		X	
Hank Johnson (GA-04)		X	
Ted Deutch (FL-22)		X	
Karen Bass (CA-37)		X	
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)		X	
Eric Swalwell (CA-15)		X	
Ted Lieu (CA-33)		X	
Jamie Raskin (MD-08)			
Pramila Jayapal (WA-07)		X	
Val Demings (FL-10)		X	
Lou Correa (CA-46)		X	
Mary Gay Scanlon (PA-05)		X	
Sylvia Garcia (TX-29)		X	
Joseph Neguse (CO-02)		X	
Lucy McBath (GA-06)		X	
Greg Stanton (AZ-09)		X	
Madeleine Dean (PA-04)		X	
Veronica Escobar (TX-16)		X	
Mondaire Jones (NY-17)		X	
Deborah Ross (NC-02)		X	
Cori Bush (MO-01)			
	AYES	NOS	PRES
Jim Jordan (OH-04)	X		
Steve Chabot (OH-01)	X		
Louie Gohmert (TX-01)	X		
Darrell Issa (CA-50)	X		
Ken Buck (CO-04)	X		
Matt Gaetz (FL-01)	X		
Mike Johnson (LA-04)	X		
Andy Biggs (AZ-05)	X		
Tom McClintock (CA-04)	X		
Greg Steube (FL-17)	X		
Tom Tiffany (WI-07)			
Thomas Massie (KY-04)			
Chip Roy (TX-21)	X		
Dan Bishop (NC-09)	X		
Michelle Fischbach (MN-07)	X		
Victoria Spartz (IN-05)	X		
Scott Fitzgerald (WI-05)	X		
Cliff Bentz (OR-02)	X		
Burgess Owens (UT-04)	X		
	AYES	NOS	PRES.
TOTAL	17	22	

6. An amendment by Ms. Spartz to delay the effective date of the legislation until the Secretary of Homeland Security certifies that the Department of Homeland Security has sufficient resources to accommodate access to counsel in secondary inspection, and that the implementation of the legislation would not cause a substantial negative impact on national security and public safety was defeated 16 to 24.

Roll Call No. 13 **Date:** 4/14/21

COMMITTEE ON THE JUDICIARY

House of Representatives
117th Congress

Amendment # 6 ( ) to ANS HR 1573 offered by Rep. Spartz

☐ PASSED
☒ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		X	
Zoe Lofgren (CA-19)		X	
Sheila Jackson Lee (TX-18)		X	
Steve Cohen (TN-09)		X	
Hank Johnson (GA-04)		X	
Ted Deutch (FL-22)		X	
Karen Bass (CA-37)		X	
Hakeem Jeffries (NY-08)		X	
David Cicilline (RI-01)		X	
Eric Swalwell (CA-15)		X	
Ted Lieu (CA-33)		X	
Jamie Raskin (MD-08)		X	
Pramila Jayapal (WA-07)		X	
Val Demings (FL-10)		X	
Lou Correa (CA-46)		X	
Mary Gay Scanlon (PA-05)		X	
Sylvia Garcia (TX-29)		X	
Joseph Neguse (CO-02)		X	
Lucy McBath (GA-06)		X	
Greg Stanton (AZ-09)		X	
Madeleine Dean (PA-04)		X	
Veronica Escobar (TX-16)		X	
Mondaire Jones (NY-17)		X	
Deborah Ross (NC-02)		X	
Cori Bush (MO-01)			
	AYES	NOS	PRES
Jim Jordan (OH-04)	X		
Steve Chabot (OH-01)	X		
Louie Gohmert (TX-01)	X		
Darrell Issa (CA-50)	X		
Ken Buck (CO-04)	X		
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)	X		
Andy Biggs (AZ-05)	X		
Tom McClintock (CA-04)	X		
Greg Steube (FL-17)	X		
Tom Tiffany (WI-07)			
Thomas Massie (KY-04)			
Chip Roy (TX-21)	X		
Dan Bishop (NC-09)	X		
Michelle Fischbach (MN-07)	X		
Victoria Spartz (IN-05)	X		
Scott Fitzgerald (WI-05)	X		
Cliff Bentz (OR-02)	X		
Burgess Owens (UT-04)	X		
	AYES	NOS	PRES.
TOTAL	16	24	

The motion to report H.R. 1573, as amended, favorably was agreed to by a rollcall vote of 24 to 16.

