

117TH CONGRESS
2D SESSION

H. R. 9304

To amend the Immigration and Nationality Act to provide access to counsel for children and other vulnerable populations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 15, 2022

Mr. MCEACHIN (for himself, Ms. LOFGREN, Ms. JACKSON LEE, Ms. SCHAKOWSKY, Ms. BONAMICI, Ms. NEWMAN, Ms. BROWNLEY, Mr. MCGOVERN, and Ms. NORTON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to provide access to counsel for children and other vulnerable populations, and for other purposes.

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 “Funding Attorneys for
5 Indigent Removal (FAIR) Proceedings Act”.

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, including”;

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 or provide counsel, at the expense of the Govern-
12 ment if necessary, at the beginning of the proceedings or
13 as expeditiously as possible, to represent in such pro-
14 ceedings any alien who has been determined by the Sec-
15 retary of Homeland Security or the Attorney General to
16 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 “(3) an individual whose income is at or below
24 200 percent of the poverty line (as defined by the
25 Office of Management and Budget and revised an-

1 nually in accordance with section 673(2) of the
2 Community Services Block Grant Act (42 U.S.C.
3 9902(2))) applicable to a family of the size involved;
4 or

5 “(4) an individual whose circumstances are
6 such that the appointment of counsel is necessary to
7 help ensure fair resolution and efficient adjudication
8 of the proceedings.

9 “(d) EXTENSION TO CONSOLIDATED CASES.—If the
10 Attorney General has consolidated the case of any alien
11 for whom counsel was appointed under subsection (c) with
12 that of any other alien, and that other alien does not have
13 counsel, then the counsel appointed under subsection (c)
14 shall be appointed to represent such other alien.

15 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
16 is authorized to be appropriated to the Executive Office
17 of Immigration Review of the Department of Justice, in
18 addition to amounts available in the Immigration Counsel
19 Account under section 295, such sums as may be nec-
20 essary to carry out this section.”.

21 (2) RULEMAKING.—The Attorney General shall
22 promulgate regulations to implement section 292(c)
23 of the Immigration and Nationality Act, as added by
24 paragraph (1), in accordance with the requirements

1 set forth in section 3006A of title 18, United States
2 Code.

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

5 (a) ACCESS TO COUNSEL.—The Secretary of Home-
6 land Security shall facilitate access to counsel for all aliens
7 detained in facilities under the supervision of U.S. Immi-
8 gration and Customs Enforcement or of U.S. Customs and
9 Border Protection, including providing information to
10 aliens in detention about legal services programs at deten-
11 tion facilities.

12 (b) ACCESS TO LEGAL ORIENTATION PROGRAMS.—
13 The Secretary of Homeland Security, in consultation with
14 the Attorney General, shall establish procedures to ensure
15 that legal orientation programs are available for all de-
16 tained aliens, including aliens held in U.S. Customs and
17 Border Protection facilities, to inform such aliens of the
18 basic procedures of immigration hearings, their rights re-
19 lating to those hearings under Federal immigration laws,
20 information that may deter such aliens from filing frivo-
21 lous legal claims, and any other information that the At-
22 torney General considers appropriate, such as a contact
23 list of potential legal resources and providers. Access to
24 legal orientation programs shall not be limited by the

1 alien's current immigration status, prior immigration his-
2 tory, or potential for immigration relief.

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

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

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

16 (1) the number and percentage of aliens de-
17 scribed in paragraphs (1), (2), (3), and (4), respec-
18 tively, of section 292(c) of the Immigration and Na-
19 tionality Act, as added by section 2(c)(1), who were
20 represented by counsel, including information speci-
21 fying—

22 (A) the stage of the legal process at which
23 the alien was represented; and

24 (B) whether the alien was in government
25 custody; and

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

3 **SEC. 5. MOTIONS TO REOPEN.**

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

7 “(v) SPECIAL RULE FOR ALIENS EN-
8 TITLED TO APPOINTMENT OF COUNSEL.—
9 If the Attorney General fails to appoint
10 counsel for an alien in violation of section
11 292(c)—

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

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

18 **SEC. 6. IMMIGRATION COUNSEL ACCOUNT.**

19 (a) IN GENERAL.—Chapter 9 of the Immigration and
20 Nationality Act is amended by adding at the end the fol-
21 lowing:

22 **“SEC. 295. IMMIGRATION COUNSEL ACCOUNT.**

23 “(a) IN GENERAL.—There is established in the gen-
24 eral fund of the Treasury a separate account, which shall
25 be known as the ‘Immigration Counsel Account’. Amounts

1 deposited into the Immigration Counsel Account shall re-
2 main available until expended to provide access to counsel
3 when required or authorized under this Act and to facili-
4 tate access to counsel under the Funding Attorneys for
5 Indigent Removal (FAIR) Proceedings Act.

6 “(b) REPORT.—At the end of each 2-year period, be-
7 ginning with the creation of Immigration Counsel Ac-
8 count, the Secretary of Homeland Security, following a
9 public rulemaking with opportunity for notice and com-
10 ment, shall submit a report to the Congress concerning
11 the status of the account, including any balances therein,
12 and recommend any adjustment in the amount of the
13 funds required to be reserved under section 286(m) for
14 deposit into the account that may be required to ensure
15 that the amounts so reserved for the succeeding two years
16 equal, as closely as possible, the cost of providing access
17 to counsel when required or authorized under this Act and
18 facilitating access counsel under the Funding Attorneys
19 for Indigent Removal (FAIR) Proceedings Act.”.

20 (b) DEPOSITS.—Section 286(m) of the Immigration
21 and Nationality Act (8 U.S.C. 1356(m)) is amended by
22 adding at the end the following:

23 “Notwithstanding the first sentence of this subsection, be-
24 ginning on the date of the enactment of the Funding At-
25 torneys for Indigent Removal (FAIR) Proceedings Act,

1 \$10 from each fee for providing adjudication or natu-
2 ralization services as may be charged and collected in ac-
3 cordance with this subsection shall be reserved and depos-
4 ited as offsetting receipts into the Immigration Counsel
5 Account established under section 295.”.

6 (c) TABLE OF CONTENTS.—The table of contents for
7 such Act is amended by inserting after the item relating
8 to section 294 the following:

“Sec. 295. Immigration Counsel Account.”.

