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(Original Signature of Member)

117TH CONGRESS  
2D SESSION

**H. R.**

To establish, under Article I of the Constitution of the United States, a court of record to be known as the United States Immigration Courts.

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IN THE HOUSE OF REPRESENTATIVES

Ms. LOFGREN introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

To establish, under Article I of the Constitution of the United States, a court of record to be known as the United States Immigration Courts.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Real Courts, Rule of Law Act of 2022”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Establishment and structure of the United States Immigration Courts.

- Sec. 3. Employees.
- Sec. 4. Budget and expenditures.
- Sec. 5. Annual report.
- Sec. 6. Effective date; transitional provisions.
- Sec. 7. Institutional transfer; continuity of proceedings.
- Sec. 8. Review by the Judicial Conference; consultation requirements.
- Sec. 9. Technical and conforming provisions.

1 **SEC. 2. ESTABLISHMENT AND STRUCTURE OF THE UNITED**  
2 **STATES IMMIGRATION COURTS.**

3 The Immigration and Nationality Act is amended by  
4 adding at the end the following:

5 **“TITLE VI—UNITED STATES**  
6 **IMMIGRATION COURTS**  
7 **“Subtitle A—Organization and**  
8 **Jurisdiction**

9 **“SEC. 601. ESTABLISHMENT AND STRUCTURE.**

10 **“(a) ESTABLISHMENT.—**

11 **“(1) IN GENERAL.—**There is established, under  
12 Article I of the Constitution of the United States, a  
13 system of courts of record to be known as the  
14 United States Immigration Courts (referred to in  
15 this Act as the ‘Immigration Courts’). Each such  
16 court of record may be referred to as an ‘immigra-  
17 tion court’. The Immigration Courts is not an agen-  
18 cy of, and shall be independent of, the executive  
19 branch of the Government.

20 **“(2) DIVISIONS.—**The Immigration Courts shall  
21 consist of an appellate division, a trial division, and  
22 an administrative division.

1           “(3) COURT OFFICES.—The principal office of  
2           the Immigration Courts shall be in the Washington,  
3           D.C. metropolitan area, but any immigration court  
4           may sit at any place within the United States.

5           “(4) COURT SEAL.—The Immigration Courts  
6           shall have a seal which shall be judicially noticed.

7           “(b) APPELLATE DIVISION.—

8           “(1) IN GENERAL.—The appellate division of  
9           the Immigration Courts shall be composed of 21 im-  
10          migration appeals judges, one of whom shall serve as  
11          chief judge, in accordance with paragraph (3).

12          “(2) APPOINTMENT OF IMMIGRATION APPEALS  
13          JUDGES.—

14                 “(A) IN GENERAL.—Each immigration ap-  
15                 peals judge shall be appointed by the President,  
16                 by and with the advice and consent of the Sen-  
17                 ate, consistent with the requirements described  
18                 in section 602.

19                 “(B) TERM OF OFFICE.—Each immigra-  
20                 tion appeals judge shall be appointed for a term  
21                 of 15 years and may be reappointed for addi-  
22                 tional 15-year terms. An immigration appeals  
23                 judge who is not reappointed for an additional  
24                 term may continue to serve after the expiration  
25                 of the prior term until the earlier of—

1                   “(i) the date that a successor is ap-  
2                   pointed; or

3                   “(ii) the date that is one year after  
4                   the expiration of the prior term.

5                   “(C) SPECIAL RULE.—If an immigration  
6                   appeals judge does not serve the entirety of an  
7                   appointed term, the resulting vacancy shall be  
8                   filled by a successor appointed in accordance  
9                   with this paragraph. At the conclusion of the  
10                  term, such successor may be reappointed in ac-  
11                  cordance with subparagraph (B).

12                  “(3) CHIEF JUDGE.—

13                  “(A) DESIGNATION.—

14                  “(i) IN GENERAL.—The chief judge  
15                  shall be the immigration appeals judge who  
16                  is most senior in appointment among the  
17                  immigration appeals judges who, at that  
18                  time of appointment to the appellate divi-  
19                  sion—

20                                  “(I) have served for 1 or more  
21                                  years;

22                                  “(II) have at least 5 years re-  
23                                  maining in their term of office as an  
24                                  immigration appeals judge; and

1                   “(III) have not previously served  
2                   as chief judge.

3                   “(ii) ACTING CHIEF JUDGE.—If no  
4                   immigration appeals judge in regular ac-  
5                   tive service satisfies all of the requirements  
6                   in clause (i), the immigration appeals  
7                   judge who is most senior in commission  
8                   and who has not previously served as chief  
9                   judge shall serve as acting chief judge until  
10                  an immigration appeals judge becomes eli-  
11                  gible under such clause.

12                  “(iii) PRECEDENCE.—Immigration  
13                  appeals judges who have the same seniority  
14                  in commission shall be eligible for service  
15                  as chief judge according to seniority in  
16                  age.

17                  “(B) TERM OF OFFICE.—

18                  “(i) IN GENERAL.—Except as pro-  
19                  vided in clause (ii), the chief judge shall  
20                  serve a term that shall end on the earliest  
21                  of—

22                  “(I) the date that is 5 years after  
23                  the date that term begins;

1                   “(II) the date that the judge is  
2 removed from service for cause in ac-  
3 cordance with section 602(f);

4                   “(III) the date that the judge  
5 leaves regular active service as an im-  
6 migration appeals judge; and

7                   “(IV) the date that the judge  
8 provides written notice to the other  
9 immigration appeals judges that such  
10 judge is resigning from service as  
11 chief judge.

