

117TH CONGRESS  
1ST SESSION

# S. 901

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

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## IN THE SENATE OF THE UNITED STATES

MARCH 23, 2021

Mrs. GILLIBRAND (for herself, Mr. MARKEY, Mr. BLUMENTHAL, Mr. BOOKER, Ms. WARREN, Mr. PADILLA, Mr. KAINE, Mr. MERKLEY, and Ms. KLOBUCHAR) introduced the following bill; which was read twice and 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 TITLES.**

4 This Act may be cited as the “Funding Attorneys for  
5 Indigent Removal Proceedings Act” or the “FAIR Pro-  
6 ceedings 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 the matter preceding subparagraph  
10 (A), by inserting “, or in the case of an unac-  
11 companied alien child (as defined in section  
12 462(g)(2) of the Homeland Security Act of  
13 2002 (6 U.S.C. 279(g)(2))), under regulations  
14 of the Secretary of Health and Human Serv-  
15 ices” after “Attorney General”;

16 (B) in subparagraph (A)—

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

19 (ii) by striking the comma at the end  
20 and inserting a semicolon;

21 (C) by redesignating subparagraphs (B)  
22 and (C) as subparagraphs (D) and (E), respec-  
23 tively;

24 (D) by inserting after subparagraph (A)  
25 the following:

1           “(B) the Attorney General, or in the case  
2 of an unaccompanied alien child, the Secretary  
3 of Health and Human Services, may appoint or  
4 provide counsel, at Government expense, to the  
5 alien;

6           “(C) the alien, at the beginning of such  
7 proceedings or as expeditiously as possible, shall  
8 automatically receive a complete copy of all rel-  
9 evant documents in the possession of the De-  
10 partment of Homeland Security (unless the  
11 alien waives the right to receive such documents  
12 by executing a knowing and voluntary written  
13 waiver in a language that he or she under-  
14 stands fluently), including—

15           “(i) all documents (other than docu-  
16 ments protected from disclosure by privi-  
17 lege and documents containing national se-  
18 curity information referred to in subpara-  
19 graph (D), law enforcement sensitive infor-  
20 mation, or information prohibited from dis-  
21 closure pursuant to any other provision of  
22 law) contained in the file maintained by  
23 the Government that includes information  
24 with respect to all transactions involving

1 the alien during the immigration process  
2 (commonly referred to as an ‘A-file’); and

3 “(ii) all documents pertaining to the  
4 alien that the Department of Homeland  
5 Security has obtained or received from  
6 other government agencies;”; and

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

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

14 “(A) has received the documents required  
15 under such paragraph; and

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

18 (b) CLARIFICATION REGARDING THE AUTHORITY OF  
19 THE ATTORNEY GENERAL AND THE SECRETARY OF  
20 HEALTH AND HUMAN SERVICES TO APPOINT COUNSEL  
21 TO ALIENS IN IMMIGRATION PROCEEDINGS.—Section 292  
22 of the Immigration and Nationality Act (8 U.S.C. 1362)  
23 is amended—

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

1       “(a) IN GENERAL.—In any proceeding conducted  
2 under section 235, 236, 238, 240, or 241, or under any  
3 other section of this Act, including”;

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

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

7               (B) by striking “he shall” and inserting  
8 “the person shall”; and

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

10       “(b) ACCESS TO COUNSEL.—

11           “(1) IN GENERAL.—The Attorney General may  
12 appoint or provide counsel to aliens in any pro-  
13 ceeding conducted under section 235, 236, 238, 240,  
14 or 241, or under any other section of this Act.

15           “(2) UNACCOMPANIED ALIEN CHILDREN.—The  
16 Secretary of Health and Human Services may ap-  
17 point or provide counsel to unaccompanied alien chil-  
18 dren (as defined in section 462(g)(2) of the Home-  
19 land Security Act of 2002 (6 U.S.C. 279(g)(2))) in  
20 any applicable proceeding conducted pursuant to any  
21 section of this Act.

22           “(3) IMMIGRATION DETENTION AND BORDER  
23 FACILITIES.—The Secretary of Homeland Security  
24 shall ensure that aliens have access to counsel inside  
25 all immigration detention and border facilities.”.

1 (c) APPOINTMENT OF COUNSEL FOR CHILDREN AND  
2 VULNERABLE ALIENS.—

3 (1) IN GENERAL.—Section 292 of the Immigra-  
4 tion and Nationality Act, as amended by subsection  
5 (b), is further amended by adding at the end the fol-  
6 lowing:

7 “(c) UNACCOMPANIED ALIEN CHILDREN.—Notwith-  
8 standing subsection (b), the Secretary of Health and  
9 Human Services shall appoint or provide counsel at Gov-  
10 ernment expense, if necessary, at the beginning of immi-  
11 gration proceedings, or as expeditiously as possible, to rep-  
12 resent in such proceedings unaccompanied alien children.

