

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. ____
OFFERED BY M __. _____**

Page 51, line 2, strike “; and” and all that follows
through line 9, and insert a period

Page 52, after line 25, insert the following:

1 SEC. 304. COUNSEL FOR UNACCOMPANIED CHILDREN.

2 (a) DEFINITIONS.—In this section:

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

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

10 (b) REFERENCES TO ALIENS.—With respect to an in-
11 dividual who is not a citizen or national of the United
12 States, any reference in this section to a “noncitizen” shall
13 be deemed to refer to an individual otherwise described
14 as an “alien” in any Federal law, Federal regulation, or
15 any written instrument issued by the executive branch of
16 the Government.

1 (c) IMPROVING IMMIGRATION COURT EFFICIENCY
2 AND REDUCING COSTS BY INCREASING ACCESS TO LEGAL
3 INFORMATION.—

4 (1) DEFINITIONS.—Section 101(a) of the Immi-
5 gration and Nationality Act (8 U.S.C. 1101(a)) is
6 amended by adding at the end the following:

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

9 “(54) The term ‘unaccompanied child’ has the mean-
10 ing given the term ‘unaccompanied alien child’ in section
11 462(g) of the Homeland Security Act of 2002 (6 U.S.C.
12 279(g)).”.

13 (2) APPOINTMENT OF COUNSEL IN REMOVAL
14 PROCEEDINGS; RIGHT TO REVIEW CERTAIN DOCU-
15 MENTS IN REMOVAL PROCEEDINGS.—Section 240(b)
16 of the Immigration and Nationality Act (8 U.S.C.
17 1229a(b)) is amended—

18 (A) in paragraph (4)—

19 (i) in the matter preceding subpara-
20 graph (A), by striking “under regulations
21 of the Attorney General” and inserting
22 “under regulations of the Attorney Gen-
23 eral, or in the case of an unaccompanied
24 child, under regulations of the Secretary of
25 Health and Human Services”;

1 (ii) in subparagraph (A)—

2 (I) by striking “, at no expense
3 to the Government,”; and

4 (II) by striking the comma at the
5 end and inserting a semicolon;

6 (iii) by redesignating subparagraphs
7 (B) and (C) as subparagraphs (D) and
8 (E), respectively;

9 (iv) by inserting after subparagraph
10 (A) the following:

11 “(B) the Attorney General, or in the case
12 of an unaccompanied child, the Secretary of
13 Health and Human Services, may appoint or
14 provide counsel, at Government expense, to
15 noncitizens in immigration proceedings;

16 “(C) the noncitizen, or the noncitizen’s
17 counsel, not later than 7 days after receiving a
18 notice to appear under section 239(a), shall re-
19 ceive a complete copy of the noncitizen’s immi-
20 gration file (commonly known as an ‘A-file’) in
21 the possession of the Department of Homeland
22 Security (other than documents protected from
23 disclosure under section 552(b) of title 5,
24 United States Code);”; and

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

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

5 “(8) FAILURE TO PROVIDE NONCITIZEN RE-
6 QUIRED DOCUMENTS.—A removal proceeding may
7 not proceed until the noncitizen, or the noncitizen’s
8 counsel if the noncitizen 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, unless the
13 noncitizen or the noncitizen’s counsel expressly
14 waives such review period.”.

15 (3) CLARIFICATION REGARDING THE AUTHOR-
16 ITY OF THE FEDERAL GOVERNMENT TO APPOINT
17 COUNSEL TO NONCITIZENS IN IMMIGRATION PRO-
18 CEEDINGS.—

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

22 **“SEC. 292. RIGHT TO COUNSEL.**

23 “(a) IN GENERAL.—In any removal proceeding be-
24 fore the Attorney General, an appeal from such a removal
25 proceeding, and any related matter before the Department

1 of Homeland Security or a State court, an unaccompanied
2 child shall have the privilege of being represented by such
3 counsel as may be authorized to practice in such pro-
4 ceeding or matter as he or she may choose. This sub-
5 section shall not apply to screening proceedings described
6 in section 235(b)(1)(A).

7 “(b) ACCESS TO COUNSEL FOR UNACCOMPANIED
8 CHILDREN.—

9 “(1) IN GENERAL.—In any removal proceeding
10 before the Attorney General, an appeal from such a
11 removal proceeding, and any related matter before
12 the Department of Homeland Security or a State
13 court, an unaccompanied child shall be represented
14 by counsel appointed or provided by the Secretary of
15 Health and Human Services, at Government ex-
16 pense, unless the child has obtained at his or her
17 own expense counsel authorized to practice in such
18 proceeding or matter.

19 “(2) TIMING.—The Secretary of Health and
20 Human Services shall appoint or provide counsel to
21 an unaccompanied child under paragraph (1) as ex-
22 peditiously as possible after the earlier of—

23 “(A) the date on which a Notice to Appear
24 for removal proceedings is issued to the unac-
25 companied child, regardless of whether the No-

1 tice to Appear has been filed with an immigra-
2 tion court; or

3 “(B) the date on which the unaccompanied
4 child is placed in the custody of the Secretary
5 of Health and Human Services.

6 “(3) LENGTH OF REPRESENTATION.—An unac-
7 companied child shall be represented by counsel
8 under paragraph (1) at every stage of the pro-
9 ceedings, beginning with the unaccompanied child’s
10 initial appearance before an official with adjudica-
11 tory authority in removal proceedings or in related
12 matters before the Department of Homeland Secu-
13 rity or a State court, through the termination of im-
14 migration proceedings and resolution of any related
15 matter before the Department of Homeland Security
16 or a State court, even if the child attains 18 years
17 of age or is reunified with a parent or legal guardian
18 while the proceedings are pending.

