

115TH CONGRESS
2D SESSION

S. 2468

To provide access to counsel for unaccompanied alien children.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 28, 2018

Ms. HIRONO (for herself, Mr. BLUMENTHAL, Mr. BOOKER, Mr. COONS, Ms. CORTEZ MASTO, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Mr. MARKEY, Mr. MERKLEY, Mr. MURPHY, Mr. WYDEN, Mr. MENENDEZ, and Ms. HARRIS) 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 alien children.

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 2018”.

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

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

9 (1) in paragraph (4)—

10 (A) in subparagraph (A)—

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

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

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

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

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

23 “(C) the alien, or the alien’s counsel, not
 24 later than 7 days after receiving a notice to ap-
 25 pear under section 239(a), shall receive a com-
 26 plete copy of the alien’s immigration file (com-

monly known as an ‘A-file’) in the possession of
the Department of Homeland Security (other
than documents protected from disclosure under
section 552(b) of title 5, United States Code);”;
and

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

“(8) FAILURE TO PROVIDE ALIEN REQUIRED
DOCUMENTS.—A removal proceeding may not pro-
ceed until the alien, or the alien’s counsel, if the
alien is represented—

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

“(B) has been provided at least 10 days to
review and assess such documents.”.

(b) CLARIFICATION REGARDING THE AUTHORITY OF
THE ATTORNEY GENERAL TO APPOINT COUNSEL TO
ALIENS IN IMMIGRATION PROCEEDINGS.—

(1) IN GENERAL.—Section 292 of the Immigra-
tion and Nationality Act (8 U.S.C. 1362) is amend-
ed to read as follows:

“SEC. 292. RIGHT TO COUNSEL.

“(a) IN GENERAL.—Except as provided in sub-
sections (b) and (c), in any removal proceeding and in any

1 appeal proceeding before the Attorney General from any
2 such removal proceeding, the subject of the proceeding
3 shall have the privilege of being represented by such coun-
4 sel as may be authorized to practice in such proceeding
5 as he or she may choose. This subsection shall not apply
6 to screening proceedings described in section
7 235(b)(1)(A).

8 “(b) ACCESS TO COUNSEL FOR UNACCOMPANIED
9 ALIEN CHILDREN.—

10 “(1) IN GENERAL.—In any removal proceeding
11 and in any appeal proceeding before the Attorney
12 General from any such removal proceeding, an unac-
13 companied alien child (as defined in section 462(g)
14 of the Homeland Security Act of 2002 (6 U.S.C.
15 279(g))) shall be represented by Government-ap-
16 pointed counsel, at Government expense.

17 “(2) LENGTH OF REPRESENTATION.—Once a
18 child is designated as an unaccompanied alien child
19 under paragraph (1), the child shall be represented
20 by counsel at every stage of the proceedings from
21 the child’s initial appearance through the termi-
22 nation of immigration proceedings, and any ancillary
23 matters appropriate to such proceedings even if the
24 child attains 18 years of age or is reunified with a

1 parent or legal guardian while the proceedings are
2 pending.

3 “(3) NOTICE.—Not later than 72 hours after
4 an unaccompanied alien child is taken into Federal
5 custody, the alien shall be notified that he or she will
6 be provided with legal counsel in accordance with
7 this subsection.

8 “(4) WITHIN DETENTION FACILITIES.—The
9 Secretary of Homeland Security shall ensure that
10 unaccompanied alien children have access to counsel
11 inside all detention, holding, and border facilities.

12 “(c) PRO BONO REPRESENTATION.—

13 “(1) IN GENERAL.—To the maximum extent
14 practicable, the Attorney General should make every
15 effort to utilize the services of competent counsel
16 who agree to provide representation to such children
17 under subsection (b) without charge.

18 “(2) DEVELOPMENT OF NECESSARY INFRA-
19 STRUCTURES AND SYSTEMS.—The Attorney General
20 shall develop the necessary mechanisms to identify
21 counsel available to provide pro bono legal assistance
22 and representation to children under subsection (b)
23 and to recruit such counsel.

