

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 5581
OFFERED BY MR. NADLER**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Access to Counsel Act
3 of 2020”.

**4 SEC. 2. ACCESS TO COUNSEL AND OTHER ASSISTANCE AT
5 PORTS OF ENTRY AND DEFERRED INSPEC-
6 TION.**

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

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

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

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

3 “(A) provide the covered individual a
4 meaningful opportunity to consult with counsel
5 and an interested party not later than one hour
6 after the secondary inspection process com-
7 mences and as necessary throughout the inspec-
8 tion process, including, as applicable, during de-
9 ferred inspection;

10 “(B) allow counsel and an interested party
11 to advocate on behalf of the covered individual,
12 including by providing to the examining immi-
13 gration officer information, documentation, and
14 other evidence in support of the covered indi-
15 vidual; and

16 “(C) to the greatest extent practicable, ac-
17 commodate a request by the covered individual
18 for counsel or an interested party to appear in-
19 person at the secondary or deferred inspection
20 site.

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

23 “(A) IN GENERAL.—The Secretary of
24 Homeland Security may not accept Form I-407
25 Record of Abandonment of Lawful Permanent

1 Resident Status (or a successor form) from a
2 lawful permanent resident subject to secondary
3 or deferred inspection without providing such
4 lawful permanent resident a reasonable oppor-
5 tunity to seek advice from counsel prior to the
6 submission of the form.

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

16 “(4) DEFINITIONS.—In this section:

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

19 “(i) an attorney who is a member in
20 good standing of the bar of any State, the
21 District of Columbia, or a territory or a
22 possession of the United States and is not
23 under an order suspending, enjoining, re-
24 straining, disbarring, or otherwise restrict-
25 ing the attorney in the practice of law; or

1 “(ii) an individual accredited by the
2 Attorney General, acting as a representa-
3 tive of an organization recognized by the
4 Executive Office for Immigration Review,
5 to represent a covered individual in immi-
6 gration matters.

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

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

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

14 “(iii) an alien seeking admission as an
15 immigrant in possession of a valid unex-
16 pired immigrant visa;

17 “(iv) an alien seeking admission as a
18 non-immigrant in possession of a valid un-
19 expired non-immigrant visa;

20 “(v) a refugee; or

21 “(vi) an alien who has been approved
22 for parole under section 212(d)(5)(A), in-
23 cluding an alien who is returning to the
24 United States in possession of a valid ad-
25 vance parole document.

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

3 “(i) a relative of the covered indi-
4 vidual;

5 “(ii) in the case of a covered indi-
6 vidual to whom an immigrant or non-immi-
7 grant visa has been issued, the petitioner
8 or sponsor thereof (including an agent of
9 such petitioner or sponsor); or

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

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

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

20 (1) section 240(b)(4)(A) (8 U.S.C.
21 1229a(b)(4)(A)),

22 (2) section 292 of the Immigration and Nation-
23 ality Act (8 U.S.C. 1362), or

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

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

