

117TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To provide counsel for unaccompanied children, and for other purposes.

\_\_\_\_\_

IN THE SENATE OF THE UNITED STATES

\_\_\_\_\_ introduced the following bill; which was read twice  
and referred to the Committee on \_\_\_\_\_

\_\_\_\_\_

**A BILL**

To provide counsel for unaccompanied children, 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 “Fair Day in Court  
5       for Kids Act of 2021”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

8               (1) NONCITIZEN.—The term “noncitizen”  
9       means an individual who is not a citizen or national  
10      of the United States.

1           (2) UNACCOMPANIED CHILD.—The term “unac-  
2           companied child” has the meaning given the term  
3           “unaccompanied alien child” in section 462(g) of the  
4           Homeland Security Act of 2002 (6 U.S.C. 279(g)).

5   **SEC. 3. REFERENCES TO ALIENS.**

6           With respect to an individual who is not a citizen or  
7           national of the United States, any reference in this Act  
8           to a “noncitizen” shall be deemed to refer to an individual  
9           otherwise described as an “alien” in any Federal law, Fed-  
10          eral regulation, or any written instrument issued by the  
11          executive branch of the Government.

12   **SEC. 4. IMPROVING IMMIGRATION COURT EFFICIENCY AND**  
13                   **REDUCING COSTS BY INCREASING ACCESS**  
14                   **TO LEGAL INFORMATION.**

15          (a) DEFINITIONS.—Section 101(a) of the Immigra-  
16          tion and Nationality Act (8 U.S.C. 1101(a)) is amended  
17          by adding at the end the following:

18           “(53) The term ‘noncitizen’ means an individual who  
19           is not a citizen or national of the United States.

20           “(54) The term ‘unaccompanied child’ has the mean-  
21           ing given the term ‘unaccompanied alien child’ in section  
22           462(g) of the Homeland Security Act of 2002 (6 U.S.C.  
23           279(g)).”.

24          (b) APPOINTMENT OF COUNSEL IN REMOVAL PRO-  
25          CEEDINGS; RIGHT TO REVIEW CERTAIN DOCUMENTS IN

1 REMOVAL PROCEEDINGS.—Section 240(b) of the Immi-  
2 gration and Nationality Act (8 U.S.C. 1229a(b)) is  
3 amended—

4 (1) in paragraph (4), in the matter preceding  
5 subparagraph (A), by striking “under regulations of  
6 the Attorney General” and inserting “under regula-  
7 tions of the Attorney General, or in the case of an  
8 unaccompanied child, under regulations of the Sec-  
9 retary of Health and Human Services”—

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, or in the case  
21 of an unaccompanied child, the Secretary of  
22 Health and Human Services, may appoint or  
23 provide counsel, at Government expense, to  
24 noncitizens in immigration proceedings;

1 “(C) the noncitizen, or the noncitizen’s  
2 counsel, not later than 7 days after receiving a  
3 notice to appear under section 239(a), shall re-  
4 ceive a complete copy of the noncitizen’s immi-  
5 gration file (commonly known as an ‘A-file’) in  
6 the possession of the Department of Homeland  
7 Security (other than documents protected from  
8 disclosure under section 552(b) of title 5,  
9 United States Code);” and

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

13 “(8) FAILURE TO PROVIDE NONCITIZEN RE-  
14 QUIRED DOCUMENTS.—A removal proceeding may  
15 not proceed until the noncitizen, or the noncitizen’s  
16 counsel if the noncitizen is represented—

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

19 “(B) has been provided at least 10 days to  
20 review and assess such documents, unless the  
21 noncitizen or the noncitizen’s counsel expressly  
22 waives such review period.”.

23 (c) CLARIFICATION REGARDING THE AUTHORITY OF  
24 THE FEDERAL GOVERNMENT TO APPOINT COUNSEL TO  
25 NONCITIZENS IN IMMIGRATION PROCEEDINGS.—

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

4   **“SEC. 292. RIGHT TO COUNSEL.**

5           “(a) IN GENERAL.—In any removal proceeding and  
6           in any appeal proceeding before the Attorney General from  
7           any such removal proceeding, the subject of the proceeding  
8           shall have the privilege of being represented by such coun-  
9           sel as may be authorized to practice in such proceeding  
10          as he or she may choose. This subsection shall not apply  
11          to screening proceedings described in section  
12          235(b)(1)(A).

