

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide access to counsel for unaccompanied alien children.

IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.

S. 1494

To amend the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to protect alien minors and to amend the Immigration and Nationality Act to end abuse of the asylum system and establish refugee application and processing centers outside the United States, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

1 At the end, add the following:

2 **SEC. 7. FAIR DAY IN COURT FOR KIDS.**

3 (a) IMPROVING IMMIGRATION COURT EFFICIENCY
4 AND REDUCING COSTS BY INCREASING ACCESS TO LEGAL
5 INFORMATION.—

6 (1) APPOINTMENT OF COUNSEL IN REMOVAL
7 PROCEEDINGS; RIGHT TO REVIEW CERTAIN DOCU-
8 MENTS IN REMOVAL PROCEEDINGS.—Section 240(b)
9 of the Immigration and Nationality Act (8 U.S.C.
10 1229a(b)) is amended—

1 (A) in paragraph (4)—
2 (i) in subparagraph (A)—
3 (I) by striking “, at no expense
4 to the Government,”; and
5 (II) by striking the comma at the
6 end and inserting a semicolon;
7 (ii) by redesignating subparagraphs
8 (B) and (C) as subparagraphs (D) and
9 (E), respectively;
10 (iii) by inserting after subparagraph
11 (A) the following:
12 “(B) the Attorney General may appoint or
13 provide counsel, at Government expense, to
14 aliens in immigration proceedings;
15 “(C) the alien, or the alien’s counsel, not
16 later than 7 days after receiving a notice to ap-
17 pear under section 239(a), shall receive a com-
18 plete copy of the alien’s immigration file (com-
19 monly known as an ‘A-file’) in the possession of
20 the Department of Homeland Security (other
21 than documents protected from disclosure under
22 section 552(b) of title 5, United States Code);”;
23 and

1 (iv) in subparagraph (D), as redesignig-
2 nated, by striking “, and” and inserting “;
3 and”; and

4 (B) by adding at the end the following:

5 “(8) FAILURE TO PROVIDE ALIEN REQUIRED
6 DOCUMENTS.—A removal proceeding may not pro-
7 ceed until the alien, or the alien’s counsel if the alien
8 is represented—

9 “(A) has received the documents required
10 under paragraph (4)(C); and

11 “(B) has been provided at least 10 days to
12 review and assess such documents.”.

13 (2) CLARIFICATION REGARDING THE AUTHOR-
14 ITY OF THE ATTORNEY GENERAL TO APPOINT COUN-
15 SEL TO ALIENS IN IMMIGRATION PROCEEDINGS.—

16 (A) IN GENERAL.—Section 292 of the Im-
17 migration and Nationality Act (8 U.S.C. 1362)
18 is amended to read as follows:

19 **“SEC. 292. RIGHT TO COUNSEL.**

20 “(a) IN GENERAL.—Except as provided in sub-
21 sections (b) and (c), in any removal proceeding and in any
22 appeal proceeding before the Attorney General from any
23 such removal proceeding, the subject of the proceeding
24 shall have the privilege of being represented by such coun-
25 sel as may be authorized to practice in such proceeding

1 as he or she may choose. This subsection shall not apply
2 to screening proceedings described in section
3 235(b)(1)(A).

4 “(b) ACCESS TO COUNSEL FOR UNACCOMPANIED
5 ALIEN CHILDREN.—

6 “(1) IN GENERAL.—In any removal proceeding
7 and in any appeal proceeding before the Attorney
8 General from any such removal proceeding, an unac-
9 companied alien child (as defined in section 462(g)
10 of the Homeland Security Act on 2002 (6 U.S.C.
11 279(g))) shall be represented by Government-ap-
12 pointed counsel, at Government expense.

13 “(2) LENGTH OF REPRESENTATION.—Once a
14 child is designated as an unaccompanied alien child
15 under paragraph (1), the child shall be represented
16 by counsel at every stage of the proceedings from
17 the child’s initial appearance through the termi-
18 nation of immigration proceedings, and any ancillary
19 matters appropriate to such proceedings even if the
20 child attains 18 years of age or is reunified with a
21 parent or legal guardian while the proceedings are
22 pending.

23 “(3) NOTICE.—Not later than 72 hours after
24 an unaccompanied alien child is taken into Federal
25 custody, the alien shall be notified that he or she will

1 be provided with legal counsel in accordance with
2 this subsection.

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

7 “(c) PRO BONO REPRESENTATION.—

8 “(1) IN GENERAL.—To the maximum extent
9 practicable, the Attorney General shall make every
10 effort to utilize the services of competent counsel
11 who agree to provide representation to such children
12 under subsection (b) without charge.

13 “(2) DEVELOPMENT OF NECESSARY INFRA-
14 STRUCTURES AND SYSTEMS.—The Attorney General
15 shall develop the necessary mechanisms to identify
16 counsel available to provide pro bono legal assistance
17 and representation to children under subsection (b)
18 and to recruit such counsel.