12                   “(ii) CONTINUATION OF SERVICE.—If,  
13 upon conclusion of the chief judge’s term  
14 of office described in clause (i)(I), no other  
15 immigration appeals judge is eligible to as-  
16 sume the role of chief judge as provided in  
17 subparagraph (A), the incumbent shall  
18 continue to serve as chief judge until an-  
19 other immigration appeals judge becomes  
20 eligible.

21                   “(4) EN BANC EXERCISE OF APPELLATE DIVI-  
22 SION AUTHORITY IN NON-ADJUDICATIVE MAT-  
23 TERS.—

24                   “(A) IN GENERAL.—The appellate division  
25 shall exercise only en banc its authority to—

1 “(i) appoint immigration trial judges  
2 to the trial division;

3 “(ii) remove immigration trial judges  
4 in accordance with section 602(f);

5 “(iii) appoint a chief administrative  
6 officer to the administrative division;

7 “(iv) promulgate rules and set policies  
8 and procedures of the Immigration Courts;  
9 and

10 “(v) address other non-adjudicative  
11 matters that require en banc consideration,  
12 as determined by the chief judge.

13 “(B) MAJORITY VOTE.—The appellate divi-  
14 sion shall exercise its en banc authority as pro-  
15 vided in subparagraph (A) by a majority vote,  
16 a quorum being present.

17 “(C) QUORUM.—For purposes of this  
18 paragraph, not less than  $\frac{2}{3}$  of all immigration  
19 appeals judges in regular active service shall  
20 constitute a quorum.

21 “(c) TRIAL DIVISION.—

22 “(1) IN GENERAL.—The trial division of the  
23 Immigration Courts shall be composed of immigra-  
24 tion trial courts, the number and geographical loca-  
25 tion of which shall be determined by the administra-

1       tive council, in accordance with the procedures de-  
2       scribed in subsection (d)(3)(B). Each immigration  
3       trial court shall be overseen by a chief trial judge.

4               “(2) APPOINTMENT OF IMMIGRATION TRIAL  
5       JUDGES.—

6               “(A) IN GENERAL.—Except as provided in  
7       section 603, each immigration trial judge shall  
8       be appointed by the appellate division consistent  
9       with the requirements described in section 602.

10              “(B) TERM OF OFFICE.—Each immigra-  
11       tion trial judge shall be appointed for a term of  
12       15 years and may be reappointed for additional  
13       15-year terms. An immigration trial judge who  
14       is not reappointed for an additional term may  
15       continue to serve after the expiration of the  
16       prior term for not more than 1 year or until a  
17       successor is appointed, whichever occurs first.

18              “(3) CHIEF TRIAL JUDGES.—

19              “(A) DESIGNATION.—The chief judge shall  
20       designate one immigration trial judge to serve  
21       as the chief trial judge for each geographical  
22       area. If only one immigration trial judge pre-  
23       sides over a geographical area, that judge shall  
24       be designated the chief trial judge.



1           “(B) TERM OF OFFICE.—Chief trial judges  
2           shall serve for an initial term of 5 years and  
3           may be reappointed for additional 5-year terms,  
4           or other periods of time that are less than 5  
5           years as determined by the appellate division.

6           “(C) RESPONSIBILITIES.—In addition to  
7           fulfilling regular judicial duties, chief trial  
8           judges shall be responsible for—

9                   “(i) overseeing the administrative op-  
10                  erations of the trial division in the geo-  
11                  graphical area in which they are located;  
12                  and

13                   “(ii) fulfilling all other duties and re-  
14                  sponsibilities articulated in this Act or del-  
15                  egated to the chief trial judges by the chief  
16                  judge.

17           “(d) ADMINISTRATIVE DIVISION.—

18                   “(1) IN GENERAL.—The administrative division  
19                  of the Immigration Courts shall consist of an admin-  
20                  istrative office and an administrative council.

21                   “(2) ADMINISTRATIVE OFFICE.—The adminis-  
22                  trative office shall be managed by a chief adminis-  
23                  trative officer, who shall be responsible for—

24                   “(A) implementing and administering oper-  
25                  ational rules, policies, and procedures of the

1 Immigration Courts established by the appellate  
2 division or the administrative council;

3 “(B) assisting the administrative council in  
4 executing its responsibilities as described in  
5 paragraph (3); and

6 “(C) fulfilling all other administrative du-  
7 ties and responsibilities articulated in this Act  
8 or delegated by the chief judge.

9 “(3) ADMINISTRATIVE COUNCIL.—

10 “(A) IN GENERAL.—The chief judge of the  
11 appellate division shall summon annually the  
12 chief trial judge of each court of the trial divi-  
13 sion to a meeting at such time and place in the  
14 United States as the chief judge may designate.  
15 The chief judge shall preside at such meeting  
16 which shall be known as the administrative  
17 council of the Immigration Courts. Special ses-  
18 sions of the council may be called by the chief  
19 judge at such times and places as the chief  
20 judge may designate. If the chief trial judge of  
21 any court of the trial division is unable to at-  
22 tend, the chief judge may summon any other  
23 judge from such court. Every judge summoned  
24 shall attend and, unless excused by the chief  
25 judge, shall remain throughout the sessions of

1 the council and advise as to the needs of that  
2 judge's court and as to any matters in respect  
3 of which the administration of justice in the  
4 Immigration Courts may be improved.