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

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

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

10 “(c) PRO BONO REPRESENTATION.—

11 “(1) IN GENERAL.—To the maximum extent
12 practicable, the Secretary of Health and Human
13 Services shall make every effort to use the services
14 of competent counsel who agree to provide represen-
15 tation to such children under subsection (b) without
16 charge to the child.

17 “(2) DEVELOPMENT OF NECESSARY INFRA-
18 STRUCTURES AND SYSTEMS.—The Secretary of
19 Health and Human Services shall establish the nec-
20 essary infrastructure and systems for the appro-
21 priate identification, recruitment, training, and over-
22 sight of counsel available to provide assistance and
23 representation to unaccompanied children under sub-
24 section (b) without charge to the child.

1 “(d) MODEL GUIDELINES ON LEGAL REPRESENTA-
2 TION OF CHILDREN.—

3 “(1) DEVELOPMENT OF GUIDELINES.—The Di-
4 rector of the Office of Refugee Resettlement, in con-
5 sultation with the Director of the Executive Office
6 for Immigration Review, the Secretary of Homeland
7 Security, and nongovernmental stakeholders with
8 relevant expertise in providing immigration-related
9 legal services to children, shall develop model guide-
10 lines for the legal representation of unaccompanied
11 children in immigration proceedings, which shall be
12 based on—

13 “(A) the 2018 report of the American Bar
14 Association entitled ‘Standards for the Custody,
15 Placement and Care; Legal Representation; and
16 Adjudication of Unaccompanied Alien Children
17 in the United States’;

18 “(B) the American Bar Association Model
19 Rules of Professional Conduct; and

20 “(C) any other source the Director of the
21 Office of Refugee Resettlement considers appro-
22 priate.

23 “(2) PURPOSE OF GUIDELINES.—The guide-
24 lines developed under paragraph (1) shall be de-
25 signed to help protect each child from any individual

1 suspected of involvement in any criminal, harmful,
2 or exploitative activity associated with the smuggling
3 or trafficking of children, while ensuring the fairness
4 of the immigration proceeding in which the child is
5 involved.

6 “(e) DUTIES OF COUNSEL.—The duties of counsel
7 appointed or provided under this section shall include—

8 “(1) representing the unaccompanied alien child
9 concerned—

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

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

14 “(2) appearing in person for each of the
15 child’s—

16 “(A) individual merits hearings and master
17 calendar hearings before the Executive Office
18 for Immigration Review; and

19 “(B) interviews involving the Department
20 of Homeland Security;

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

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

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

8 “(6) carrying out other such duties as may be
9 prescribed by the Secretary of Health and Human
10 Services or the Director of the Executive Office for
11 Immigration Review.

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

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

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

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

22 (B) RULEMAKING.—The Secretary of
23 Health and Human Services shall promulgate
24 regulations to implement section 292 of the Im-
25 migration and Nationality Act, as added by

1 subparagraph (A), in accordance with the re-
2 quirements set forth in section 3006A of title
3 18, United States Code.

4 (d) ACCESS BY COUNSEL TO DEPARTMENT OF
5 HOMELAND SECURITY FACILITIES.—The Secretary of
6 Homeland Security shall provide access to counsel for all
7 noncitizens detained in—

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

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

14 (e) REPORT ON ACCESS TO COUNSEL.—

15 (1) REPORT.—Not later than December 31 of
16 each year, the Secretary of Health and Human Serv-
17 ices, in consultation with the Attorney General, shall
18 prepare and submit a report to the Committee on
19 the Judiciary of the Senate and the Committee on
20 the Judiciary of the House of Representatives re-
21 garding the extent to which the Secretary has pro-
22 vided counsel for unaccompanied children as de-
23 scribed in subsection (b) of section 292 of the Immi-
24 gration and Nationality Act, as amended by sub-
25 section (c)(3).

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 unac-
5 panied children described in subsection (b)
6 of section 292 of the Immigration and Nation-
7 ality Act, as amended by subsection (c)(3), who
8 were represented by counsel, including informa-
9 tion specifying—

10 (i) the stage of the legal process at
11 which representation of each such child
12 commenced;

13 (ii) whether each such child was in
14 government custody on the date on which
15 such representation commenced; and

16 (iii) the nationality and ages of such
17 children;

18 (B) the number and percentage of children
19 who received Know Your Rights presentations
20 or legal screenings, including the nationality
21 and ages of such children; and

22 (C) a description of the mechanisms used
23 under subsection (b) of section 292 of the Im-
24 migration and Nationality Act, as added by
25 subsection (c)(3), for identifying, recruiting,

1 and training pro bono counsel to represent un-
2 accompanied children.

3 (f) MOTIONS TO REOPEN.—Section 240(c)(7)(C) of
4 the Immigration and Nationality Act (8 U.S.C.
5 1229a(c)(7)(C)) is amended by adding at the end the fol-
6 lowing:

7 “(v) SPECIAL RULE FOR UNACCOM-
8 PANIED CHILDREN ENTITLED TO APPOINT-
9 MENT OF COUNSEL.—If the Secretary of
10 Health and Human Services fails to ap-
11 point or provide counsel for an unaccom-
12 panied child under section 292(b)—

13 “(I) the limitations under this
14 paragraph with respect to the filing of
15 a motion to reopen by such child shall
16 not apply; and

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

