

114TH CONGRESS
2D SESSION

S. 2540

To provide access to counsel for unaccompanied children and other vulnerable populations.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 2016

Mr. REID (for himself, Mr. DURBIN, Mrs. MURRAY, Mr. LEAHY, Mr. MENENDEZ, Ms. HIRONO, Mr. FRANKEN, Mr. UDALL, and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide access to counsel for unaccompanied children
and other vulnerable populations.

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 “Fair Day in Court
5 for Kids Act of 2016”.

1 **SEC. 2. IMPROVING IMMIGRATION COURT EFFICIENCY AND**
 2 **REDUCING COSTS BY INCREASING ACCESS**
 3 **TO LEGAL INFORMATION.**

4 (a) APPOINTMENT OF COUNSEL IN CERTAIN CASES;
 5 RIGHT TO REVIEW CERTAIN DOCUMENTS IN REMOVAL
 6 PROCEEDINGS.—Section 240(b) of the Immigration and
 7 Nationality Act (8 U.S.C. 1229a(b)) is amended—

8 (1) in paragraph (4)—

9 (A) in subparagraph (A)—

10 (i) by striking “, at no expense to the
 11 Government,”; and

12 (ii) by striking the comma at the end
 13 and inserting a semicolon;

14 (B) by redesignating subparagraphs (B)
 15 and (C) as subparagraphs (D) and (E), respec-
 16 tively;

17 (C) by inserting after subparagraph (A)
 18 the following:

19 “(B) the Attorney General may appoint or
 20 provide counsel, at Government expense, to
 21 aliens in immigration proceedings;

22 “(C) the alien shall, at the beginning of
 23 the proceedings or as expeditiously as possible,
 24 automatically receive a complete copy of all rel-
 25 evant documents in the possession of the De-
 26 partment of Homeland Security, including all

1 documents (other than documents protected
2 from disclosure by privilege, including national
3 security information referred to in subpara-
4 graph (D), law enforcement sensitive informa-
5 tion, and information prohibited from disclosure
6 pursuant to any other provision of law) con-
7 tained in the file maintained by the Government
8 that includes information with respect to all
9 transactions involving the alien during the im-
10 migration process (commonly referred to as an
11 ‘A-file’), and all documents pertaining to the
12 alien that the Department of Homeland Secu-
13 rity has obtained or received from other govern-
14 ment agencies, unless the alien waives the right
15 to receive such documents by executing a know-
16 ing and voluntary written waiver in a language
17 that he or she understands fluently;” and

18 (D) in subparagraph (D), as redesignated,
19 by striking “, and” and inserting “; and”; and
20 (2) by adding at the end the following:

21 “(8) FAILURE TO PROVIDE ALIEN REQUIRED
22 DOCUMENTS.—In the absence of a waiver under
23 paragraph (4)(C), a removal proceeding may not
24 proceed until the alien—

1 “(A) has received the documents as re-
 2 quired under such paragraph; and

3 “(B) has been provided meaningful time to
 4 review and assess such documents.”.

5 (b) CLARIFICATION REGARDING THE AUTHORITY OF
 6 THE ATTORNEY GENERAL TO APPOINT COUNSEL TO
 7 ALIENS IN IMMIGRATION PROCEEDINGS.—Section 292 of
 8 the Immigration and Nationality Act (8 U.S.C. 1362) is
 9 amended—

10 (1) by striking “In any” and inserting the fol-
 11 lowing:

12 “(a) IN GENERAL.—In any”;

13 (2) in subsection (a), as redesignated—

14 (A) by striking “(at no expense to the Gov-
 15 ernment)”; and

16 (B) by striking “he shall” and inserting
 17 “the person shall”; and

18 (3) by adding at the end the following:

19 “(b) ACCESS TO COUNSEL.—The Attorney General
 20 may appoint or provide counsel to aliens in any proceeding
 21 conducted under section 235, 236, 238, 240, or 241 or
 22 any other section of this Act. The Secretary of Homeland
 23 Security shall ensure that aliens have access to counsel
 24 inside all immigration detention and border facilities.”.

1 (c) APPOINTMENT OF COUNSEL FOR UNACCOM-
2 PANIED ALIEN CHILDREN AND VULNERABLE ALIENS.—

3 (1) IN GENERAL.—Section 292 of the Immigra-
4 tion and Nationality Act (8 U.S.C. 1362), as amend-
5 ed by subsection (b), is further amended by adding
6 at the end the following:

7 “(c) UNACCOMPANIED ALIEN CHILDREN AND VUL-
8 NERABLE ALIENS.—Notwithstanding subsection (b), the
9 Attorney General shall appoint counsel, at the expense of
10 the Government if necessary, at the beginning of the pro-
11 ceedings or as expeditiously as possible, to represent in
12 such proceedings any alien who has been determined by
13 the Secretary of Homeland Security or the Attorney Gen-
14 eral to be—

15 “(1) an unaccompanied alien child (as defined
16 in section 462(g) of the Homeland Security Act on
17 2002 (6 U.S.C. 279(g)));

18 “(2) a particularly vulnerable individual, such
19 as—

20 “(A) a person with a disability; or

21 “(B) a victim of abuse, torture, or violence;

22 or

23 “(3) an individual whose circumstances are
24 such that the appointment of counsel is necessary to

1 help ensure fair resolution and efficient adjudication
2 of the proceedings.

