

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To clarify the right to counsel in immigration proceedings and the standards for treatment of detained individuals.

**IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.**

**S. 1494**

To amend the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to protect alien minors and to amend the Immigration and Nationality Act to end abuse of the asylum system and establish refugee application and processing centers outside the United States, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Ms. HARRIS

Viz:

1 Add at the end the following:

2 **SEC. 7. CLARIFICATION OF RIGHT TO COUNSEL.**

3 (a) RIGHT TO COUNSEL IN IMMIGRATION PRO-  
4 CEEDINGS.—

5 (1) Subparagraph (A) of section 240(b)(4) of  
6 the Immigration and Nationality Act (8 U.S.C.  
7 1229a(b)(4)) is amended to read as follows:

8 “(A) the alien shall have the privilege of  
9 being represented by counsel of the alien’s

1 choosing who is authorized to practice in such  
2 proceedings,”.

3 (2) Section 292 of the Immigration and Nation-  
4 ality Act (8 U.S.C. 1362) is amended to read as fol-  
5 lows:

6 **“SEC. 292. RIGHT TO COUNSEL.**

7 “(a) IN GENERAL.—In any removal, exclusion, or de-  
8 portation proceeding or inspection under section 235(a),  
9 235(b), 236, 238, 240, or 241, the person subject to such  
10 proceeding shall be entitled to representation by such au-  
11 thorized counsel as the person may choose.

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

21 “(c) RECORD OF ABANDONMENT OF LAWFUL PER-  
22 MANENT RESIDENT STATUS OR WITHDRAWAL OF APPLI-  
23 CATION FOR ADMISSION.—A person held or detained at  
24 a port of entry may not submit a valid Record of Abandon-  
25 ment of Lawful Permanent Resident Status or Withdrawal

1 of Application for Admission if such person has been de-  
2 nied access to counsel in accordance with this section.

3 “(d) DEFINITIONS.—In this section:

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

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

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

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

1 **SEC. 8. TREATMENT OF INDIVIDUALS HELD OR DETAINED**  
2 **AT PORTS OF ENTRY OR AT ANY CBP OR ICE**  
3 **DETENTION FACILITY.**

4 (a) **IN GENERAL.**—The holding or detention of indi-  
5 viduals at a port of entry or at any holding or detention  
6 facility overseen by U.S. Customs and Border Protection  
7 or U.S. Immigration and Customs Enforcement—

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

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

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