

116TH CONGRESS
1ST SESSION

S. _____

To provide access to counsel for unaccompanied alien children.

IN THE SENATE OF THE UNITED STATES

Ms. HIRONO introduced the following bill; which was read twice and referred
to the Committee on _____

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 2019”.

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

9 (a) APPOINTMENT OF COUNSEL IN REMOVAL PRO-
10 CEEDINGS; RIGHT TO REVIEW CERTAIN DOCUMENTS IN
11 REMOVAL PROCEEDINGS.—Section 240(b) of the Immi-

1 gration and Nationality Act (8 U.S.C. 1229a(b)) is
2 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, or the alien’s counsel, not
18 later than 7 days after receiving a notice to ap-
19 pear under section 239(a), shall receive a com-
20 plete copy of the alien’s immigration file (com-
21 monly known as an ‘A-file’) in the possession of
22 the Department of Homeland Security (other
23 than documents protected from disclosure under
24 section 552(b) of title 5, United States Code);”;
25 and

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

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

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

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

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

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

18 **“SEC. 292. RIGHT TO COUNSEL.**

19 “(a) IN GENERAL.—Except as provided in sub-
20 sections (b) and (c), in any removal proceeding and in any
21 appeal proceeding before the Attorney General from any
22 such removal proceeding, the subject of the proceeding
23 shall have the privilege of being represented by such coun-
24 sel as may be authorized to practice in such proceeding
25 as he or she may choose. This subsection shall not apply

1 to screening proceedings described in section
2 235(b)(1)(A).

3 “(b) ACCESS TO COUNSEL FOR UNACCOMPANIED
4 ALIEN CHILDREN.—

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

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

22 “(3) NOTICE.—Not later than 72 hours after
23 an unaccompanied alien child is taken into Federal
24 custody, the alien shall be notified that he or she will

1 be provided with legal counsel in accordance with
2 this subsection.

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

7 “(c) PRO BONO REPRESENTATION.—

8 “(1) IN GENERAL.—To the maximum extent
9 practicable, the Attorney General should make every
10 effort to utilize the services of competent counsel
11 who agree to provide representation to such children
12 under subsection (b) without charge.

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

19 “(d) CONTRACTS; GRANTS.—The Attorney General
20 may enter into contracts with, or award grants to, non-
21 profit agencies with relevant expertise in the delivery of
22 immigration-related legal services to children to carry out
23 the responsibilities under this section, including providing
24 legal orientation, screening cases for referral, recruiting,
25 training, and overseeing pro bono attorneys. Nonprofit

1 agencies may enter into subcontracts with, or award
2 grants to, private voluntary agencies with relevant exper-
3 tise in the delivery of immigration related legal services
4 to children in order to carry out this section.

5 “(e) MODEL GUIDELINES ON LEGAL REPRESENTA-
6 TION OF CHILDREN.—

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

16 “(2) PURPOSE OF GUIDELINES.—The guide-
17 lines developed under paragraph (1) shall be de-
18 signed to help protect each child from any individual
19 suspected of involvement in any criminal, harmful,
20 or exploitative activity associated with the smuggling
21 or trafficking of children, while ensuring the fairness
22 of the removal proceeding in which the child is in-
23 volved.

24 “(f) DUTIES OF COUNSEL.—Counsel provided under
25 this section shall—

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

5 “(2) appear in person for all individual merits
6 hearings before the Executive Office for Immigration
7 Review and interviews involving the Department of
8 Homeland Security;

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

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

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

17 “(1) any duties, responsibilities, disciplinary, or
18 ethical responsibilities an attorney may have to his
19 or her client under State law;

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

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

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

7 **SEC. 3. ACCESS BY COUNSEL AND LEGAL ORIENTATION AT**
8 **DETENTION FACILITIES.**

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

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

17 (a) REPORT.—Not later than December 31 of each
18 year, the Secretary of Homeland Security, in consultation
19 with the Attorney General, shall prepare and submit a re-
20 port to the Committee on the Judiciary of the Senate and
21 the Committee on the Judiciary of the House of Rep-
22 resentatives regarding the extent to which aliens described
23 in section 292(b) of the Immigration and Nationality Act,
24 as added by section 2(b), have been provided access to
25 counsel.

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

4 (1) the number and percentage of aliens de-
5 scribed in section 292(b) of the Immigration and
6 Nationality Act, as added by section 2(b), who were
7 represented by counsel, including information speci-
8 fying—

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

11 (B) whether the alien was in government
12 custody; and

13 (C) the nationality and ages of such aliens;
14 and

15 (2) the number and percentage of aliens who
16 received legal orientation presentations, including
17 the nationality and ages of such aliens.

18 **SEC. 5. AUTHORIZATION OF APPROPRIATIONS.**

19 (a) IN GENERAL.—There is authorized to be appro-
20 priated to the Executive Office of Immigration Review of
21 the Department of Justice such sums as may be necessary
22 to carry out this Act.

23 (b) BUDGETARY EFFECTS.—The budgetary effects of
24 this Act, for the purpose of complying with the Statutory
25 Pay-As-You-Go-Act of 2010, shall be determined by ref-

1 erence to the latest statement titled “Budgetary Effects
2 of PAYGO Legislation” for this Act, submitted for print-
3 ing in the Congressional Record by the Chairman of the
4 Senate Budget Committee, provided that such statement
5 has been submitted prior to the vote on passage.