Roll Call No. 14 **Date:** 4/14/21

COMMITTEE ON THE JUDICIARY

House of Representatives
117th Congress

Final Passage on: HR 1573

☑ PASSED
☐ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	X		
Zoe Lofgren (CA-19)	X		
Sheila Jackson Lee (TX-18)	X		
Steve Cohen (TN-09)	X		
Hank Johnson (GA-04)	X		
Ted Deutch (FL-22)	X		
Karen Bass (CA-37)	X		
Hakeem Jeffries (NY-08)	X		
David Cicilline (RI-01)	X		
Eric Swalwell (CA-15)	X		
Ted Lieu (CA-33)	X		
Jamie Raskin (MD-08)	X		
Pramila Jayapal (WA-07)	X		
Val Demings (FL-10)	X		
Lou Correa (CA-46)	X		
Mary Gay Scanlon (PA-05)	X		
Sylvia Garcia (TX-29)	X		
Joseph Neguse (CO-02)	X		
Lucy McBath (GA-06)	X		
Greg Stanton (AZ-09)	X		
Madeleine Dean (PA-04)	X		
Veronica Escobar (TX-16)	X		
Mondaire Jones (NY-17)	X		
Deborah Ross (NC-02)	X		
Cori Bush (MO-01)			
	AYES	NOS	PRES
Jim Jordan (OH-04)		X	
Steve Chabot (OH-01)		X	
Louie Gohmert (TX-01)		X	
Darrell Issa (CA-50)		X	
Ken Buck (CO-04)		X	
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)		X	
Andy Biggs (AZ-05)		X	
Tom McClintock (CA-04)		X	
Greg Steube (FL-17)		X	
Tom Tiffany (WI-07)			
Thomas Massie (KY-04)			
Chip Roy (TX-21)		X	
Dan Bishop (NC-09)		X	
Michelle Fischbach (MN-07)		X	
Victoria Spartz (IN-05)		X	
Scott Fitzgerald (WI-05)		X	
Cliff Bentz (OR-02)		X	
Burgess Owens (UT-04)		X	
	AYES	NOS	PRES.
TOTAL	24	16	

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1573, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 15, 2021.

Hon. JERROLD NADLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1573, the Access to Counsel Act of 2021.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lindsay Wylie.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 1573, Access to Counsel Act of 2021
As ordered reported by the House Committee on the Judiciary on April 14, 2021

By Fiscal Year, Millions of Dollars	2021	2021-2026	2021-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	825	not estimated

Statutory pay-as-you-go procedures apply?	No	**Mandate Effects**	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

H.R. 1573 would require the Department of Homeland Security (DHS) to allow individuals subject to secondary immigration inspection at U.S. ports of entry to consult with an attorney, accredited immigration official, family member, or immigration sponsor during the inspection. The bill also would require DHS to allow the counsel or interested party to appear in person at the inspection site to the greatest extent practicable. (A secondary immigration inspection is conducted by customs officers if individuals entering the United States do not have the required documents for entry or if their information cannot be initially verified.)

Approximately 10.2 million individuals were referred to secondary inspection at the United States' 328 ports of entry in 2019. Using information provided by Customs and Border Protection (CBP), CBO expects that roughly 8 percent of referrals would request access to counsel each year. Immigration at ports of entry has declined significantly in fiscal years 2020 and 2021 because of the coronavirus pandemic; CBO assumes referrals would return to pre-pandemic levels beginning in mid-2022.

CBO estimates that CBP would need two new full-time officers on average at each port of entry to provide security and transportation services for individuals requesting access to counsel. (The number of CBP officers stationed at each port of entry ranges from several individuals to up to several thousands, and the number of additional officers needed at each port under the bill would vary by the size of the port.) CBO estimates that salaries, benefits, and overtime for the additional staff would cost about $700 million over the 2021–2026 period; such spending would be subject to the availability of appropriated funds.

Additionally, using information provided by the agency, CBO expects that 222 ports of entry (nearly two-thirds of all ports) would need additional space or other upgrades to accommodate the bill's requirement to allow counsel to appear in person at inspection sites. Using that same information and historical patterns of construction costs, CBO estimates the total cost for construction and operation of the additional space would total $123 million over the 2021–2026 period.

