

114TH CONGRESS
2D SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

Ms. LOFGREN (for herself, Mr. GUTIÉRREZ, Ms. ROYBAL-ALLARD, and [see ATTACHED LIST of cosponsors]) introduced the following bill; which was referred to the Committee on _____

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 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-

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

14 (D) in subparagraph (D), as redesignated,
15 by striking “, and” and inserting “; and”; and
16 (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 proceeding conducted
9 under section 235, 236, 238, 240, 241, or any other sec-
10 tion of this Act,”;

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

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

14 (B) by striking “he shall” and inserting
15 “the person shall”;

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

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

23 (c) APPOINTMENT OF COUNSEL FOR CHILDREN AND
24 VULNERABLE ALIENS.—

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

5 “(c) CHILDREN AND VULNERABLE ALIENS.—Not-
6 withstanding subsection (b), the Attorney General shall
7 appoint counsel, at the expense of the Government if nec-
8 essary, at the beginning of the proceedings or as expedi-
9 tiously as possible, to represent in such proceedings any
10 alien who has been determined by the Secretary of Home-
11 land Security or the Attorney General to be—

12 “(1) a child (as defined in section 101(b)(1) of
13 this Act);

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) EXTENSION TO CONSOLIDATED CASES.—If the
24 Attorney General has consolidated the case of any alien
25 for whom counsel was appointed under subsection (c) with

1 that of any other alien, and that other alien does not have
2 counsel, then the counsel appointed under subsection (c)
3 shall be appointed to represent such other alien.

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

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

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

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

23 (b) ACCESS TO LEGAL ORIENTATION PROGRAMS.—
24 The Secretary of Homeland Security, in consultation with
25 the Attorney General, shall establish procedures to ensure

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

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

24 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
25 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 section 292(c) of the Immigration and Nationality Act, as
9 added by section 2(c)(1), by contracting with nongovern-
10 mental, community-based organizations to provide appro-
11 priate case management services to such aliens. This pilot
12 program shall not be used to monitor individuals des-
13 igned as unaccompanied alien children under Section
14 462 of the Homeland Security Act.

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

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

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
2 authorized to be appropriated to the Department of
3 Homeland Security such sums as may be necessary to
4 carry out this section.

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

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

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

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

24 (A) the stage of the legal process at which
25 the alien was represented; and

1 (B) whether the alien was in government
2 custody; and

3 (2) the number and percentage of aliens who
4 received legal orientation presentations.

5 **SEC. 6. MOTIONS TO REOPEN.**

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

9 “(v) SPECIAL RULE FOR CHILDREN
10 AND OTHER VULNERABLE ALIENS.—If the
11 Attorney General fails to appoint counsel
12 for an alien in violation of section 292(c)—

13 “(I) no limitation under this
14 paragraph pertaining to the filing of
15 any motion under this paragraph by
16 such alien shall apply; and

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