13 “(d) OTHER VULNERABLE ALIENS.—Notwith-  
14 standing subsection (b), the Attorney General shall ap-  
15 point or provide counsel at Government expense, if nec-  
16 essary, at the beginning of immigration proceedings or as  
17 expeditiously as possible, to represent in such proceedings  
18 any alien who has been determined by the Secretary of  
19 Homeland Security or the Attorney General to be—

20 “(1) a child who is not an unaccompanied alien  
21 child;

22 “(2) a person with a disability;

23 “(3) a victim of abuse, torture, or violence;

24 “(4) an individual whose income is at or below  
25 200 percent of the poverty line (as defined by the

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

6 “(5) an individual whose circumstances require  
7 the appointment of counsel to help ensure the fair  
8 resolution and efficient adjudication of the pro-  
9 ceedings.

10 “(e) EXTENSION TO CONSOLIDATED CASES.—If the  
11 Attorney General has consolidated the case of an alien for  
12 whom counsel was appointed under subsection (c) or (d)  
13 with the case of another alien who does not have counsel,  
14 the counsel appointed under subsection (c) or (d), as appli-  
15 cable, shall be appointed to represent such other alien.

16 “(f) AUTHORIZATION OF APPROPRIATIONS.—There  
17 is authorized to be appropriated to the Office of Refugee  
18 Resettlement of the Department of Health and Human  
19 Services and to Executive Office for Immigration Review  
20 of the Department of Justice, such sums as may be nec-  
21 essary to carry out this section.”.

22 (2) RULEMAKING.—

23 (A) UNACCOMPANIED ALIEN CHILDREN.—

24 The Secretary of Health and Human Services  
25 shall promulgate regulations to implement sec-

1           tion 292(c) of the Immigration and Nationality  
2           Act, as added by paragraph (1), in accordance  
3           with the requirements set forth in section  
4           3006A of title 18, United States Code.

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

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

14          (a) ACCESS TO COUNSEL.—The Secretary of Home-  
15          land Security shall facilitate access to counsel for all aliens  
16          detained in facilities under the supervision of U.S. Immi-  
17          gration and Customs Enforcement or of U.S. Customs and  
18          Border Protection, including providing information to  
19          such aliens regarding legal services programs at detention  
20          facilities.

21          (b) ACCESS TO LEGAL ORIENTATION PROGRAMS.—

22                  (1) PROCEDURES.—The Secretary of Homeland  
23          Security, in consultation with the Attorney General,  
24          shall establish procedures—



1 (A) to ensure that legal orientation pro-  
2 grams are available for all detained aliens, in-  
3 cluding aliens held in U.S. Customs and Border  
4 Protection facilities; and

5 (B) to inform such aliens of—

6 (i) the basic procedures of immigra-  
7 tion hearings;

8 (ii) their rights relating to such hear-  
9 ings under Federal immigration laws;

10 (iii) information that may deter such  
11 aliens from filing frivolous legal claims;  
12 and

13 (iv) any other information that the  
14 Attorney General considers appropriate,  
15 such as a contact list of potential legal re-  
16 sources and providers.

17 (2) UNIVERSAL AVAILABILITY.—Access to legal  
18 orientation programs under paragraph (1) may not  
19 be limited by the alien’s current immigration status,  
20 prior immigration history, or potential for immigra-  
21 tion relief.

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

23 (a) REPORT.—Not later than December 31 of each  
24 year, the Secretary of Homeland Security, in consultation  
25 with the Attorney General and the Secretary of Health

1 and Human Services, shall submit a report to the Com-  
2 mittee on the Judiciary of the Senate and the Committee  
3 on the Judiciary of the House of Representatives regard-  
4 ing the extent to which aliens described in subsections (c)  
5 and (d) of section 292 of the Immigration and Nationality  
6 Act, as added by section 2(c)(1), have been provided ac-  
7 cess to counsel.

8 (b) CONTENTS.—Each report submitted pursuant to  
9 subsection (a) shall include, for the immediately preceding  
10 1-year period—

11 (1) the number and percentage of aliens de-  
12 scribed in section 292(c) of the Immigration and  
13 Nationality Act and in paragraphs (1), (2), (3), and  
14 (4), respectively, of section 292(d) of such Act who  
15 were represented by counsel, including information  
16 specifying—

17 (A) the stage of the legal process at which  
18 the alien was represented; and

19 (B) whether the alien was in government  
20 custody; and

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

1 **SEC. 5. MOTIONS TO REOPEN.**

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

5 “(v) SPECIAL RULE FOR ALIENS EN-  
6 TITLED TO APPOINTMENT OF COUNSEL.—  
7 If the Secretary of Health and Human  
8 Services or the Attorney General fail to ap-  
9 point counsel for an alien in accordance  
10 with subsection (c) or (d) of section 292,  
11 as applicable—

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.”.

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