

**REPORT OF THE  
CHIEF LEGISLATIVE ANALYST**

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DATE: March 7, 2017

TO: Honorable Members of the Rules, Elections, Intergovernmental Relations and  
Neighborhoods Committee

FROM: Sharon M. Tso   
Chief Legislative Analyst

Council File No: 17-0002-S27  
Assignment No. 17-02-0195

SUBJECT: Resolution (Ryu - Bonin – Buscaino – Cedillo – Huizar – Martinez - Wesson) to  
SUPPORT S. 349 to ensure that those held or detained at border crossings or a  
ports of entry have a guaranteed access to legal counsel.

CLA RECOMMENDATION:

Adopt Resolution (Ryu - Bonin – Buscaino – Cedillo – Huizar – Martinez - Wesson) to include  
in the City’s 2017-2018 Federal Legislative Program, SUPPORT for S. 349 (Harris), the Access  
to Counsel Act of 2017, which would ensure that those held or detained while attempting to enter  
the United States, whether at a border crossing or a port of entry, would be guaranteed access to  
legal counsel.

SUMMARY

The Resolution (Ryu - Bonin – Buscaino – Cedillo – Huizar – Martinez - Wesson), introduced  
February 15, 2017, supports U.S. Senator Kamala Harris’ bill, S. 349. The Resolution states that  
on January 27, 2017, the President of the United States issued Executive Order No. 13769,  
entitled “Protecting the Nation from Foreign Terrorist Entry into the United States,” which  
blocked refugees from entering the United States for a period of 120 days, blocked entry of  
Syrian refugees indefinitely and denied entry of all visitors from seven Muslim-majority  
countries, which include Iraq, Syria, Sudan, Iran, Somalia, Libya and Yemen for 90 days. The  
Resolution also states that the President’s ban created chaos and uncertainty at airports across the  
country by detaining traveling students, business people and those attempting to attend funerals  
for family members. The detained travelers were held without access to outside communication,  
nor to legal counsel at over a dozen airports including Los Angeles, Newark, Chicago and  
Atlanta. The Resolution states there are a number of legal challenges to the executive order,  
including a three-judge panel of the U.S. Ninth Circuit Court of Appeals, which has ruled that a  
Seattle judge’s temporary restraining order issued to block the executive order should remain in  
effect until its legality is further examined. The Access to Counsel Act of 2017 (Harris),  
according to the Resolution, affirms that the right to counsel begins at the time of holding or  
detention; provides a redress option if counsel cannot personally meet with those detained; and

invalidates any effort by immigration enforcement officials to persuade someone to relinquish their legal status if the person has been denied access to counsel. It also limits detention to the briefest term possible and in the least restrictive conditions practicable.

## BACKGROUND

Executive Order No. 13769 has a stated purpose of protecting the American people from terrorist attacks by foreign nationals admitted to the United States. It also states that the visa-issuance process plays a crucial role in detecting individuals with terrorist ties and stopping them from entering the United States. Once the order was issued, the United States Customs and Border Protection Agency detained hundreds of individuals it suspected to be in violation of the order arriving at U.S. airports and ports of entry. Individuals and advocacy organizations responded with protests at major airports and cities, including Los Angeles International Airport, disrupting normal operations and causing major delays. Numerous legal challenges were initiated in response to the executive order that resulted in a temporary restraining order by the U.S. Ninth Circuit Court of Appeals blocking the implementation of the executive order.

The Access to Counsel Act of 2017 seeks to clarify a right to counsel for persons subject to any removal, exclusion, or deportation proceeding or inspection, at no expense to the government. It also provides that the U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement agencies shall provide redress options for counsel to communicate remotely with a held or detained person during the first hour of holding, regardless of the day or time when such holding or detention began. Senate Bill 349 also provides that a person held or detained at a port of entry may not submit a valid Record of Abandonment of Lawful Permanent Resident Status or Withdrawal of Application for Admission if such person has been denied access to counsel. The bill also requires a standard of treatment of individuals held or detained at ports of entry or any detention facility by federal immigration officials. It first requires that U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement shall hold or detain to the briefest term and least restrictive conditions practicable and consistent with the rationale for the detention; and, second, requires that the federal agencies shall include access to food, water, and restroom facilities.

## BILL STATUS

02/09/17    Introduced in Senate.  
02/09/17    Read twice and referred to the Committee on the Judiciary.