Specifically, CBO estimates that construction costs at 113 land facilities would total $62 million over the 2021–2026 period, with $10 million spent in subsequent years. CBO estimates the cost of renting additional space at 109 airport facilities would total $44 million over the 2021–2026 period. In addition, CBO estimates the cost of initial setup, recurring maintenance, and other operational expenses associated with the additional space would total $17 million over the 2021–2026 period. All construction and operational costs would be subject to the availability of appropriated funds.

The costs of the legislation, detailed in Table 1, fall within budget function 750 (administration of justice).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 1573

	By fiscal year, millions of dollars—						
	2021	2022	2023	2024	2025	2026	2021–2026
CBP Personnel:							
Estimated Authorization	0	62	132	158	189	226	767
Estimated Outlays	0	50	112	146	180	215	703

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 1573—Continued

	By fiscal year, millions of dollars—						
	2021	2022	2023	2024	2025	2026	2021–2026
Construction and Operation at Ports of Entry:							
Estimated Authorization	0	82	12	13	13	13	134
Estimated Outlays	0	13	27	27	28	28	123
Total Changes:							
Estimated Authorization	0	144	145	171	202	239	900
Estimated Outlays	0	63	139	173	208	243	825

Components may not sum to totals because of rounding; CBP = Customs and Border Protection.

The CBO staff contact for this estimate is Lindsay Wylie. The estimate was reviewed by Leo Lex, Deputy Director of Budget Analysis.

Duplication of Federal Programs

No provision of H.R. 1573 establishes or reauthorizes a program of the Federal government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1573 would require DHS to ensure that certain individuals who are subjected to prolonged inspection by CBP at ports of entry have a meaningful opportunity to communicate with counsel and other interested parties. The bill also provides extra protection for lawful permanent residents by prohibiting DHS from accepting a Record of Abandonment of Lawful Permanent Resident Status from an individual without first providing a reasonable opportunity for such individual to consult with counsel.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1573 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

Section-by-Section Analysis

Sec. 1. Short Title. Section 1 sets forth the short title of the bill as the "Access to Counsel Act of 2021".

Sec. 2. Access to Counsel and Other Assistance at Ports of Entry and During Deferred Inspection.

Section (2)(a) amends section 235 of the INA to create a new subsection (e).

New subsection (e)(1) requires the Secretary of Homeland Security to ensure that "covered individuals" have a meaningful opportunity to consult with counsel or an interested party during the inspection process.

New subsection (e)(2) sets forth the scope of such access, requiring the Secretary to ensure that individuals are permitted to consult with counsel or interested parties not later than one hour after secondary inspection commences and through the end of the inspection process. Counsel and interested parties shall be allowed to advocate on behalf of the covered individual and provide supporting documentation and other information to the Customs and Border Protection (CBP) inspecting officer. CBP shall, to the greatest extent practicable, accommodate a request for counsel or an interested party to appear in-person at the secondary or deferred inspection site.

New subsection (e)(3) provides extra protection for lawful permanent residents (LPRs) by prohibiting the Secretary of Homeland Security from accepting a Record of Abandonment of Lawful Permanent Resident Status (Form I–407) from an LPR without providing the LPR with a reasonable opportunity to consult with counsel. The Secretary may, however, accept such form if the LPR waives the opportunity to seek advice from counsel in writing.

New subsection (e)(4) defines the terms "counsel," "covered individual," and "interested party".

Section (2)(b) establishes the effective date as 180 days after the enactment of the Act.

Section (2)(c) clarifies that nothing in the Act may be construed to limit a pre-existing right to counsel or right to appointed counsel under the INA or any other provision of law, including a court order.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 1573, as reported, are shown as follows:

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

* * * * * * *

TITLE II—IMMIGRATION

* * * * * * *

CHAPTER 4—INSPECTION, APPREHENSION, EXAMINATION, EXCLUSION, AND REMOVAL

* * * * * * *

INSPECTION BY IMMIGRATION OFFICERS; EXPEDITED REMOVAL OF INADMISSIBLE ARRIVING ALIENS; REFERRAL FOR HEARING

SEC. 235. (a) INSPECTION.—

(1) ALIENS TREATED AS APPLICANTS FOR ADMISSION.—An alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters) shall be deemed for purposes of this Act an applicant for admission.