13          “(b) ACCESS TO COUNSEL FOR UNACCOMPANIED  
14          CHILDREN.—

15                 “(1) IN GENERAL.—In any removal proceeding  
16                 and in any appeal proceeding before the Attorney  
17                 General from any such removal proceeding, an unac-  
18                 companied child shall be represented by counsel ap-  
19                 pointed or provided by the Secretary of Health and  
20                 Human Services, at Government expense, unless the  
21                 child has obtained at his or her own expense counsel  
22                 authorized to practice in such proceeding.

23                 “(2) TIMING.—The Secretary of Health and  
24                 Human Services shall appoint or provide counsel to  
25                 an unaccompanied child under paragraph (1)—

1 “(A) as expeditiously as possible; and

2 “(B) not later than the date on which the  
3 child is first scheduled to appear before an im-  
4 migration judge.

5 “(3) LENGTH OF REPRESENTATION.—An unac-  
6 companied child shall be represented by counsel  
7 under paragraph (1) at every stage of the pro-  
8 ceedings from the unaccompanied child’s initial ap-  
9 pearance through the termination of immigration  
10 proceedings, and any ancillary matters appropriate  
11 to such proceedings even if the child attains 18  
12 years of age or is reunified with a parent or legal  
13 guardian while the proceedings are pending.

14 “(4) CONTINUITY IN REPRESENTATION.—If  
15 counsel retained by an unaccompanied child at his or  
16 her own expense ceases representing the child for  
17 any reason, the Secretary of Health and Human  
18 Services shall ensure continued representation of the  
19 child by appointing or providing new counsel as ex-  
20 peditiously as possible.

21 “(5) NOTICE.—Not later than 72 hours after  
22 an unaccompanied child is taken into Federal cus-  
23 tody, the child shall be notified that he or she will  
24 be provided with legal counsel in accordance with  
25 this subsection.

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

5       “(c) PRO BONO REPRESENTATION.—

6           “(1) IN GENERAL.—To the maximum extent  
7       practicable, the Secretary of Health and Human  
8       Services shall make every effort to use the services  
9       of competent counsel who agree to provide represen-  
10      tation to such children under subsection (b) without  
11      charge.

12          “(2) DEVELOPMENT OF NECESSARY INFRA-  
13      STRUCTURES AND SYSTEMS.—Through appropriate  
14      nonprofit organizations described in subsection (d),  
15      the Secretary of Health and Human Services shall  
16      ensure the availability of the necessary mechanisms  
17      to identify, recruit, train, and oversee counsel avail-  
18      able to provide pro bono legal assistance and rep-  
19      resentation to unaccompanied children under sub-  
20      section (b).

21      “(d) CONTRACTS; GRANTS.—

22          “(1) IN GENERAL.—The Secretary of Health  
23      and Human Services may enter into contracts with,  
24      or award grants to, nonprofit organizations with rel-  
25      evant expertise in the delivery of immigration-related

1 legal services to children to carry out the responsibil-  
2 ities under this section, including providing legal ori-  
3 entation, screening cases for referral, identifying, re-  
4 cruiting, training, and overseeing pro bono attor-  
5 neys.

6 “(2) SUBCONTRACTS AND SUBGRANTS PER-  
7 MITTED.—Nonprofit organizations may enter into  
8 subcontracts with, or award grants to, other non-  
9 profit organizations with relevant expertise in the  
10 delivery of immigration-related legal services to chil-  
11 dren in order to carry out this section.

12 “(e) MODEL GUIDELINES ON LEGAL REPRESENTA-  
13 TION OF CHILDREN.—

14 “(1) DEVELOPMENT OF GUIDELINES.—The Di-  
15 rector of the Office of Refugee Resettlement, in con-  
16 sultation with the Director of the Executive Office  
17 for Immigration Review and nonprofit organizations  
18 with relevant expertise in providing immigration-re-  
19 lated legal services to children, shall develop model  
20 guidelines for the legal representation of unaccom-  
21 panied children in immigration proceedings, which  
22 shall be based on—

23 “(A) the 2018 report of the American Bar  
24 Association entitled ‘Standards for the Custody,  
25 Placement and Care; Legal Representation; and

1           Adjudication of Unaccompanied Alien Children  
2           in the United States’ ;

3                   “(B) the American Bar Association Model  
4           Rules of Professional Conduct; and

5                   “(C) any other source the Director of the  
6           Office of Refugee Resettlement considers appro-  
7           priate.

8                   “(2) PURPOSE OF GUIDELINES.—The guide-  
9           lines developed under paragraph (1) shall be de-  
10          signed to help protect each child from any individual  
11          suspected of involvement in any criminal, harmful,  
12          or exploitative activity associated with the smuggling  
13          or trafficking of children, while ensuring the fairness  
14          of the removal proceeding in which the child is in-  
15          volved.