3 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
4 is authorized to be appropriated to the Executive Office
5 of Immigration Review of the Department of Justice such
6 sums as may be necessary to carry out this section.”.

7 (2) RULEMAKING.—The Attorney General shall
8 promulgate regulations to implement section 292(c)
9 of the Immigration and Nationality Act, as added by
10 paragraph (1), in accordance with the requirements
11 set forth in section 3006A of title 18, United States
12 Code.

13 **SEC. 3. ACCESS BY COUNSEL AND LEGAL ORIENTATION AT**
14 **DETENTION FACILITIES.**

15 (a) ACCESS TO COUNSEL.—The Secretary of Home-
16 land Security shall facilitate access to counsel for all aliens
17 detained in facilities under the supervision of U.S. Immi-
18 gration and Customs Enforcement or of U.S. Customs and
19 Border Protection, including providing information to
20 aliens in detention about legal services programs at deten-
21 tion facilities.

22 (b) ACCESS TO LEGAL ORIENTATION PROGRAMS.—
23 The Secretary of Homeland Security, in consultation with
24 the Attorney General, shall establish procedures to ensure
25 that legal orientation programs are available for all de-

1 tained aliens, including aliens held in U.S. Customs and
2 Border Protection facilities, to inform such aliens of the
3 basic procedures of immigration hearings, their rights re-
4 lating to those hearings under Federal immigration laws,
5 information that may deter such aliens from filing frivo-
6 lous legal claims, and any other information that the At-
7 torney General considers appropriate, such as a contact
8 list of potential legal resources and providers. Access to
9 legal orientation programs shall not be limited by the
10 alien's current immigration status, prior immigration his-
11 tory, or potential for immigration relief.

12 (c) PILOT PROJECT FOR NONDETAINED ALIENS IN
13 REMOVAL PROCEEDINGS.—The Attorney General shall
14 develop and administer a 2-year pilot program at not
15 fewer than 2 immigration courts to provide nondetained
16 aliens with pending asylum claims access to legal informa-
17 tion. At the conclusion of the pilot program, the Attorney
18 General shall submit a report to the Committee on the
19 Judiciary of the Senate and the Committee on the Judici-
20 ary of the House of Representatives that describes the ex-
21 tent to which nondetained aliens are provided with access
22 to counsel.

23 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
24 authorized to be appropriated to the Executive Office of

1 Immigration Review of the Department of Justice such
 2 sums as may be necessary to carry out this section.

3 **SEC. 4. CASE MANAGEMENT PILOT PROGRAM TO INCREASE**
 4 **COURT APPEARANCE RATES.**

5 (a) CONTRACT AUTHORITY.—The Secretary of
 6 Homeland Security shall establish a pilot program to in-
 7 crease the court appearance rates of aliens described in
 8 paragraphs (2) and (3) of section 292(c) of the Immigra-
 9 tion and Nationality Act, as added by section 2(c)(1), by
 10 contracting with nongovernmental, community-based or-
 11 ganizations to provide appropriate case management serv-
 12 ices to such aliens.

13 (b) SCOPE OF SERVICES.—Case management services
 14 provided under subsection (a) shall include assisting aliens
 15 with—

- 16 (1) accessing legal counsel;
- 17 (2) complying with court-imposed deadlines and
 18 other legal obligations;
- 19 (3) procuring appropriate housing;
- 20 (4) enrolling their minor children in school; and
- 21 (5) acquiring health services, including, if need-
 22 ed, mental health services.

23 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
 24 authorized to be appropriated to the Department of

1 Homeland Security such sums as may be necessary to
2 carry out this section.

3 **SEC. 5. REPORT ON ACCESS TO COUNSEL.**

4 (a) REPORT.—Not later than December 31 of each
5 year, the Secretary of Homeland Security, in consultation
6 with the Attorney General, shall prepare and submit a re-
7 port to the Committee on the Judiciary of the Senate and
8 the Committee on the Judiciary of the House of Rep-
9 resentatives regarding the extent to which aliens described
10 in section 292(c) of the Immigration and Nationality Act,
11 as added by section 2(c)(1), have been provided access to
12 counsel.

13 (b) CONTENTS.—Each report submitted under para-
14 graph (a) shall include, for the immediately preceding 1-
15 year period—

16 (1) the number and percentage of aliens de-
17 scribed in paragraphs (1), (2), and (3), respectively,
18 of section 292(c) of the Immigration and Nationality
19 Act, as added by section 2(c)(1), who were rep-
20 resented by counsel, including information speci-
21 fying—

22 (A) the stage of the legal process at which
23 the alien was represented; and

24 (B) whether the alien was in government
25 custody; and

- 1 (2) the number and percentage of aliens who
- 2 received legal orientation presentations.

