

114TH CONGRESS
2D SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

Mr. REID (for himself, Mr. DURBIN, Mrs. MURRAY, Mr. LEAHY, and Mr. MENENDEZ) introduced the following bill; which was read twice and referred to the Committee on _____

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”.

6 **SEC. 2. IMPROVING IMMIGRATION COURT EFFICIENCY AND**
7 **REDUCING COSTS BY INCREASING ACCESS**
8 **TO LEGAL INFORMATION.**

9 (a) APPOINTMENT OF COUNSEL IN CERTAIN CASES;
10 RIGHT TO REVIEW CERTAIN DOCUMENTS IN REMOVAL

1 PROCEEDINGS.—Section 240(b) of the Immigration and
2 Nationality Act (8 U.S.C. 1229a(b)) is amended—

3 (1) in paragraph (4)—

4 (A) in subparagraph (A)—

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

7 (ii) by striking the comma at the end
8 and inserting a semicolon;

9 (B) by redesignating subparagraphs (B)
10 and (C) as subparagraphs (D) and (E), respec-
11 tively;

12 (C) by inserting after subparagraph (A)
13 the following:

14 “(B) the Attorney General may appoint or
15 provide counsel, at Government expense, to
16 aliens in immigration proceedings;

17 “(C) the alien shall, at the beginning of
18 the proceedings or as expeditiously as possible,
19 automatically receive a complete copy of all rel-
20 evant documents in the possession of the De-
21 partment of Homeland Security, including all
22 documents (other than documents protected
23 from disclosure by privilege, including national
24 security information referred to in subpara-
25 graph (D), law enforcement sensitive informa-

tion, and information prohibited from disclosure pursuant to any other provision of law) contained in the file maintained by the Government that includes information with respect to all transactions involving the alien during the immigration process (commonly referred to as an ‘A-file’), and all documents pertaining to the alien that the Department of Homeland Security has obtained or received from other government agencies, unless the alien waives the right to receive such documents by executing a knowing and voluntary written waiver in a language that he or she understands fluently;” and

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

17 “(8) FAILURE TO PROVIDE ALIEN REQUIRED
18 DOCUMENTS.—In the absence of a waiver under
19 paragraph (4)(C), a removal proceeding may not
20 proceed until the alien—

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

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

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

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

8 “(a) IN GENERAL.—In any”;

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

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

12 (B) by striking “he shall” and inserting
13 “the person shall”; and

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

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

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

23 (1) IN GENERAL.—Section 292 of the Immigra-
24 tion and Nationality Act (8 U.S.C. 1362), as amend-

1 ed by subsection (b), is further amended by adding
2 at the end the following:

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

11 “(1) an unaccompanied alien child (as defined
12 in section 462(g) of the Homeland Security Act on
13 2002 (6 U.S.C. 279(g)));

14 “(2) a particularly vulnerable individual, such
15 as—

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

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

18 or

19 “(3) an individual whose circumstances are
20 such that the appointment of counsel is necessary to
21 help ensure fair resolution and efficient adjudication
22 of the proceedings.

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

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

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

9 **SEC. 3. ACCESS BY COUNSEL AND LEGAL ORIENTATION AT**
10 **DETENTION FACILITIES.**

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

18 (b) ACCESS TO LEGAL ORIENTATION PROGRAMS.—
19 The Secretary of Homeland Security, in consultation with
20 the Attorney General, shall establish procedures to ensure
21 that legal orientation programs are available for all de-
22 tained aliens, including aliens held in U.S. Customs and
23 Border Protection facilities, to inform such aliens of the
24 basic procedures of immigration hearings, their rights re-
25 lating to those hearings under Federal immigration laws,

1 information that may deter such aliens from filing frivo-
2 lous legal claims, and any other information that the At-
3 torney General considers appropriate, such as a contact
4 list of potential legal resources and providers. Access to
5 legal orientation programs shall not be limited by the
6 alien's current immigration status, prior immigration his-
7 tory, or potential for immigration relief.

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

19 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
20 authorized to be appropriated to the Executive Office of
21 Immigration Review of the Department of Justice such
22 sums as may be necessary to carry out this section.

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

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

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

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

21 (c) **AUTHORIZATION OF APPROPRIATIONS.**—There is
22 authorized to be appropriated to the Department of
23 Homeland Security such sums as may be necessary to
24 carry out this section.

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

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

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

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

20 (A) the stage of the legal process at which
21 the alien was represented; and

22 (B) whether the alien was in government
23 custody; and

24 (2) the number and percentage of aliens who
25 received legal orientation presentations.