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AJR-10 Access to Counsel Act. (2017-2018)

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Assembly Joint Resolution No. 10

CHAPTER 143

Relative to access to counsel.

[Filed with Secretary of State September 07, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AJR 10, Santiago. Access to Counsel Act.

This measure would urge the Congress of the United States to support S. 349, the Access to Counsel Act, which would ensure that those persons 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.

Fiscal Committee: no

WHEREAS, On January 27, 2017, President Donald J. Trump issued Executive Order 13769, entitled "Protecting the Nation from Foreign Terrorist Entry into the United States," designed to block all refugee entry for a period of 120 days, indefinitely blocking Syrian refugees seeking asylum, and suspending for 90 days entry into the United States of aliens, both immigrant and nonimmigrant, from seven Muslim-majority countries: Iraq, Syria, Sudan, Iran, Somalia, Libya, and Yemen; 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 United States, including not only refugees, but students, those traveling on business, scientists, tourists, and even the bereaved who were traveling for funerals; canceling 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 airports in 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 United States citizens and green cardholders being held for long periods of time and denied access to volunteer lawyers—and who, in some instances, were 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: the United States District Court for the Eastern District of Virginia issued a temporary restraining order that mandated that legal permanent residents returning from abroad should have access to lawyers while being detained at Dulles International Airport; the United States District Court for the Eastern District of New York issued a temporary restraining order barring the deportation of as many as 200 people, citing the "irreparable injury" they would face; the United States District Court for the Western District of Washington at Seattle issued a temporary halt to the order; and a three-judge panel of the United States Court of Appeals for the Ninth Circuit ruled that the Washington 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 lack 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 telephone or an attorney; and

WHEREAS, On February 9, 2017, United States Senator Kamala D. Harris introduced S. 349, commonly referred to as the Access to Counsel Act, which would ensure that those persons 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 (for example, via telephone or video teleconference); invalidating any effort by immigration enforcement officials to persuade a person to relinquish his or her 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 is required, by the due process and equal protection Clauses of the Fourteenth Amendment to the United States Constitution as established by 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, The State of California 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; and

WHEREAS, This resolution is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person; now, therefore, be it

Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature urges the 115th Congress of the United States to support S. 349, the Access to Counsel Act, which would ensure that those persons 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; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President, the Vice President, and the Attorney General of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, to each Senator and Representative from California in the Congress of the United States, and to the author for appropriate distribution.