5 “(B) DETERMINATION OF NUMBER OF RE-  
6 QUIRED JUDGES AND GEOGRAPHICAL AREAS OF  
7 SERVICE.—

8 “(i) SURVEY.—Not later than 1 year  
9 after the date of the enactment of the Real  
10 Courts, Rule of Law Act of 2022, and  
11 every 4 years thereafter, the administrative  
12 council shall conduct a survey, which shall  
13 include the solicitation of information and  
14 recommendations from the public, to deter-  
15 mine the number of immigration trial  
16 courts required to provide for the expedi-  
17 tious and effective administration of jus-  
18 tice, as well as the geographical areas to be  
19 served by such courts. In conducting the  
20 survey, the administrative council shall—

21 “(I) assess the continuing need  
22 for existing immigration trial court  
23 positions and the need for additional  
24 positions in each geographical loca-  
25 tion;

1                   “(II) evaluate local conditions in  
2                   each geographical location, including  
3                   the proximity to populations to be  
4                   served, the quality and availability of  
5                   infrastructure to support transpor-  
6                   tation and communication, and the  
7                   availability of legal services for indi-  
8                   gent and non-English speaking indi-  
9                   viduals;

10                   “(III) consider proximity and ac-  
11                   cess to judicial and Department of  
12                   Homeland Security facilities; and

13                   “(IV) consider the allocation of  
14                   immigration trial courts and judges  
15                   among existing geographical areas  
16                   and whether the administration of  
17                   justice would be better served by the  
18                   presence of immigration trial courts  
19                   and judges in new or different areas.

20                   “(ii) PUBLICATION OF SURVEY RE-  
21                   SULTS.—The administrative council shall  
22                   publish the results of the survey described  
23                   in subparagraph (A).

24                   “(iii) NOTICE OF VACANCIES.—The  
25                   administrative council shall publish notice

1 of any immigration judge vacancies or new  
2 staff positions.

3 “(C) MERIT SELECTION PANEL.—

4 “(i) APPOINTMENT OF IMMIGRATION  
5 JUDGES.—The administrative council shall  
6 establish a merit selection panel to assist  
7 in identifying and recommending individ-  
8 uals who are best qualified to serve as im-  
9 migration judges, consistent with sub-  
10 sections (a), (b), and (c) of section 602.

11 “(ii) COMPOSITION.—The panel de-  
12 scribed in paragraph (1) shall consist of  
13 qualified individuals with experience in a  
14 diverse range of settings, including aca-  
15 demia, non-governmental organizations,  
16 private immigration practice, and govern-  
17 ment service.

18 **“SEC. 602. IMMIGRATION APPEALS JUDGES AND TRIAL**  
19 **JUDGES.**

20 “(a) QUALIFICATIONS OF IMMIGRATION JUDGES.—  
21 Each immigration judge shall—

22 “(1) be a member in good standing of the bar  
23 of a Federal court or the highest court of a State,  
24 or any combination thereof, for not less than ten  
25 years;

1           “(2) possess, and have a reputation for, integ-  
2           rity and good character;

3           “(3) possess and have demonstrated a commit-  
4           ment to equal justice under the law;

5           “(4) possess and have demonstrated out-  
6           standing legal ability and competence, as evidenced  
7           by substantial legal experience, ability to deal with  
8           complex legal problems, aptitude for legal scholar-  
9           ship and writing, and familiarity with courts and  
10          court processes;

11          “(5) exhibit demeanor, character, and person-  
12          ality that indicate a judicial temperament; and

13          “(6) be qualified to conduct fair and impartial  
14          hearings that are consistent with due process.

15          “(b) ADDITIONAL FACTORS FOR THE APPOINTMENT  
16 OF IMMIGRATION JUDGES.—In appointing immigration  
17 judges, the President and the appellate division shall en-  
18 sure that—

19           “(1) qualified candidates are identified without  
20           regard to race, color, sex, religion, national origin,  
21           disability, age, or any other factor protected under  
22           Federal law;

23           “(2) the corps of immigration judges—

1           “(A) is comprised primarily of individuals  
2           with prior legal experience in immigration law;  
3           and

4           “(B) to the extent practicable, reflects a  
5           balance of individuals with prior legal experi-  
6           ence in the public sector and private sector; and

7           “(3) candidates are selected without regard to  
8           political party affiliation or perceived political ide-  
9           ology.

10          “(c) PROHIBITED RELATIONSHIPS.—No individual  
11          may be appointed as an immigration trial judge if such  
12          individual is related by blood in the first-, second-, or  
13          third-degree, or by marriage to a immigration appeals  
14          judge in regular active service.

15          “(d) CONTINUING EDUCATION.—In addition to the  
16          training required under section 603(c) of the International  
17          Religious Freedom Act of 1998 (22 U.S.C. 6473(c)), all  
18          immigration judges shall be required to satisfy continuing  
19          education requirements, as determined by the administra-  
20          tive council.

21          “(e) SALARIES.—

22                 “(1) IMMIGRATION APPEALS JUDGES.—Each  
23                 immigration appeals judge shall serve on a full-time  
24                 basis and shall receive as compensation for such  
25                 services, an annual salary that is equal to the salary

1 of a judge of the district court of the United States  
2 as determined pursuant to section 135 of title 28,  
3 United States Code.

4 “(2) IMMIGRATION TRIAL JUDGES.—Each im-  
5 migration trial judge shall serve on a full-time basis  
6 and shall receive as compensation for such services,  
7 an annual salary that is equal to 92 percent of the  
8 salary of a judge of the district court of the United  
9 States as determined pursuant to section 135 of title  
10 28, United States Code.