19 “(d) CONTRACTS; GRANTS.—The Attorney General
20 may enter into contracts with, or award grants to, non-
21 profit agencies with relevant expertise in the delivery of
22 immigration-related legal services to children to carry out
23 the responsibilities under this section, including providing
24 legal orientation, screening cases for referral, recruiting,
25 training, and overseeing pro bono attorneys. Nonprofit

1 agencies may enter into subcontracts with, or award
2 grants to, private voluntary agencies with relevant exper-
3 tise in the delivery of immigration-related legal services
4 to children in order to carry out this section.

5 “(e) MODEL GUIDELINES ON LEGAL REPRESENTA-
6 TION OF CHILDREN.—

7 “(1) DEVELOPMENT OF GUIDELINES.—The Ex-
8 ecutive Office for Immigration Review, in consulta-
9 tion with voluntary agencies and national experts,
10 shall develop model guidelines for the legal represen-
11 tation of alien children in immigration proceedings,
12 which shall be based on the children’s asylum guide-
13 lines, the American Bar Association Model Rules of
14 Professional Conduct, and other relevant domestic or
15 international sources.

16 “(2) PURPOSE OF GUIDELINES.—The guide-
17 lines developed under paragraph (1) shall be de-
18 signed to help protect each child from any individual
19 suspected of involvement in any criminal, harmful,
20 or exploitative activity associated with the smuggling
21 or trafficking of children, while ensuring the fairness
22 of the removal proceeding in which the child is in-
23 volved.

24 “(f) DUTIES OF COUNSEL.—Counsel provided under
25 this section shall—

1 “(1) represent the unaccompanied alien child in
2 all proceedings and matters relating to the immigra-
3 tion status of the child or other actions involving the
4 Department of Homeland Security;

5 “(2) appear in person for all individual merits
6 hearings before the Executive Office for Immigration
7 Review and interviews involving the Department of
8 Homeland Security;

9 “(3) owe the same duties of undivided loyalty,
10 confidentiality, and competent representation to the
11 child as is due to an adult client; and

12 “(4) carry out other such duties as may be pro-
13 scribed by the Attorney General or the Executive Of-
14 fice for Immigration Review.

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

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

20 “(2) the admission requirements under State
21 law; or

22 “(3) any other State law pertaining to the ad-
23 mission to the practice of law in a particular juris-
24 diction.”.

1 (B) RULEMAKING.—The Attorney General
2 shall promulgate regulations to implement sec-
3 tion 292 of the Immigration and Nationality
4 Act, as added by subparagraph (A), in accord-
5 ance with the requirements set forth in section
6 3006A of title 18, United States Code.

7 (b) ACCESS BY COUNSEL AT DETENTION FACILI-
8 TIES.—The Secretary of Homeland Security shall provide
9 access to counsel for all aliens detained in a facility under
10 the supervision of U.S. Immigration and Customs En-
11 forcement, U.S. Customs and Border Protection, or the
12 Department of Health and Human Services, or in any pri-
13 vate facility that contracts with the Federal Government
14 to house, detain, or hold aliens.

15 (c) REPORT ON ACCESS TO COUNSEL.—

16 (1) REPORT.—Not later than December 31 of
17 each year, the Secretary of Homeland Security, in
18 consultation with the Attorney General, shall pre-
19 pare and submit a report to the Committee on the
20 Judiciary of the Senate and the Committee on the
21 Judiciary of the House of Representatives regarding
22 the extent to which aliens described in section
23 292(b) of the Immigration and Nationality Act, as
24 added by subsection (a)(2), have been provided ac-
25 cess to counsel.

1 (2) CONTENTS.—Each report submitted under
2 paragraph (1) shall include, for the immediately pre-
3 ceding 1-year period—

4 (A) the number and percentage of aliens
5 described in section 292(b) of the Immigration
6 and Nationality Act, as added by subsection
7 (a)(2), who were represented by counsel, includ-
8 ing information specifying—

9 (i) the stage of the legal process at
10 which each such alien was represented;

11 (ii) whether the alien was in govern-
12 ment custody; and

13 (iii) the nationality and ages of such
14 aliens; and

15 (B) the number and percentage of aliens
16 who received legal orientation presentations, in-
17 cluding the nationality and ages of such aliens.

18 (d) AUTHORIZATION OF APPROPRIATIONS.—

19 (1) IN GENERAL.—There is authorized to be
20 appropriated to the Executive Office for Immigra-
21 tion Review of the Department of Justice such sums
22 as may be necessary to carry out this section.

23 (2) BUDGETARY EFFECTS.—The budgetary ef-
24 fects of this section, for the purpose of complying
25 with the Statutory Pay-As-You-Go Act of 2010,

1 shall be determined by reference to the latest state-
2 ment titled “Budgetary Effects of PAYGO Legisla-
3 tion” for this section, submitted for printing in the
4 Congressional Record by the Chairman of the Senate
5 Budget Committee, provided that such statement
6 has been submitted prior to the vote on passage.