16                  “(f) DUTIES OF COUNSEL.—The duties of counsel  
17          appointed or provided under this section shall include—

18                   “(1) representing the unaccompanied alien child  
19          concerned—

20                           “(A) in all proceedings and matters relat-  
21                   ing to the immigration status of the child and;

22                           “(B) with respect to any other action in-  
23                   volving the Department of Homeland Security;

24                   “(2) appearing in person for each of the  
25          child’s—

1           “(A) individual merits hearings and master  
2           calendar hearings before the Executive Office  
3           for Immigration Review; and

4           “(B) interviews involving the Department  
5           of Homeland Security;

6           “(3) owing the same duties of undivided loyalty,  
7           confidentiality, and competent representation to the  
8           child as is due to an adult client;

9           “(4) advocating for the child’s legal interests,  
10          as directed by the child’s express wishes;

11          “(5) in the case of a child who does not express  
12          the objectives of representation, or is found incom-  
13          petent, referring the child for the appointment of an  
14          independent child advocate, as described in section  
15          235(c)(6) of the William Wilberforce Trafficking  
16          Victims Protection Reauthorization Act of 2008 (8  
17          U.S.C. 1232(c)(6)); and

18          “(6) carrying out other such duties as may be  
19          prescribed by the Secretary of Health and Human  
20          Services or the Director of the Executive Office for  
21          Immigration Review.

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

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

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

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

9 (2) RULEMAKING.—The Secretary of Health  
10 and Human Services shall promulgate regulations to  
11 implement section 292 of the Immigration and Na-  
12 tionality Act, as added by paragraph (1), in accord-  
13 ance with the requirements set forth in section  
14 3006A of title 18, United States Code.

15 **SEC. 5. ACCESS BY COUNSEL TO DEPARTMENT OF HOME-**  
16 **LAND SECURITY FACILITIES.**

17 The Secretary of Homeland Security shall provide ac-  
18 cess to counsel for all noncitizens detained in—

19 (1) a facility under the supervision of U.S. Im-  
20 migration and Customs Enforcement or U.S. Cus-  
21 toms and Border Protection; or

22 (2) a private facility that contracts with the De-  
23 partment of Homeland Security to house, detain, or  
24 hold noncitizens.

1   **SEC. 6. REPORT ON ACCESS TO COUNSEL.**

2           (a) REPORT.—Not later than December 31 of each  
3 year, the Secretary of Health and Human Services, in con-  
4 sultation with the Attorney General, shall prepare and  
5 submit a report to the Committee on the Judiciary of the  
6 Senate and the Committee on the Judiciary of the House  
7 of Representatives regarding the extent to which the Sec-  
8 retary has provided counsel for unaccompanied children  
9 as described in subsection (b) of section 292 of the Immi-  
10 gration and Nationality Act, as amended by section 4(c).

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

14               (1) the number and percentage of unaccom-  
15 panied children described in subsection (b) of section  
16 292 of the Immigration and Nationality Act, as  
17 amended by section 4(c), who were represented by  
18 counsel, including information specifying—

19                       (A) the stage of the legal process at which  
20 representation of each such child commenced;

21                       (B) whether each such child was in govern-  
22 ment custody on the date on which such rep-  
23 resentation commenced; and

24                       (C) the nationality and ages of such chil-  
25 dren;

1           (2) the number and percentage of children who  
2       received Know Your Rights presentations, including  
3       the nationality and ages of such children; and

4           (3) a description of the mechanisms used under  
5       subsection (b) of section 292 of the Immigration and  
6       Nationality Act, as added by section 4(c), for identi-  
7       fying, recruiting, and training pro bono counsel to  
8       represent unaccompanied children.

9   **SEC. 7. 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 UNACCOM-  
14                   PANIED CHILDREN ENTITLED TO APPOINT-  
15                   MENT OF COUNSEL.—If the Secretary of  
16                   Health and Human Services fails to ap-  
17                   point or provide counsel for an unaccom-  
18                   panied child under section 292(b)—

19                   “(I) the limitations under this  
20                   paragraph with respect to the filing of  
21                   a motion to reopen by such child  
22                   shall not apply; and

23                   “(II) the filing of such a motion  
24                   shall stay the removal of the child.”.

1   **SEC. 8. AUTHORIZATION OF APPROPRIATIONS.**

2           (a) IN GENERAL.—There is authorized to be appro-  
3   priated to the Office of Refugee Resettlement such sums  
4   as may be necessary to carry out this Act.

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