(2) STOWAWAYS.—An arriving alien who is a stowaway is not eligible to apply for admission or to be admitted and shall be ordered removed upon inspection by an immigration officer. Upon such inspection if the alien indicates an intention to apply for asylum under section 208 or a fear of persecution, the officer shall refer the alien for an interview under subsection (b)(1)(B). A stowaway may apply for asylum only if the stowaway is found to have a credible fear of persecution under subsection (b)(1)(B). In no case may a stowaway be considered an applicant for admission or eligible for a hearing under section 240.

(3) INSPECTION.—All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.

(4) WITHDRAWAL OF APPLICATION FOR ADMISSION.—An alien applying for admission may, in the discretion of the Attorney General and at any time, be permitted to withdraw the application for admission and depart immediately from the United States.

(5) STATEMENTS.—An applicant for admission may be required to state under oath any information sought by an immigration officer regarding the purposes and intentions of the applicant in seeking admission to the United States, including the applicant's intended length of stay and whether the applicant intends to remain permanently or become a United States citizen, and whether the applicant is inadmissible.

(b) INSPECTION OF APPLICANTS FOR ADMISSION.—

(1) INSPECTION OF ALIENS ARRIVING IN THE UNITED STATES AND CERTAIN OTHER ALIENS WHO HAVE NOT BEEN ADMITTED OR PAROLED.—

(A) SCREENING.—

(i) IN GENERAL.—If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 212(a)(6)(C) or 212(a)(7), the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 208 or a fear of persecution.

(ii) CLAIMS FOR ASYLUM.—If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is described in clause (iii) is inadmissible under section 212(a)(6)(C) or 212(a)(7) and the alien indicates either an intention to apply for asylum under section 208 or a fear of persecution, the officer

shall refer the alien for an interview by an asylum officer under subparagraph (B).

(iii) APPLICATION TO CERTAIN OTHER ALIENS.—

(I) IN GENERAL.—The Attorney General may apply clauses (i) and (ii) of this subparagraph to any or all aliens described in subclause (II) as designated by the Attorney General. Such designation shall be in the sole and unreviewable discretion of the Attorney General and may be modified at any time.

(II) ALIENS DESCRIBED.—An alien described in this clause is an alien who is not described in subparagraph (F), who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph.

(B) ASYLUM INTERVIEWS.—

(i) CONDUCT BY ASYLUM OFFICERS.—An asylum officer shall conduct interviews of aliens referred under subparagraph (A)(ii), either at a port of entry or at such other place designated by the Attorney General.

(ii) REFERRAL OF CERTAIN ALIENS.—If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.

(iii) REMOVAL WITHOUT FURTHER REVIEW IF NO CREDIBLE FEAR OF PERSECUTION.—

(I) IN GENERAL.—Subject to subclause (III), if the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review.

(II) RECORD OF DETERMINATION.—The officer shall prepare a written record of a determination under subclause (I). Such record shall include a summary of the material facts as stated by the applicant, such additional facts (if any) relied upon by the officer, and the officer's analysis of why, in the light of such facts, the alien has not established a credible fear of persecution. A copy of the officer's interview notes shall be attached to the written summary.

(III) REVIEW OF DETERMINATION.—The Attorney General shall provide by regulation and upon the alien's request for prompt review by an immigration judge of a determination under subclause (I) that the alien does not have a credible fear of persecution. Such review shall include an opportunity for the alien to be heard and questioned by the immigration judge, either in person or by tele-

phonic or video connection. Review shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination under subclause (I).

(IV) MANDATORY DETENTION.—Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.

(iv) INFORMATION ABOUT INTERVIEWS.—The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible. An alien who is eligible for such interview may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process.

(v) CREDIBLE FEAR OF PERSECUTION DEFINED.—For purposes of this subparagraph, the term "credible fear of persecution" means that there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208.

(C) LIMITATION ON ADMINISTRATIVE REVIEW.—Except as provided in subparagraph (B)(iii)(III), a removal order entered in accordance with subparagraph (A)(i) or (B)(iii)(I) is not subject to administrative appeal, except that the Attorney General shall provide by regulation for prompt review of such an order under subparagraph (A)(i) against an alien who claims under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, after having been warned of the penalties for falsely making such claim under such conditions, to have been lawfully admitted for permanent residence, to have been admitted as a refugee under section 207, or to have been granted asylum under section 208.

