

117TH CONGRESS  
1ST SESSION

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

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

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IN THE SENATE OF THE UNITED STATES

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

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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”.

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

10 (a) APPOINTMENT OF COUNSEL IN CERTAIN CASES;  
11 RIGHT TO REVIEW CERTAIN DOCUMENTS IN REMOVAL

1 PROCEEDINGS.—Section 240(b) of the Immigration and  
2 Nationality Act (8 U.S.C. 1229a(b)) is amended—

3 (1) in paragraph (4)—

4 (A) in the matter preceding subparagraph  
5 (A), by inserting “, or in the case of an unac-  
6 companied alien child (as defined in section  
7 462(g)(2) of the Homeland Security Act of  
8 2002 (6 U.S.C. 279(g)(2))), under regulations  
9 of the Secretary of Health and Human Serv-  
10 ices” after “Attorney General”;

11 (B) in subparagraph (A)—

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

14 (ii) by striking the comma at the end  
15 and inserting a semicolon;

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

19 (D) by inserting after subparagraph (A)  
20 the following:

21 “(B) the Attorney General, or in the case  
22 of an unaccompanied alien child, the Secretary  
23 of Health and Human Services, may appoint or  
24 provide counsel, at Government expense, to the  
25 alien;

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

10           “(i) all documents (other than docu-  
11 ments protected from disclosure by privi-  
12 lege and documents containing national se-  
13 curity information referred to in subpara-  
14 graph (D), law enforcement sensitive infor-  
15 mation, or information prohibited from dis-  
16 closure pursuant to any other provision of  
17 law) contained in the file maintained by  
18 the Government that includes information  
19 with respect to all transactions involving  
20 the alien during the immigration process  
21 (commonly referred to as an ‘A-file’); and

22           “(ii) all documents pertaining to the  
23 alien that the Department of Homeland  
24 Security has obtained or received from  
25 other government agencies;” and

1 (E) 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.—In the absence of a waiver under  
6 paragraph (4)(C), a removal proceeding may not  
7 proceed until the alien—

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

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

12 (b) CLARIFICATION REGARDING THE AUTHORITY OF  
13 THE ATTORNEY GENERAL AND THE SECRETARY OF  
14 HEALTH AND HUMAN SERVICES TO APPOINT COUNSEL  
15 TO ALIENS IN IMMIGRATION PROCEEDINGS.—Section 292  
16 of the Immigration and Nationality Act (8 U.S.C. 1362)  
17 is amended—

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

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

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

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

1 (B) by striking “he shall” and inserting  
2 “the person shall”; and

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

4 “(b) ACCESS TO COUNSEL.—

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

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

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

20 (c) APPOINTMENT OF COUNSEL FOR CHILDREN AND  
21 VULNERABLE ALIENS.—

22 (1) IN GENERAL.—Section 292 of the Immigra-  
23 tion and Nationality Act, as amended by subsection  
24 (b), is further amended by adding at the end the fol-  
25 lowing:

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

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

14           “(1) a child who is not an unaccompanied alien  
15 child;

16           “(2) a person with a disability;

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

18           “(4) an individual whose income is at or below  
19 200 percent of the poverty line (as defined by the  
20 Office of Management and Budget and revised an-  
21 nually in accordance with section 673(2) of the  
22 Community Services Block Grant Act (42 U.S.C.  
23 9902(2))) applicable to a family of the size involved;  
24 or



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

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

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

17           (b) ACCESS TO LEGAL ORIENTATION PROGRAMS.—

18                   (1) PROCEDURES.—The Secretary of Homeland  
19           Security, in consultation with the Attorney General,  
20           shall establish procedures—

21                           (A) to ensure that legal orientation pro-  
22                           grams are available for all detained aliens, in-  
23                           cluding aliens held in U.S. Customs and Border  
24                           Protection facilities; and

25                           (B) to inform such aliens of—

- 1 (i) the basic procedures of immigra-  
2 tion hearings;
- 3 (ii) their rights relating to such hear-  
4 ings under Federal immigration laws;
- 5 (iii) information that may deter such  
6 aliens from filing frivolous legal claims;  
7 and
- 8 (iv) any other information that the  
9 Attorney General considers appropriate,  
10 such as a contact list of potential legal re-  
11 sources and providers.

12 (2) UNIVERSAL AVAILABILITY.—Access to legal  
13 orientation programs under paragraph (1) may not  
14 be limited by the alien’s current immigration status,  
15 prior immigration history, or potential for immigra-  
16 tion relief.

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

18 (a) REPORT.—Not later than December 31 of each  
19 year, the Secretary of Homeland Security, in consultation  
20 with the Attorney General and the Secretary of Health  
21 and Human Services, shall submit a report to the Com-  
22 mittee on the Judiciary of the Senate and the Committee  
23 on the Judiciary of the House of Representatives regard-  
24 ing the extent to which aliens described in subsections (c)  
25 and (d) of section 292 of the Immigration and Nationality

1 Act, as added by section 2(c)(1), have been provided ac-  
2 cess to counsel.

3 (b) CONTENTS.—Each report submitted pursuant to  
4 subsection (a) shall include, for the immediately preceding  
5 1-year period—

6 (1) the number and percentage of aliens de-  
7 scribed in section 292(e) of the Immigration and  
8 Nationality Act and in paragraphs (1), (2), (3), and  
9 (4), respectively, of section 292(d) of such Act who  
10 were represented by counsel, including information  
11 specifying—

12 (A) the stage of the legal process at which  
13 the alien was represented; and

14 (B) whether the alien was in government  
15 custody; and

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

18 **SEC. 5. MOTIONS TO REOPEN.**

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

22 “(v) SPECIAL RULE FOR ALIENS EN-  
23 TITLED TO APPOINTMENT OF COUNSEL.—  
24 If the Secretary of Health and Human  
25 Services or the Attorney General fail to ap-

1 point counsel for an alien in accordance  
2 with subsection (c) or (d) of section 292,  
3 as applicable—

4 “(I) no limitation under this  
5 paragraph pertaining to the filing of  
6 any motion under this paragraph by  
7 such alien shall apply; and

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