24 “(d) CONTRACTS; GRANTS.—The Attorney General
25 may enter into contracts with, or award grants to, non-

1 profit agencies with relevant expertise in the delivery of
 2 immigration-related legal services to children to carry out
 3 the responsibilities under this section, including providing
 4 legal orientation, screening cases for referral, recruiting,
 5 training, and overseeing pro bono attorneys. Nonprofit
 6 agencies may enter into subcontracts with, or award
 7 grants to, private voluntary agencies with relevant exper-
 8 tise in the delivery of immigration related legal services
 9 to children in order to carry out this section.

10 “(e) MODEL GUIDELINES ON LEGAL REPRESENTA-
 11 TION OF CHILDREN.—

12 “(1) DEVELOPMENT OF GUIDELINES.—The Ex-
 13 ecutive Office for Immigration Review, in consulta-
 14 tion with voluntary agencies and national experts,
 15 shall develop model guidelines for the legal represen-
 16 tation of alien children in immigration proceedings,
 17 which shall be based on the children’s asylum guide-
 18 lines, the American Bar Association Model Rules of
 19 Professional Conduct, and other relevant domestic or
 20 international sources.

21 “(2) PURPOSE OF GUIDELINES.—The guide-
 22 lines developed under paragraph (1) shall be de-
 23 signed to help protect each child from any individual
 24 suspected of involvement in any criminal, harmful,
 25 or exploitative activity associated with the smuggling

1 or trafficking of children, while ensuring the fairness
2 of the removal proceeding in which the child is in-
3 volved.

4 “(f) DUTIES OF COUNSEL.—Counsel provided under
5 this section shall—

6 “(1) represent the unaccompanied alien child in
7 all proceedings and matters relating to the immigra-
8 tion status of the child or other actions involving the
9 Department of Homeland Security;

10 “(2) appear in person for all individual merits
11 hearings before the Executive Office for Immigration
12 Review and interviews involving the Department of
13 Homeland Security;

14 “(3) owe the same duties of undivided loyalty,
15 confidentiality, and competent representation to the
16 child as is due to an adult client; and

17 “(4) carry out other such duties as may be pro-
18 scribed by the Attorney General or the Executive Of-
19 fice for Immigration Review.

20 “(g) SAVINGS PROVISION.—Nothing in this section
21 may be construed to supersede—

22 “(1) any duties, responsibilities, disciplinary, or
23 ethical responsibilities an attorney may have to his
24 or her client under State law;

1 “(2) the admission requirements under State
2 law; or

3 “(3) any other State law pertaining to the ad-
4 mission to the practice of law in a particular juris-
5 diction.”.

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

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

14 The Secretary of Homeland Security shall provide ac-
15 cess to counsel for all aliens detained in a facility under
16 the supervision of U.S. Immigration and Customs En-
17 forcement, U.S. Customs and Border Protection, or the
18 Department of Health and Human Services, or in any pri-
19 vate facility that contracts with the Federal Government
20 to house, detain, or hold aliens.

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

22 (a) REPORT.—Not later than December 31 of each
23 year, the Secretary of Homeland Security, in consultation
24 with the Attorney General, shall prepare and submit a re-
25 port to the Committee on the Judiciary of the Senate and

1 the Committee on the Judiciary of the House of Rep-
 2 resentatives regarding the extent to which aliens described
 3 in section 292(b) of the Immigration and Nationality Act,
 4 as added by section 2(b), have been provided access to
 5 counsel.

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

9 (1) the number and percentage of aliens de-
 10 scribed in section 292(b) of the Immigration and
 11 Nationality Act, as added by section 2(b), who were
 12 represented by counsel, including information speci-
 13 fying—

14 (A) the stage of the legal process at which
 15 each such alien was represented;

16 (B) whether the alien was in government
 17 custody; and

18 (C) the nationality and ages of such aliens;
 19 and

20 (2) the number and percentage of aliens who
 21 received legal orientation presentations, including
 22 the nationality and ages of such aliens.

23 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

24 (a) IN GENERAL.—There is authorized to be appro-
 25 priated to the Executive Office of Immigration Review of

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

3 (b) BUDGETARY EFFECTS.—The budgetary effects of
4 this Act, for the purpose of complying with the Statutory
5 Pay-As-You-Go-Act of 2010, shall be determined by ref-
6 erence to the latest statement titled “Budgetary Effects
7 of PAYGO Legislation” for this Act, submitted for print-
8 ing in the Congressional Record by the Chairman of the
9 Senate Budget Committee, provided that such statement
10 has been submitted prior to the vote on passage.

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