

114TH CONGRESS
2D SESSION

H. R. 4646

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 2016

Ms. LOFGREN (for herself, Mr. GUTIÉRREZ, Ms. ROYBAL-ALLARD, Mr. HOYER, Mr. CONYERS, Mr. MCGOVERN, Mr. QUIGLEY, Ms. SCHAKOWSKY, Mr. JOHNSON of Georgia, Mr. HONDA, Mr. GRIJALVA, Ms. JACKSON LEE, Mr. ELLISON, Mr. CÁRDENAS, Mr. O’ROURKE, Ms. JUDY CHU of California, Ms. LINDA T. SÁNCHEZ of California, Mr. BECERRA, Mr. VARGAS, Mrs. NAPOLITANO, Ms. DELBENE, Ms. ADAMS, Mr. POLIS, Mr. CROWLEY, Mrs. TORRES, Ms. KAPTUR, Ms. NORTON, Ms. HAHN, Mr. SERRANO, Ms. VELÁZQUEZ, Mr. KENNEDY, Mr. LARSON of Connecticut, Mr. SCOTT of Virginia, Ms. BONAMICI, Mr. GALLEGO, Ms. MOORE, Mrs. DINGELL, Mr. SIRES, Mr. DANNY K. DAVIS of Illinois, Mr. DEUTCH, Ms. DEGETTE, Mr. DOGGETT, Mr. JEFFRIES, Mr. KIND, Mr. COHEN, Mr. MCDERMOTT, Mr. PIERLUISI, Mr. CASTRO of Texas, Mr. NADLER, Ms. MICHELLE LUJAN GRISHAM of New Mexico, Mrs. CAPPS, and Ms. WASSERMAN SCHULTZ) introduced the following bill; which was 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Fair Day in Court
3 for Kids Act of 2016”.

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

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

11 (1) in paragraph (4)—

12 (A) in subparagraph (A)—

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

15 (ii) by striking the comma at the end
16 and inserting a semicolon;

17 (B) by redesignating subparagraphs (B)
18 and (C) as subparagraphs (D) and (E), respec-
19 tively;

20 (C) by inserting after subparagraph (A)
21 the following:

22 “(B) the Attorney General may appoint or
23 provide counsel, at Government expense, to
24 aliens in immigration proceedings;

25 “(C) the alien shall, at the beginning of
26 the proceedings or as expeditiously as possible,

1 automatically receive a complete copy of all rel-
2 evant documents in the possession of the De-
3 partment of Homeland Security, including all
4 documents (other than documents protected
5 from disclosure by privilege, including national
6 security information referred to in subpara-
7 graph (D), law enforcement sensitive informa-
8 tion, and information prohibited from disclosure
9 pursuant to any other provision of law) con-
10 tained in the file maintained by the Government
11 that includes information with respect to all
12 transactions involving the alien during the im-
13 migration process (commonly referred to as an
14 ‘A-file’), and all documents pertaining to the
15 alien that the Department of Homeland Secu-
16 rity has obtained or received from other govern-
17 ment agencies, unless the alien waives the right
18 to receive such documents by executing a know-
19 ing and voluntary written waiver in a language
20 that he or she understands fluently;” 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 as re-
4 quired 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, 241, or any other sec-
16 tion of this Act,”;

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

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

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

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

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

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

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

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

23 or

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

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

3 “(d) **EXTENSION TO CONSOLIDATED CASES.**—If the
4 Attorney General has consolidated the case of any alien
5 for whom counsel was appointed under subsection (c) with
6 that of any other alien, and that other alien does not have
7 counsel, then the counsel appointed under subsection (c)
8 shall be appointed to represent such other alien.

9 “(e) **AUTHORIZATION OF APPROPRIATIONS.**—There
10 is authorized to be appropriated to the Executive Office
11 of Immigration Review of the Department of Justice such
12 sums as may be necessary to carry out this section.”.

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

19 **SEC. 3. ACCESS BY COUNSEL AND LEGAL ORIENTATION AT**
20 **DETENTION FACILITIES.**

21 (a) **ACCESS TO COUNSEL.**—The Secretary of Home-
22 land Security shall facilitate access to counsel for all aliens
23 detained in facilities under the supervision of U.S. Immi-
24 gration and Customs Enforcement or of U.S. Customs and
25 Border Protection, including providing information to

1 aliens in detention about legal services programs at deten-
2 tion facilities.

3 (b) ACCESS TO LEGAL ORIENTATION PROGRAMS.—

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

18 (c) PILOT PROJECT FOR NONDETAINED ALIENS IN
19 REMOVAL PROCEEDINGS.—The Attorney General shall
20 develop and administer a 2-year pilot program at not
21 fewer than 2 immigration courts to provide nondetained
22 aliens with pending asylum claims access to legal informa-
23 tion. At the conclusion of the pilot program, the Attorney
24 General shall submit a report to the Committee on the
25 Judiciary of the Senate and the Committee on the Judici-

1 ary of the House of Representatives that describes the ex-
2 tent to which nondetained aliens are provided with access
3 to counsel.

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

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

10 (a) CONTRACT AUTHORITY.—The Secretary of
11 Homeland Security shall establish a pilot program to in-
12 crease the court appearance rates of aliens described in
13 section 292(c) of the Immigration and Nationality Act, as
14 added by section 2(c)(1), by contracting with nongovern-
15 mental, community-based organizations to provide appro-
16 priate case management services to such aliens. This pilot
17 program shall not be used to monitor individuals des-
18 ignated as unaccompanied alien children under section
19 462 of the Homeland Security Act.

20 (b) SCOPE OF SERVICES.—Case management services
21 provided under subsection (a) shall include assisting aliens
22 with—

23 (1) accessing legal counsel;

24 (2) complying with court-imposed deadlines and
25 other legal obligations;

1 (3) procuring appropriate housing;

2 (4) enrolling their minor children in school; and

3 (5) acquiring health services, including, if need-
4 ed, mental health services.

5 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
6 authorized to be appropriated to the Department of
7 Homeland Security such sums as may be necessary to
8 carry out this section.

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

10 (a) REPORT.—Not later than December 31 of each
11 year, the Secretary of Homeland Security, in consultation
12 with the Attorney General, shall prepare and submit a re-
13 port to the Committee on the Judiciary of the Senate and
14 the Committee on the Judiciary of the House of Rep-
15 resentatives regarding the extent to which aliens described
16 in section 292(c) of the Immigration and Nationality Act,
17 as added by section 2(c)(1), have been provided access to
18 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), and (3), respectively,
24 of section 292(c) of the Immigration and Nationality
25 Act, as added by section 2(c)(1), who were rep-

1 resented by counsel, including information speci-
2 fying—

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. 6. 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 CHILDREN
14 AND OTHER VULNERABLE ALIENS.—If the
15 Attorney General fails to appoint counsel
16 for an alien in violation of section 292(c)—

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

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

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