

118TH CONGRESS
2D SESSION

S. 4683

To amend the Immigration and Nationality Act to provide for claims of ineffective assistance of counsel in immigration matters, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 11 (legislative day, JULY 10), 2024

Mr. MURPHY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to provide for claims of ineffective assistance of counsel in immigration matters, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Strengthening Immi-
5 gration Procedures Act of 2024”.

6 **SEC. 2. FINDINGS; PURPOSE.**

7 (a) FINDINGS.—Congress makes the following find-
8 ings:

1 (1) Consistent with the Fifth Amendment to
2 the Constitution of the United States, an alien has
3 the right to effective counsel in removal proceedings
4 and in pursuing applications for discretionary and
5 nondiscretionary immigration relief and benefits in
6 the United States.

7 (2) Effective counsel must be competent counsel
8 if it is to be meaningful, and aliens do not always
9 receive effective counsel.

10 (3) Board of Immigration Appeals precedent
11 and Department of Justice and Department of
12 Homeland Security policy has been interpreted to re-
13 quire aliens who have been victims of ineffective as-
14 sistance of counsel, to file official complaints with
15 State bar associations before seeking further relief
16 under the immigration laws (as defined in section
17 101(a) of the Immigration and Nationality Act (8
18 U.S.C. 1101(a))).

19 (4) A mandatory filing of a bar complaint is
20 unique to the application of immigration laws.

21 (5) Consequently, such requirement—

22 (A) has had a chilling effect on immigra-
23 tion attorneys;

1 (B) acts as a barrier to access to counsel
 2 for aliens in need of representation in immigra-
 3 tion matters; and

4 (C) results in additional obstacles aliens
 5 must overcome to access a full and fair process
 6 in immigration proceedings.

7 (6) In every other matter, the standard set
 8 forth in *Strickland v. Washington*, 466 U.S. 668
 9 (1984), is the standard used to assess an ineffective
 10 assistance of counsel claim; therefore, the same
 11 standard should apply to immigration matters.

12 (b) PURPOSE.—The purpose of this Act is to set forth
 13 a procedure and associated standards for the evaluation
 14 of ineffective assistance of counsel claims in immigration
 15 matters.

16 **SEC. 3. CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL**
 17 **IN IMMIGRATION MATTERS.**

18 (a) IN GENERAL.—Chapter 9 of title II of the Immi-
 19 gration and Nationality Act (8 U.S.C. 1351 et seq.) is
 20 amended by adding at the end the following:

21 **“SEC. 295. CLAIMS OF INEFFECTIVE ASSISTANCE OF COUN-**
 22 **SEL.**

23 “(a) IN GENERAL.—With respect to any immigration
 24 matter, an alien may raise a claim of ineffective assistance
 25 of counsel based on a claim that—

1 “(1) the performance of the alien’s prior coun-
 2 sel with respect to such immigration matter was de-
 3 ficient; and

4 “(2) such deficient performance prejudiced the
 5 immigration proceeding.

6 “(b) DEFINITIONS.—In this section:

7 “(1) IMMIGRATION MATTER.—The term ‘immi-
 8 gration matter’ means, any stage of an exclusion,
 9 deportation, or removal proceeding, including a col-
 10 lateral matter, a motion to reopen or reconsider, and
 11 any matter concerning an alien pending before the
 12 Secretary of Homeland Security or the Attorney
 13 General.

14 “(2) PREJUDICE.—The term ‘prejudice’ means,
 15 with respect to counsel of an alien, the errors of
 16 such counsel were so serious as to deprive the alien
 17 of a fair immigration proceeding.”.

18 (b) CLERICAL AMENDMENT.—The table of contents
 19 for the Immigration and Nationality Act (8 U.S.C. 1101
 20 et seq.) is amended by inserting after the item relating
 21 to section 294 the following:

“Sec. 295. Claims of ineffective assistance of counsel.”.

22 (c) EFFECTIVE DATE.—The amendment made by
 23 this section shall apply with respect to any immigration
 24 case or proceeding regardless of whether such case or pro-
 25 ceeding is—

1 (1) pending as of the date of the enactment of
2 this Act;

3 (2) commenced after such date of enactment; or

4 (3) fully adjudicated before such date of enact-
5 ment.

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