(D) LIMIT ON COLLATERAL ATTACKS.—In any action brought against an alien under section 275(a) or section 276, the court shall not have jurisdiction to hear any claim attacking the validity of an order of removal entered under subparagraph (A)(i) or (B)(iii).

(E) ASYLUM OFFICER DEFINED.—As used in this paragraph, the term "asylum officer" means an immigration officer who—

(i) has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under section 208, and

(ii) is supervised by an officer who meets the condition described in clause (i) and has had substantial experience adjudicating asylum applications.

(F) EXCEPTION.—Subparagraph (A) shall not apply to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations and who arrives by aircraft at a port of entry.

(G) COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.—Nothing in this subsection shall be construed to authorize or require any person described in section 208(e) to be permitted to apply for asylum under section 208 at any time before January 1, 2014.

(2) INSPECTION OF OTHER ALIENS.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 240.

(B) EXCEPTION.—Subparagraph (A) shall not apply to an alien—

(i) who is a crewman,

(ii) to whom paragraph (1) applies, or

(iii) who is a stowaway.

(C) TREATMENT OF ALIENS ARRIVING FROM CONTIGUOUS TERRITORY.—In the case of an alien described in subparagraph (A) who is arriving on land (whether or not at a designated port of arrival) from a foreign territory contiguous to the United States, the Attorney General may return the alien to that territory pending a proceeding under section 240.

(3) CHALLENGE OF DECISION.—The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to be admitted is so challenged, before an immigration judge for a proceeding under section 240.

(c) REMOVAL OF ALIENS INADMISSIBLE ON SECURITY AND RELATED GROUNDS.—

(1) REMOVAL WITHOUT FURTHER HEARING.—If an immigration officer or an immigration judge suspects that an arriving alien may be inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 212(a)(3), the officer or judge shall—

(A) order the alien removed, subject to review under paragraph (2);

(B) report the order of removal to the Attorney General; and

(C) not conduct any further inquiry or hearing until ordered by the Attorney General.

(2) REVIEW OF ORDER.—(A) The Attorney General shall review orders issued under paragraph (1).

(B) If the Attorney General—

(i) is satisfied on the basis of confidential information that the alien is inadmissible under subparagraph (A) (other than clause (ii)), (B), or (C) of section 212(a)(3), and

(ii) after consulting with appropriate security agencies of the United States Government, concludes that disclosure of the information would be prejudicial to the public interest, safety, or security,

the Attorney General may order the alien removed without further inquiry or hearing by an immigration judge.

(C) If the Attorney General does not order the removal of the alien under subparagraph (B), the Attorney General shall specify the further inquiry or hearing that shall be conducted in the case.

(3) SUBMISSION OF STATEMENT AND INFORMATION.—The alien or the alien's representative may submit a written statement and additional information for consideration by the Attorney General.

(d) AUTHORITY RELATING TO INSPECTIONS.—

(1) AUTHORITY TO SEARCH CONVEYANCES.—Immigration officers are authorized to board and search any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States.

(2) AUTHORITY TO ORDER DETENTION AND DELIVERY OF ARRIVING ALIENS.—Immigration officers are authorized to order an owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crewmember) to the United States—

(A) to detain the alien on the vessel or at the airport of arrival, and

(B) to deliver the alien to an immigration officer for inspection or to a medical officer for examination.

(3) ADMINISTRATION OF OATH AND CONSIDERATION OF EVIDENCE.—The Attorney General and any immigration officer shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of any alien or person he believes or suspects to be an alien to enter, reenter, transit through, or reside in the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service.

(4) SUBPOENA AUTHORITY.—(A) The Attorney General and any immigration officer shall have power to require by subpoena the attendance and testimony of witnesses before immigration officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of this Act and the administration of the Service, and to that end may invoke the aid of any court of the United States.

(B) Any United States district court within the jurisdiction of which investigations or inquiries are being conducted by an immigration officer may, in the event of neglect or refusal to respond to a subpoena issued under this paragraph or refusal to testify before an immigration officer, issue an order requiring such persons to appear before an immigration officer, produce books, papers, and documents if demanded, and tes-

tify, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(e) ACCESS TO COUNSEL AND OTHER ASSISTANCE DURING INSPECTION AT PORTS OF ENTRY AND DURING DEFERRED 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 remainder of 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.—Except as provided in subparagraph (B), the Secretary of Homeland Security may not accept a 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 first providing such lawful permanent resident a meaningful opportunity to seek advice from counsel.

