

115TH CONGRESS  
1ST SESSION

# H. R. 2043

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

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 2017

Ms. LOFGREN (for herself, Mr. GUTIÉRREZ, Ms. ROYBAL-ALLARD, Mr. CONYERS, Ms. JUDY CHU of California, Mr. MCGOVERN, Ms. MICHELLE LUJAN GRISHAM of New Mexico, Mr. CROWLEY, Mr. VEASEY, Mr. GRIJALVA, Mrs. NAPOLITANO, Mr. QUIGLEY, Ms. BONAMICI, Mr. SIRES, Mr. YARMUTH, Ms. DELBENE, Ms. SÁNCHEZ, Mr. ELLISON, Mr. SCOTT of Virginia, Mr. HUFFMAN, Ms. MOORE, Mrs. TORRES, and Mr. LEWIS of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

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## 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 2017”.

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

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

8 (1) in paragraph (4)—

9 (A) in subparagraph (A)—

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

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

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

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

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

22 “(C) the alien shall, at the beginning of  
23 the proceedings or as expeditiously as possible,  
24 automatically receive a complete copy of all rel-  
25 evant documents in the possession of the De-  
26 partment of Homeland Security, including all

documents (other than documents protected from disclosure by privilege, including national security information referred to in subparagraph (D), law enforcement sensitive information, 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:

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

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

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

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

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

12           “(a) IN GENERAL.—In any proceeding conducted  
13 under section 235, 236, 238, 240, 241, or any other sec-  
14 tion of this Act,”;

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

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

18           (B) by striking “he shall” and inserting  
19           “the person shall”; and

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

21           “(b) ACCESS TO COUNSEL.—The Attorney General  
22 may appoint or provide counsel to aliens in any proceeding  
23 conducted under section 235, 236, 238, 240, or 241 or  
24 any other section of this Act. The Secretary of Homeland

1 Security shall ensure that aliens have access to counsel  
2 inside all immigration detention and border facilities.”.

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

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

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

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

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

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

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

22 or

23 “(3) an individual whose circumstances are  
24 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 para-  
20 graph (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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