11 “(3) PROHIBITION ON THE PRACTICE OF  
12 LAW.—No immigration judge may engage in the  
13 practice of law or any other practice, business, occu-  
14 pation, or employment that is inconsistent with the  
15 expeditious, proper, and impartial performance of  
16 such judge’s duties.

17 “(f) REMOVAL.—

18 “(1) IN GENERAL.—An immigration judge may  
19 be removed from office only on grounds of inca-  
20 pacity, misconduct, neglect of duty, or having en-  
21 gaged in the practice of law, and in accordance with  
22 the following:

23 “(A) An immigration appeals judge may be  
24 removed from office by the President.



1           “(B) An immigration trial judge may be  
2 removed from office by the appellate division.

3           “(C) No immigration judge may be re-  
4 moved from office unless such judge is provided  
5 with notice of the allegations forming the basis  
6 for removal and an opportunity to appear in  
7 person at a hearing to rebut such allegations.

8           “(2) COMPLAINTS.—

9           “(A) IN GENERAL.—The appellate division  
10 shall promulgate rules, consistent with chapter  
11 16 of title 28, United States Code, for receiv-  
12 ing, investigating, and resolving complaints re-  
13 garding the conduct of immigration judges. In  
14 investigating and acting upon any such com-  
15 plaint, the appellate division shall have the pow-  
16 ers granted to a judicial council under such  
17 chapter.

18           “(B) JUDICIAL CONFERENCE.—The provi-  
19 sions of sections 354(b) through 360 of title 28,  
20 United States Code, regarding referral or cer-  
21 tification to, and petition for review in the Judi-  
22 cial Conference of the United States, and action  
23 thereon, shall apply to the exercise of the pow-  
24 ers of a judicial council by the appellate divi-  
25 sion. The grounds for removal specified in para-

1 graph (1) shall provide the basis for a deter-  
 2 mination to refer a complaint to the Judicial  
 3 Conference, for further action by the Con-  
 4 ference, and for certification and transmittal by  
 5 the Conference of any complaint to the Presi-  
 6 dent.

7 “(g) RETIREMENT.—

8 “(1) Any immigration judge shall retire upon  
 9 attaining the age of 70.

10 “(2) Any immigration judge who meets the age  
 11 and service requirements set forth in the following  
 12 table may retire:

<b>“The immigration judge has at- tained age</b>	<b>And the years of service as an immigration judge are at least:</b>
65 .....	15
66 .....	14
67 .....	13
68 .....	12
69 .....	11
70 .....	10

13 “(3) Any immigration judge who is not re-  
 14 appointed following the expiration of the term of his  
 15 office may retire upon the completion of such term,  
 16 if—

17 “(A) he has served as an immigration  
 18 judge for 15 years or more; and

19 “(B) not earlier than 9 months preceding  
 20 the date of the expiration of the term of his of-

1           fice and not later than 6 months preceding such  
2           date, he advised the President or the appellate  
3           division, as appropriate, in writing that he was  
4           willing to accept reappointment as an immigra-  
5           tion judge.

6           “(4) Any immigration judge who becomes per-  
7           manently disabled from performing his duties shall  
8           retire.

9           “(h) RETIRED PAY.—Any individual who—

10           “(1) retires under paragraph (1), (2), or (3) of  
11           subsection (g) and elects under subsection (i) to re-  
12           ceive retired pay under this subsection shall receive  
13           retired pay during any period at a rate which bears  
14           the same ratio to the rate of the salary payable to  
15           an immigration judge during such period as the  
16           number of years he has served as immigration judge  
17           bears to 10; except that the rate of such retired pay  
18           shall not be more than the rate of such salary for  
19           such period; or

20           “(2) retires under paragraph (4) of subsection  
21           (b) and elects under subsection (i) to receive retired  
22           pay under this subsection shall receive retired pay  
23           during any period at a rate- (A) equal to the rate  
24           of the salary payable to an immigration judge during  
25           such period if before he retired he had served as an

1 immigration judge not less than 10 years; or (B)  
2 one-half of the rate of the salary payable to an im-  
3 migration judge during such period if before he re-  
4 tired he had served as an immigration judge less  
5 than 10 years.

6 Such retired pay shall begin to accrue on the day following  
7 the day on which his salary as immigration judge ceases  
8 to accrue, and shall continue to accrue during the remain-  
9 der of his life. Retired pay under this subsection shall be  
10 paid in the same manner as the salary of an immigration  
11 judge. In computing the rate of the retired pay under  
12 paragraph (1) of this subsection for any individual who  
13 is entitled thereto, that portion of the aggregate number  
14 of years he has served as an immigration judge which is  
15 a fractional part of 1 year shall be eliminated if it is less  
16 than 6 months, or shall be counted as a full year if it  
17 is 6 months or more. In computing the rate of the retired  
18 pay under paragraph (1) of this subsection for any indi-  
19 vidual who is entitled thereto, any period during which  
20 such individual performs services under subsection (c) on  
21 a substantially full-time basis shall be treated as a period  
22 during which he has served as an immigration judge.