(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) an 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 nonimmigrant in possession of a valid unexpired nonimmigrant 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 a nonimmigrant 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.

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Minority Views

House Democrats' answer to the raging Biden Border Crisis is to send in the lawyers. H.R. 1573 would amend section 235 of the Immigration and Nationality Act to provide a right to consult with counsel and an "interested party" during secondary inspections of travelers to the United States at any port of entry. U.S. Customs and Border Protection (CBP) has raised concerns about the serious operational and practical implications of providing a right to consult with counsel and an "interested party" during the secondary inspection process. Yet, the Democrat majority held no legislative hearing on this bill prior to markup. At a time when the U.S. faces an unprecedented crisis at the southern border, this bill will significantly burden federal immigration agencies and do nothing to stop the Biden Border Crisis.

I. THE BILL'S RIGHT OF ACCESS TO COUNSEL AND AN INTERESTED PARTY IS MISGUIDED

H.R. 1573 would require the Secretary of the Department Homeland Security (DHS) to provide a individual in the secondary inspection process with a meaningful opportunity to consult with counsel not later than one hour after the secondary inspection process commences. This requirement would apply at any port of entry where secondary inspections are conducted, including land, air, and sea ports. There are 328 U.S. ports of entry.[1]

H.R. 1573 also grants the individual in secondary inspection access to an interested party during the first hour of referral to secondary inspection. Under the bill, an "interested party" is defined as a relative of the covered individual; the petitioner or sponsor of the covered individual; or a person, organization, or entity in the U.S. with a bona fide connection to the covered individual. The bill does not address the serious potential that a person could use the "interested party" contact in furtherance of a crime. For example, an individual part of a criminal conspiracy could contact and communicate with a co-conspirator while in secondary inspection.

The right to consultation under the bill applies to nationals of the United States, returning Lawful Permanent Residents, aliens seeking admission with unexpired immigrant or nonimmigrant visas, refugees, returning asylees, and aliens approved for parole or in possession of an advance parole document. The bill also prohibits DHS from accepting an abandonment of Lawful Permanent Resident status unless the individual has the ability to consult with counsel or waives that right.

Under current regulations, applicants for admission are not entitled to representation in primary or secondary inspections unless the applicant has become the focus of a criminal investigation and

[1] Information provided by U.S. Customs and Border Protection.

has been taken into custody.[2] The right to counsel only attaches once the screening turns from questions of admissibility of people or goods to a custodial interrogation relating to a criminal offense.[3] An alien seeking admission to the United States has no due process right to counsel except insofar as Congress would provide,[4] and there is no right to counsel in secondary inspection.[5] However, the CBP Adjudicator's Field Manual does provide that the inspecting officer may, at his or her discretion, permit a relative, friend, or representative access to the inspection area to provide assistance.[6]

II. THE BILL WILL HAVE SIGNIFICANT NEGATIVE EFFECTS ON CBP

Secondary inspection—as opposed to primary inspection in which travelers are quickly screened for admissibility[7] and customs[8] purposes—is a tool used by customs officers to conduct additional screening and vetting of certain individuals without causing delays for other travelers.[9] A person "referred to secondary" is usually[10] directed to wait at an adjacent inspections location for additional questioning by a customs officer, physical searches, or to give customs officers more time to research the applicant in law enforcement databases.[11] CBP conducts over 17 million secondary inspections of persons each year at various ports of entry.[12]

Giving individuals the right to access counsel during secondary inspection would have serious logistical and practical consequences for CBP's ability to screen travelers and carry out its mission of facilitating lawful trade and travel quickly and efficiently. CBP enforces nearly 500 U.S. trade laws and regulations on behalf of 49 different government agencies.[13] In fiscal year 2019, CBP processed more than 410 million travelers at ports of entry, including almost

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[2] 8 C.F.R. § 292.6 ("Provided, that nothing in this paragraph shall be construed to provide any applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody.").

[3] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[4] *See Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950) ("Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned").

