

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To provide access to counsel for indigent children  
in immigration proceedings.

**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 Strike sections 2 and 3 and insert the following:

2 **SEC. 2. 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 redesignated, by striking “, and” and inserting “; and”; and

2  
3  
4 (B) by adding at the end the following:

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

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 AUTHORITY OF THE ATTORNEY GENERAL TO APPOINT COUNSEL TO ALIENS IN IMMIGRATION PROCEEDINGS.—

14  
15  
16 (A) IN GENERAL.—Section 292 of the Immigration and Nationality Act (8 U.S.C. 1362)  
17 is amended to read as follows:  
18

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 counsel as may be authorized to practice in such proceeding  
25

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 CHILDREN.—

5 “(1) IN GENERAL.—In any removal proceeding  
6 and in any appeal proceeding before the Attorney  
7 General from any such removal proceeding, any indi-  
8 gent child under the age of 18 years without legal  
9 representation shall be represented by Government-  
10 appointed counsel, at Government expense.

11 “(2) LENGTH OF REPRESENTATION.—Once a  
12 child is designated as a child entitled to Govern-  
13 ment-appointed counsel under paragraph (1), the  
14 child shall be represented by counsel at every stage  
15 of the proceedings from the child’s initial appearance  
16 through the termination of immigration proceedings,  
17 and any ancillary matters appropriate to such pro-  
18 ceedings even if the child attains 18 years of age.

19 “(3) NOTICE.—Not later than 72 hours after a  
20 child who meets the conditions for Government-ap-  
21 pointed counsel under paragraph (1) is taken into  
22 Federal custody, the alien shall be notified that he  
23 or she will be provided with legal counsel in accord-  
24 ance with this subsection.

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

5           “(c) PRO BONO REPRESENTATION.—

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

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

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

1 tise in the delivery of immigration-related legal services  
2 to children in order to carry out this section.

3 “(e) MODEL GUIDELINES ON LEGAL REPRESENTA-  
4 TION OF CHILDREN.—

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

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

22 “(f) DUTIES OF COUNSEL.—Counsel provided under  
23 this section shall—

24 “(1) represent the child in all proceedings and  
25 matters relating to the immigration status of the

1 child or other actions involving the Department of  
2 Homeland Security;

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

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

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

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

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

18 “(2) the admission requirements under State  
19 law; or

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

23 (B) RULEMAKING.—The Attorney General  
24 shall promulgate regulations to implement sec-  
25 tion 292 of the Immigration and Nationality

1 Act, as added by subparagraph (A), in accord-  
2 ance with the requirements set forth in section  
3 3006A of title 18, United States Code.

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

12 (c) REPORT ON ACCESS TO COUNSEL.—

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

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



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

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

8 (ii) whether the alien was in govern-  
9 ment custody; and

10 (iii) the nationality and ages of such  
11 aliens; and

12 (B) the number and percentage of aliens  
13 who received legal orientation presentations, in-  
14 cluding the nationality and ages of such aliens.

15 (d) AUTHORIZATION OF APPROPRIATIONS.—

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

20 (2) BUDGETARY EFFECTS.—The budgetary ef-  
21 fects of this section, for the purpose of complying  
22 with the Statutory Pay-As-You-Go Act of 2010,  
23 shall be determined by reference to the latest state-  
24 ment titled “Budgetary Effects of PAYGO Legisla-  
25 tion” for this section, submitted for printing in the

- 1 Congressional Record by the Chairman of the Senate
- 2 Budget Committee, provided that such statement
- 3 has been submitted prior to the vote on passage.