23 “(i) ELECTION TO RECEIVE RETIRED PAY.—Any im-  
24 migration judge may elect to receive retired pay under  
25 subsection (h). Such an election—

1           “(1) may be made only while an individual is an  
2           immigration judge (except that in the case of an in-  
3           dividual who fails to be reappointed as immigration  
4           judge at the expiration of a term of office, it may  
5           be made at any time before the day after the day  
6           on which his successor takes office);

7           “(2) once made, shall be irrevocable;

8           “(3) in the case of any immigration judge other  
9           than the chief judge, shall be made by filing notice  
10          thereof in writing with the chief judge; and

11          “(4) in the case of the chief judge, shall be  
12          made by filing notice thereof in writing with the Of-  
13          fice of Personnel Management.

14          The chief judge shall transmit to the Office of Personnel  
15          Management a copy of each notice filed with him under  
16          this subsection.

17          “(j) RETIRED PAY AFFECTED IN CERTAIN CASES.—  
18          In the case of an individual for whom an election to receive  
19          retired pay under subsection (h) is in effect—

20                 “(1) 1-YEAR FORFEITURE FOR FAILURE TO  
21                 PERFORM JUDICIAL DUTIES.—If such individual  
22                 during any calendar year fails to perform judicial  
23                 duties required of him by section 603, such indi-  
24                 vidual shall forfeit all rights to retired pay under  
25                 subsection (d) for the 1-year period which begins on

1 the 1st day on which he so fails to perform such du-  
2 ties.

3 “(2) SUSPENSION OF RETIRED PAY DURING PE-  
4 RIOD OF COMPENSATED GOVERNMENT SERVICE.—If  
5 such individual accepts compensation for civil office  
6 or employment under the Government of the United  
7 States (other than the performance of judicial duties  
8 pursuant to section 603), such individual shall for-  
9 feit all rights to retired pay under subsection (h) for  
10 the period for which such compensation is received.

11 “(3) FORFEITURES OF RETIRED PAY UNDER  
12 PARAGRAPH (1) NOT TO APPLY WHERE INDIVIDUAL  
13 ELECTS TO FREEZE AMOUNT OF RETIRED PAY.—

14 “(A) IN GENERAL.—If any individual  
15 makes an election under this paragraph—

16 “(i) paragraph (1) and section 603  
17 shall not apply to such individual begin-  
18 ning on the date such election takes effect,  
19 and

20 “(ii) the retired pay under subsection  
21 (h) payable to such individual for periods  
22 beginning on or after the date such elec-  
23 tion takes effect shall be equal to the re-  
24 tired pay to which such individual would be

1 entitled without regard to this clause at  
2 the time of such election.

3 “(B) ELECTION.—An election under this  
4 paragraph—

5 “(i) may be made by an individual  
6 only if such individual meets the age and  
7 service requirements for retirement under  
8 paragraph (2) of subsection (g),

9 “(ii) may be made only during the pe-  
10 riod during which the individual may make  
11 an election to receive retired pay or while  
12 the individual is receiving retired pay, and

13 “(iii) shall be made in the same man-  
14 ner as the election to receive retired pay.

15 Such an election, once it takes effect, shall be  
16 irrevocable.

17 “(C) WHEN ELECTION TAKES EFFECT.—  
18 Any election under this paragraph shall take ef-  
19 fect on the 1st day of the 1st month following  
20 the month in which the election is made.

21 “(k) COORDINATION WITH CIVIL SERVICE RETIRE-  
22 MENT.—

23 “(1) GENERAL RULE.—Except as otherwise  
24 provided in this subsection, the provisions of the civil  
25 service retirement laws (including the provisions re-

1       lating to the deduction and withholding of amounts  
2       from basic pay, salary, and compensation) shall  
3       apply in respect of service as an immigration judge  
4       (together with other service as an officer or em-  
5       ployee to whom such civil service retirement laws  
6       apply) as if this section had not been enacted.

7               “(2) EFFECT OF ELECTING RETIRED PAY.—In  
8       the case of any individual who has filed an election  
9       to receive retired pay under subsection (h)—

10               “(A) no annuity or other payment shall be  
11               payable to any person under the civil service re-  
12               tirement laws with respect to any service per-  
13               formed by such individual (whether performed  
14               before or after such election is filed and wheth-  
15               er performed as immigration judge or other-  
16               wise);

17               “(B) no deduction for purposes of the Civil  
18               Service Retirement and Disability Fund shall be  
19               made from retired pay payable to him under  
20               subsection (h) or from any other salary, pay, or  
21               compensation payable to him, for any period be-  
22               ginning after the day on which such election is  
23               filed; and

24               “(C) such individual shall be paid the  
25               lump-sum credit computed under section



1           8331(8) of title 5 of the United States Code  
2           upon making application therefor with the Of-  
3           fice of Personnel Management.

4           “(1) RETIREMENT FOR DISABILITY.—

5           “(1) Any immigration judge who becomes per-  
6           manently disabled from performing his duties shall  
7           certify to the President, or the appellate division, as  
8           applicable, his disability in writing. If the chief judge  
9           retires for disability, his retirement shall not take ef-  
10          fect until concurred in by the President.

11          “(2) Whenever any immigration judge who be-  
12          comes permanently disabled from performing his du-  
13          ties does not retire or the appellate division, as ap-  
14          plicable, and the President finds that such immigra-  
15          tion judge is unable to discharge efficiently all the  
16          duties of his office by reason of permanent mental  
17          or physical disability and that the appointment of an  
18          additional immigration judge is necessary for the ef-  
19          ficient dispatch of business, the President or the ap-  
20          pellate division, as applicable, shall declare such im-  
21          migration judge to be retired.

