

116TH CONGRESS
1ST SESSION

S. 2389

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

IN THE SENATE OF THE UNITED STATES

JULY 31, 2019

Mr. SCHUMER (for Mrs. GILLIBRAND (for herself, Mr. BLUMENTHAL, and Mr. BOOKER)) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide access to counsel for 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 TITLES.**

4 This Act may be cited as the “Funding Attorneys for
5 Indigent Removal Proceedings Act” or the “FAIR Pro-
6 ceedings Act”.

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 the
 21 alien;

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

1 alien waives the right to receive such documents
2 by executing a knowing and voluntary written
3 waiver in a language that he or she under-
4 stands fluently), including—

5 “(i) all documents (other than docu-
6 ments protected from disclosure by privi-
7 lege and documents containing national se-
8 curity information referred to in subpara-
9 graph (D), law enforcement sensitive infor-
10 mation, or information prohibited from dis-
11 closure pursuant to any other provision of
12 law) contained in the file maintained by
13 the Government that includes information
14 with respect to all transactions involving
15 the alien during the immigration process
16 (commonly referred to as an ‘A-file’); and

17 “(ii) all documents pertaining to the
18 alien that the Department of Homeland
19 Security has obtained or received from
20 other government agencies;” and

21 (D) in subparagraph (D), as redesignated,
22 by striking “, and” and inserting “; and”; and
23 (2) by adding at the end the following:

24 “(8) FAILURE TO PROVIDE ALIEN REQUIRED
25 DOCUMENTS.—In the absence of a waiver under

1 paragraph (4)(C), a removal proceeding may not
2 proceed until the alien—

3 “(A) has received the documents required
4 under such paragraph; and

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

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

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

14 “(a) IN GENERAL.—In any proceeding conducted
15 under section 235, 236, 238, 240, or 241, or under any
16 other section of this Act, including”;

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

18 (A) by striking “(at no expense to the Gov-
19 ernment)”;

20 (B) by striking “he shall” and inserting
21 “the person shall”; and

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

23 “(b) ACCESS TO COUNSEL.—The Attorney General
24 may appoint or provide counsel to aliens in any proceeding
25 conducted under section 235, 236, 238, 240, or 241, or

1 under any other section of this Act. The Secretary of
 2 Homeland Security shall ensure that aliens have access
 3 to counsel inside all immigration detention and border fa-
 4 cilities.”.

5 (c) APPOINTMENT OF COUNSEL FOR CHILDREN AND
 6 VULNERABLE ALIENS.—

7 (1) IN GENERAL.—Section 292 of the Immigra-
 8 tion and Nationality Act, as amended by subsection
 9 (b), is further amended by adding at the end the fol-
 10 lowing:

11 “(c) CHILDREN AND VULNERABLE ALIENS.—Not-
 12 withstanding subsection (b), the Attorney General shall
 13 appoint or provide counsel, at the expense of the Govern-
 14 ment, if necessary, at the beginning of immigration pro-
 15 ceedings, or as expeditiously as possible, to represent in
 16 such proceedings any alien who has been determined by
 17 the Secretary of Homeland Security or the Attorney Gen-
 18 eral to be—

19 “(1) a child;

20 “(2) a person with a disability;

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

22 “(4) an individual whose income is at or below
 23 200 percent of the poverty line (as defined by the
 24 Office of Management and Budget and revised an-
 25 nually in accordance with section 673(2) of the

1 Community Services Block Grant Act (42 U.S.C.
2 9902(2))) applicable to a family of the size involved;
3 or

4 “(5) an individual whose circumstances require
5 the appointment of counsel to help ensure the fair
6 resolution and efficient adjudication of the pro-
7 ceedings.

8 “(d) EXTENSION TO CONSOLIDATED CASES.—If the
9 Attorney General has consolidated the case of an alien for
10 whom counsel was appointed under subsection (c) with the
11 case of another alien who does not have counsel, the coun-
12 sel appointed under subsection (c) shall be appointed to
13 represent such other alien.