[5] *American Immigration Lawyer's Assn. v. Reno*, 199 F.3d 1352 (D.C. Cir. 2000) (affirming lower court's determination that "ban[ning] access to counsel during the secondary inspection stage is reasonable in view of Congress's dual purposes in providing fair procedures while creating a more expedited removal process"); *AILA v. Reno,* 18 F. Supp. 2d 38, 55 (D.D.C. 1998).

[6] CBP Inspector's Field Manual, Chapter 2.9, available at https://www.aila.org/File/Related/11120959A.pdf.

[7] INA § 235(a)(3) ("All aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers.").

[8] 19 C.F.R. § 162.6 ("All persons, baggage and merchandise arriving in the Customs territory of the United States from places outside thereof are liable to inspection by a CBP officer.").

[9] *See* Privacy Impact Assessment, U.S. Customs and Border Protection, TECS, (Dec. 22, 2010), available at https://www.dhs.gov/xlibrary/assets/privacy/privacy-pia-cbp-tecs.pdf ("At primary, CBP obtains information directly from the traveler via his or her presented travel documents (e.g., passport) and/or verbal communication between the CBP officer and the traveler If the CBP officer at primary determines that additional inspection is needed, the traveler will be referred to secondary.").

[10] However, in some ports of entry, primary and secondary will occur at the same time with the same CBP officer.

[11] Saghetti, Lisa: *Border Security: Immigration Inspections at Ports of Entry*, (Jan. 26, 2015) Congressional Research Service, available at https://fas.org/sgp/crs/homesec/R43356.pdf.

[12] Data provided by CBP to Committee Staff on February 7, 2020.

[13] *CBP Trade and Travel Report: Fiscal Year 2019,* (Jan. 2020), available at https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/CBP%20FY2019%20Trade%20and%20Travel%20Report.pdf.

136 million at airports.[14] Each day CBP inspects over one million people at the various land, air, and sea ports of entry.[15]

According to the Congressional Budget Office (CBO), CBP officials have indicated that H.R. 1573 could increase the length of secondary inspections and drastically delay processing, which would have an upstream effect on primary inspection as well.[16] CBO also notes that CBP does not have physical space in its ports to accommodate in-person attorney visits for everyone referred to secondary inspection. CBP will thus need to build out facilities to accommodate in- person attorney consultations and will have to dedicate countless additional manhours holding individuals in secondary inspection who are waiting for counsel or interested parties to show up at the port and spend time consulting.[17] CBP will need to hire additional personnel at each port of entry, provide security and transportation for each individual seeking access to counsel, upgrade current space, and construct new space for necessary meetings.[18] CBO estimates that H.R. 1573 will cost $825 million over the next five years.[19]

During the week of April 5, 2021, Republican Members of the Judiciary Committee traveled to McAllen, Texas and visited the Hidalgo Port of Entry, where officers explained that facilities were already too small, outdated, and in dire need of upgrades. The officers explained that the city of McAllen was already paying for structural upkeep of the port facility because Congress had neglected to do so for so long. H.R. 1573 would only further strain CBP's resources and complicate CBP's ability to carry out its mission and protect our country.

Other than Republican fact-finding in McAllen, Texas—which Democrats declined to join—the Democrat majority made no effort this Congress to gather information about how H.R. 1573 would affect CBP or border communities. The Committee considered H.R. 1573 without any legislative hearing this Congress to receive and examine input from CBP, immigration stakeholders, and members of border communities. Additionally, during the Committee's consideration of the bill. Democrats rejected all amendments offered by Republicans that would have improved the bill's provisions.

III. CONCLUSION

The Democrats failed to conduct any legislative due diligence on H.R. 1573 in the 117th Congress. As a result, the bill's access to counsel and interested party provisions are misguided. The bill's implementation will severely and negatively affect CBP's ability to facilitate lawful trade and travel. Most egregiously, at a time when CBP and other immigration agencies are stretched thin by the

[14] *Id.*
[15] *Id.*
[16] CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE OF H.R. 1573 ACCESS TO COUNSEL ACT OF 2021 (Apr. 15, 2021).
[17] *Id.*
[18] *Id.*
[19] *Id.*

Biden Administration's radical immigration policies, H.R. 1573 does nothing to address the Biden Border Crisis.

JIM JORDAN,
Ranking Member.

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