22          “(m) REVOCATION OF ELECTION TO RECEIVE RE-  
23          TIRED PAY.—

24          “(1) IN GENERAL.—Notwithstanding subsection  
25          (e)(2), an individual who has filed an election to re-

1       ceive retired pay under subsection (h) may revoke  
2       such election at any time before the first day on  
3       which retired pay (or compensation under section  
4       603 in lieu of retired pay) would (but for such rev-  
5       ocation) begin to accrue with respect to such indi-  
6       vidual.

7               “(2) MANNER OF REVOKING.—Any revocation  
8       under this subsection shall be made by filing a no-  
9       tice thereof in writing with the Civil Service Com-  
10       mission. The Civil Service Commission shall trans-  
11       mit to the chief judge a copy of each notice filed  
12       under this subsection.

13               “(3) EFFECT OF REVOCATION.—In the case of  
14       any revocation under this subsection—

15                       “(A) for purposes of this section, the indi-  
16       vidual shall be treated as not having filed an  
17       election to receive retired pay under subsection  
18       (h),

19                       “(B) no credit shall be allowed for any  
20       service as an immigration judge unless with re-  
21       spect to such service either there has been de-  
22       ducted and withheld the amount required by  
23       the civil service retirement laws or there has  
24       been deposited in the Civil Service Retirement

1 and Disability Fund an amount equal to the  
2 amount so required, with interest,

3 “(C) the Immigration Courts shall deposit  
4 in the Civil Service Retirement and Disability  
5 Fund an amount equal to the additional  
6 amount it would have contributed to such Fund  
7 but for the election under subsection (i), and

8 “(D) if subparagraph (C) is complied with,  
9 service on the Immigration Courts shall be  
10 treated as service with respect to which deduc-  
11 tions and contributions had been made during  
12 the period of service.

13 “(n) THRIFT SAVINGS PLAN.—

14 “(1) ELECTION TO CONTRIBUTE.—

15 “(A) IN GENERAL.—An immigration judge  
16 may elect to contribute to the Thrift Savings  
17 Fund established by section 8437 of title 5,  
18 United States Code.

19 “(B) PERIOD OF ELECTION.—An election  
20 may be made under this paragraph only during  
21 a period provided under section 8432(b) of title  
22 5, United States Code, for individuals subject to  
23 chapter 84 of such title.

24 “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—

25 Except as otherwise provided in this subsection, the

1 provisions of subchapters III and VII of chapter 84  
2 of title 5, United States Code, shall apply with re-  
3 spect to an immigration judge who makes an elec-  
4 tion under paragraph (1).

5 “(3) SPECIAL RULES.—

6 “(A) AMOUNT CONTRIBUTED.—The  
7 amount contributed by an immigration judge to  
8 the Thrift Savings Fund in any pay period shall  
9 not exceed the maximum percentage of such im-  
10 migration judge’s basic pay for such period as  
11 allowable under section 8440f of title 5, United  
12 States Code. Basic pay does not include any re-  
13 tired pay paid pursuant to this section.

14 “(B) CONTRIBUTIONS FOR BENEFIT OF  
15 IMMIGRATION JUDGE.—No contributions may  
16 be made for the benefit of an immigration judge  
17 under section 8432(c) of title 5, United States  
18 Code.

19 “(C) APPLICABILITY OF SECTION 8433(b)  
20 OF TITLE 5 WHETHER OR NOT IMMIGRATION  
21 JUDGE RETIRES.—Section 8433(b) of title 5,  
22 United States Code, applies with respect to an  
23 immigration judge who makes an election under  
24 paragraph (1) and who either—

25 “(i) retires under subsection (g), or

1                   “(ii) ceases to serve as an immigra-  
2                   tion judge but does not retire under sub-  
3                   section (g).

4                   Retirement under subsection (b) is a separation  
5                   from service for purposes of subchapters III  
6                   and VII of chapter 84 of that title.

7                   “(D)    APPLICABILITY    OF    SECTION  
8                   8351(b)(5) OF TITLE 5.—The provisions of sec-  
9                   tion 8351(b)(5) of title 5, United States Code,  
10                  shall apply with respect to an immigration  
11                  judge who makes an election under paragraph  
12                  (1).

13                  “(E)    EXCEPTION.—Notwithstanding sub-  
14                  paragraph (C), if any immigration judge retires  
15                  under this section, or resigns without having  
16                  met the age and service requirements set forth  
17                  under subsection (g)(2), and such immigration  
18                  judge’s nonforfeitable account balance is less  
19                  than an amount that the Executive Director of  
20                  the Federal Retirement Thrift Investment  
21                  Board prescribes by regulation, the Executive  
22                  Director shall pay the nonforfeitable account  
23                  balance to the participant in a single payment.

1 **“SEC. 603. TEMPORARY IMMIGRATION JUDGES AND COURT**  
2 **FACILITIES.**

3 “(a) IN GENERAL.—Subject to subsection (c), if the  
4 administrative council determines, based on specific and  
5 credible facts, that the current resources of the Immigra-  
6 tion Courts are insufficient for the expeditious and effec-  
7 tive administration of justice, the appellate division may  
8 exercise its authority en banc to—

9 “(1) appoint temporary immigration trial  
10 judges, which appointment shall be undertaken in a  
11 manner consistent with the requirements of section  
12 602, to the extent practicable;

13 “(2) recall retired immigration trial or appeals  
14 judges, as described in subsection (b); and

15 “(3) establish temporary court facilities in des-  
16 ignated geographic areas.