14 “(e) AUTHORIZATION OF APPROPRIATIONS.—In ad-
15 dition to amounts available in the Immigration Counsel
16 Account under section 295, there is authorized to be ap-
17 propriated to the Executive Office of Immigration Review
18 of the Department of Justice, such sums as may be nec-
19 essary to carry out this section.”.

20 (2) RULEMAKING.—The Attorney General shall
21 promulgate regulations to implement section 292(c)
22 of the Immigration and Nationality Act, as added by
23 paragraph (1), in accordance with the requirements
24 set forth in section 3006A of title 18, United States
25 Code.

1 **SEC. 3. ACCESS BY COUNSEL AND LEGAL ORIENTATION AT**
2 **DETENTION FACILITIES.**

3 (a) ACCESS TO COUNSEL.—The Secretary of Home-
4 land Security shall facilitate access to counsel for all aliens
5 detained in facilities under the supervision of U.S. Immi-
6 gration and Customs Enforcement or of U.S. Customs and
7 Border Protection, including providing information to
8 such aliens regarding legal services programs at detention
9 facilities.

10 (b) ACCESS TO LEGAL ORIENTATION PROGRAMS.—

11 (1) PROCEDURES.—The Secretary of Homeland
12 Security, in consultation with the Attorney General,
13 shall establish procedures—

14 (A) to ensure that legal orientation pro-
15 grams are available for all detained aliens, in-
16 cluding aliens held in U.S. Customs and Border
17 Protection facilities; and

18 (B) to inform such aliens of—

19 (i) the basic procedures of immigra-
20 tion hearings;

21 (ii) their rights relating to such hear-
22 ings under Federal immigration laws;

23 (iii) information that may deter such
24 aliens from filing frivolous legal claims;
25 and

1 (iv) any other information that the
2 Attorney General considers appropriate,
3 such as a contact list of potential legal re-
4 sources and providers.

5 (2) UNIVERSAL AVAILABILITY.—Access to legal
6 orientation programs under paragraph (1) may not
7 be limited by the alien’s current immigration status,
8 prior immigration history, or potential for immigra-
9 tion relief.

10 **SEC. 4. REPORT ON ACCESS TO COUNSEL.**

11 (a) REPORT.—Not later than December 31 of each
12 year, the Secretary of Homeland Security, in consultation
13 with the Attorney General, shall submit a report to the
14 Committee on the Judiciary of the Senate and the Com-
15 mittee on the Judiciary of the House of Representatives
16 regarding the extent to which aliens described in section
17 292(c) of the Immigration and Nationality Act, as added
18 by section 2(c)(1), have been provided access to counsel.

19 (b) CONTENTS.—Each report submitted under sub-
20 section (a) shall include, for the immediately preceding 1-
21 year period—

22 (1) the number and percentage of aliens de-
23 scribed in paragraphs (1), (2), (3), and (4), respec-
24 tively, of section 292(c) of the Immigration and Na-

1 tionality Act who were represented by counsel, in-
 2 cluding information specifying—

3 (A) the stage of the legal process at which
 4 the alien was represented; and

5 (B) whether the alien was in government
 6 custody; and

7 (2) the number and percentage of aliens who
 8 received legal orientation presentations.

9 **SEC. 5. MOTIONS TO REOPEN.**

10 Section 240(c)(7)(C) of the Immigration and Nation-
 11 ality Act (8 U.S.C. 1229a(c)(7)(C)) is amended by adding
 12 at the end the following:

13 “(v) SPECIAL RULE FOR ALIENS EN-
 14 TITLED TO APPOINTMENT OF COUNSEL.—
 15 If the Attorney General fails to appoint
 16 counsel for an alien in violation of section
 17 292(c)—

18 “(I) no limitation under this
 19 paragraph pertaining to the filing of
 20 any motion under this paragraph by
 21 such alien shall apply; and

22 “(II) the filing of such a motion
 23 shall stay the removal of the alien.”.

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