  
Blayne Sutton-Wills  
Analyst

Attachment:            1. Resolution  
SMT:BSW:bsw

## RESOLUTION

RULES, ELECTIONS & INTERGOVERNMENTAL RELATIONS

**WHEREAS**, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

**WHEREAS**, on January 27, 2017, President Donald J. Trump issued an executive order: *Protecting the Nation from Foreign Terrorist Entry into the United States* – designed to block all refugee entry for a period of 120 days, indefinitely blocks Syrian refugees seeking asylum, and suspend entry into the United States of refugees from seven Muslim-majority countries: Iraq, Syria, Sudan, Iran, Somalia, Libya and Yemen for 90 days; and

**WHEREAS**, the President's abrupt ban created chaos and uncertainty in airports across the globe, stranding, and in many cases, detaining travelers from all walks of life who were expecting to return to the U.S. – not only refugees, but students, those travelling on business, scientists, tourists and even the bereaved who were travelling for funerals – cancelling an estimated 60,000 visas, prompting fervent debate on American values and igniting strong legal pushback; and

**WHEREAS**, at more than a dozen airports, including Los Angeles, Newark, Boston, Dallas, Chicago and Atlanta, immigration attorneys appeared in droves to offer free services to those detained, many of whom were young children or elderly U.S. citizens and Green Card holders being held for long periods of time and denied access to volunteer lawyers – in some instances, pressured to sign forms to give up their legal permanent resident status; and

**WHEREAS**, much of the American judiciary has ruled with one voice on the executive order: federal courts in Virginia issued a temporary restraining order which mandated that Legal Permanent Residents returning from abroad should have access to lawyers while being detained at Dulles International Airport; the Eastern District of New York issued a temporary restraining order barring the deportation of as many as 200 people, citing the “irreparable harm” they would face; a federal judge in Washington State issued a temporary halt to the order; and a three judge panel of the U.S. 9th Circuit Court of Appeals has ruled that the Seattle federal judge's restraining order on the policy should remain in effect while the legality is further examined; and

**WHEREAS**, even after these rulings, the mixed signals continue as both travelers and advocates lacking consistent guidance for helping refugees already in the pipeline, leaving families scared to let their loved ones board planes for fear that they will be held for long periods of time without access to a phone or an attorney; and

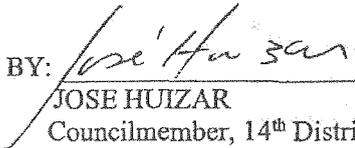
**WHEREAS**, the *Access to Counsel Act of 2017*, S. 349 (Harris), ensures that those held or detained while attempting to enter the United States, whether at a border crossing or a port of entry, would be guaranteed access to legal counsel, by affirming: that the right to counsel attaches at the time of holding or detention; providing a redress option, if counsel cannot personally meet with those detained at the border or ports of entry, for the provision of legal advice remotely (e.g., phone or video teleconference); invalidating any effort by immigration enforcement officials to persuade someone to relinquish their legal status if that person has been denied access to counsel; and directing immigration enforcement officials to limit detention to the briefest term possible and least restrictive conditions practicable, and include access to food, water, and restroom facilities; and

WHEREAS, meaningful access to legal representation has been codified by the Fourteenth Amendment's due process or equal protection clause and decades of case law – in fact, legal representation is fundamental to safeguarding fair and equal access to the legal system, in which some of our most vulnerable residents face potential crises, including termination of tenancy, loss of child custody, and immigration removal; and

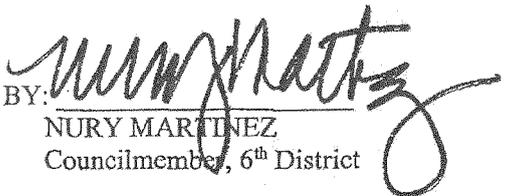
WHEREAS, Los Angeles is, and will continue to be, a place of refuge for people from all walks of life – regardless of one's background, income, sexual orientation, religious affiliation or immigration status.

NOW THEREFORE BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2017-2018 Federal Legislative Program SUPPORT for the *Access to Counsel Act of 2017*, S. 349 (Harris), which would ensure that those held or detained while attempting to enter the United States, whether at a border crossing or a port of entry, would be guaranteed access to legal counsel.

CO-PRESENTED BY:   
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ORIGINAL

SECONDED BY: 

FEB 15 2017