17 “(b) RECALL OF RETIRED JUDGES.—

18 “(1) ELIGIBILITY.—A retired immigration  
19 judge may be recalled for service if the judge pro-  
20 vides to the clerk of the Immigration Courts written  
21 notice that the judge is willing to be recalled for  
22 service in accordance with the terms of this sub-  
23 section.

24 “(2) AUTHORITY OF RECALLED JUDGES.—An  
25 immigration judge who is recalled to serve as an im-  
26 migration appeals judge or immigration trial judge

1       may exercise all of the judicial powers and duties of  
2       such judges in regular active service, except as spe-  
3       cifically provided in this subtitle. Such judge shall  
4       not be counted for purposes of sections 601(b)(1) or  
5       (c)(2).

6           “(3) COMPENSATION.—An immigration judge  
7       who is recalled for service shall be paid at the rate  
8       of pay in effect under section 602(e) for the position  
9       at the time of the judge’s retirement, less the  
10      amount of the judge’s retirement annuity.

11          “(4) EFFECT ON CIVIL SERVICE RETIRE-  
12      MENT.—Except as provided in subsection (d), an im-  
13      migration judge who is recalled for service who re-  
14      tired under chapter 83 or 84 of title 5, United  
15      States Code, shall be considered to be a reemployed  
16      annuitant under that chapter. Nothing in this sub-  
17      section affects the right of an immigration judge  
18      who retired under chapter 83 or 84 of title 5, United  
19      States Code, to serve as a reemployed annuitant in  
20      accordance with the provisions of title 5, United  
21      States Code.

22          “(c) REPORTING REQUIREMENTS.—

23           “(1) INITIAL REPORT.—Prior to exercising the  
24      authority described in subsection (a), the appellate  
25      division shall transmit a report to the Committee on

1 the Judiciary of the House of Representatives and  
2 the Committee on the Judiciary of the Senate detail-  
3 ing—

4 “(A) the specific and credible facts that led  
5 to the determination that additional court re-  
6 sources are required;

7 “(B) an assessment as to the number of  
8 temporary immigration judges or court facilities  
9 that are required; and

10 “(C) an estimate as to how long the appel-  
11 late division expects the immigration judges or  
12 court facilities described in subsection (a) to re-  
13 main in place.

14 “(2) ADDITIONAL REPORTING.—Not later than  
15 30 days after exercising the authority under sub-  
16 section (a) and every 30 days thereafter, the appel-  
17 late division shall report to the Committees named  
18 in paragraph (1) on the current status of the Immi-  
19 gration Courts and the continuing need for the tem-  
20 porary immigration judges or court facilities.

21 “(3) REDUCTION IN RESOURCES AND TERMI-  
22 NATION.—

23 “(A) GRADUAL REDUCTION IN RE-  
24 SOURCES.—The appellate division shall, exer-  
25 cising its authority en banc in accordance with



1 section 601(b)(4), terminate the appointment of  
2 individual temporary immigration judges and  
3 close individual temporary court facilities as the  
4 appellate division, in consultation with the ad-  
5 ministrative council, determines they are no  
6 longer required. For purposes of this subpara-  
7 graph, section 602(g) does not apply.

8 “(B) TERMINATION.—All temporary immi-  
9 gration judge appointments shall be rescinded  
10 and all temporary court facilities closed upon  
11 the earliest of—

12 “(i) the date that the appellate divi-  
13 sion determines, in consultation with the  
14 administrative council, that regular court  
15 resources are sufficient to resume normal  
16 court operations;

17 “(ii) the date that Congress directs  
18 that such actions be taken by concurrent  
19 resolution; or

20 “(iii) 210 days after the appellate di-  
21 vision submits its initial report under para-  
22 graph (1)(A), unless Congress extends  
23 such 210-day period by law.

24 **“SEC. 604. JURISDICTION.**

25 “(a) APPELLATE DIVISION JURISDICTION.—

1           “(1) IN GENERAL.—The appellate division of  
2 the Immigration Courts shall have jurisdiction  
3 over—

4           “(A) appeals of immigration trial judge de-  
5 cisions, as described in section 625(c);

6           “(B) appeals of decisions by the Secretary  
7 of Homeland Security on petitions filed under  
8 section 204 to classify an alien described in sec-  
9 tions 201(b)(2)(A)(i) or 203(a); and

10           “(C) original proceedings and appeals in  
11 disciplinary matters concerning attorneys and  
12 practitioners before the Immigration Courts.

13           “(2) SAVINGS CLAUSE.—In addition to the mat-  
14 ters described in paragraph (1), the appellate divi-  
15 sion shall have jurisdiction to hear and decide all  
16 other matters over which the Board of Immigration  
17 Appeals had authority on the day before the effective  
18 date of this Act.

19           “(b) TRIAL DIVISION JURISDICTION.—

20           “(1) IN GENERAL.—The trial division of the  
21 Immigration Courts shall have jurisdiction over—

22           “(A) removal proceedings as described in  
23 sections 238 and 240;

24           “(B) review of rescissions of lawful perma-  
25 nent residence under section 246;

1           “(C) review of credible fear determinations  
2           under section 235 and reasonable fear deter-  
3           minations for aliens subject to reinstated orders  
4           of removal under section 241;

5           “(D) review of applications for asylum re-  
6           ferred by the Secretary of Homeland Security  
7           where the applicant is barred from being placed  
8           in removal proceedings under section 240, and  
9           referrals for protection under section 241(b)(3)  
10          or the United Nations Convention Against Tor-  
11          ture where the individual is not in removal pro-  
12          ceedings and is barred from asylum under this  
13          Act;

14          “(E) determinations relating to bond, cus-  
15          tody, or the detention of any alien in the cus-  
16          tody of the Department of Homeland Security;

17          “(F) determinations as to whether admin-  
18          istrative actions arising from applications or pe-  
19          titions filed by or on behalf of the alien and  
20          that are pending during the course of the  
21          alien’s removal proceedings under section 240  
22          have been unlawfully withheld or unreasonably  
23          delayed; and

1           “(G) disciplinary matters concerning attor-  
2           neys and practitioners before the Immigration  
3           Courts.

4           “(2) SAVINGS CLAUSE.—In addition to the mat-  
5           ters described in paragraph (1), the trial division  
6           shall have jurisdiction to hear and decide all other  
7           matters over which immigration judges had author-  
8           ity on the day before the effective date of this Act.

9           **“Subtitle B—Procedure and**  
10           **Appellate Review**

11           **“SEC. 621. PROCEEDINGS.**

12           “(a) APPELLATE DIVISION PROCEEDINGS.—

13           “(1) IN GENERAL.—Except as provided by rules  
14           established by the appellate division, proceedings be-  
15           fore the appellate division shall be heard and decided  
16           by immigration appeals judges sitting in panels of  
17           three such judges or en banc, and decisions shall be  
18           made by majority vote. Any decision of a panel may  
19           be reconsidered by the court sitting en banc.

20           “(2) PRECEDENCE IN APPELLATE DIVISION.—

21           The chief judge of the Immigration Courts shall  
22           have precedence and preside at any session of the  
23           appellate division that such judge attends. Other im-  
24           migration appeals judges shall have precedence and  
25           preside in the appellate division according to the se-

1       niority of their original commissions and, for judges  
2       whose commissions bear the same date, according to  
3       seniority in age.

4       “(b) TRIAL DIVISION PROCEEDINGS.—

5             “(1) IN GENERAL.—Except as provided in sec-  
6       tion 604(a), all proceedings before the Immigration  
7       Courts shall originate in the trial division. Pro-  
8       ceedings before the trial division shall be heard and  
9       decided by a single immigration trial judge, with  
10      matters assigned to such judges in a manner deter-  
11      mined by the appellate division.

12            “(2) AUTHORITY OF TRIAL DIVISION.—In pre-  
13      siding over matters before the trial division, immi-  
14      gration trial judges may—

15            “(A) record and receive evidence, admin-  
16      ister oaths, examine and cross-examine wit-  
17      nesses, set deadlines, and render findings of  
18      fact and conclusions of law;

19            “(B) render decisions on respondents’  
20      prima facie and discretionary eligibility for re-  
21      lief from removal; and

22            “(C) order and take depositions, issue sub-  
23      poenas requiring the attendance and testimony  
24      of witnesses and the production of documents

1           or other evidence, and order responses to writ-  
2           ten interrogatories.

3           “(c) CONTEMPT AUTHORITY.—

4           “(1) IN GENERAL.—Immigration judges shall  
5           have the authority, to sanction by civil money pen-  
6           alty, any individual whose action or inaction ob-  
7           structs the administration of justice or is otherwise  
8           in contempt of the lawful authority of such judge or  
9           the Immigration Courts.

10          “(2) NOTICE.—No individual may be sanc-  
11          tioned for contempt under paragraph (1) without  
12          first receiving notice of the charges and an oppor-  
13          tunity to rebut such charges.

14          “(d) ASSISTANCE TO THE COURT.—The Immigration  
15          Courts shall have such assistance in carrying out its lawful  
16          writ, process, order, rule, decree, or command, including  
17          nationwide service of a subpoena, as is available to a court  
18          of the United States, as that term is defined in section  
19          451 of title 28, United States Code. The United States  
20          marshal for a district in which the immigration trial judge  
21          is sitting shall, if requested by the presiding judge, attend  
22          any court proceeding in that district, and may otherwise  
23          provide, when requested by the chief trial judge of that  
24          immigration trial court, for the security of the immigra-  
25          tion trial court, including the personal protection of

1 judges, court officers, witnesses, and other threatened per-  
2 sons in the interests of justice, where criminal intimidation  
3 impedes on the functioning of the judicial process or any  
4 other official proceeding. The United States Marshals  
5 Service retains final authority regarding security require-  
6 ments for the Immigration Courts.

7 “(e) OPINIONS AND ORDERS.—

8 “(1) IN GENERAL.—Opinions and orders shall  
9 be issued in accordance with rules promulgated by  
10 the appellate division, except that decisions on the  
11 merits of an application or request for relief from re-  
12 moval rendered by the trial division or the appellate  
13 division shall, to the greatest extent practicable, be  
14 issued in the form of a written opinion and shall in-  
15 clude an analysis of the facts of the case and the  
16 legal reasoning for the decision.

17 “(2) PRECEDENTS.—Unless subsequently modi-  
18 fied or reversed by the appellate division, the court  
19 of appeals for the respective judicial circuit, or the  
20 Supreme Court, precedent decisions of the appellate  
21 division shall be binding on all immigration judges  
22 and all officers and employees of executive agencies  
23 (as defined in section 105 of title 5, United States  
24 Code) with powers, functions, and duties under this

1 Act and other laws relating to the immigration and  
2 naturalization of aliens.

3 “(f) RECUSAL OF JUDGES.—Section 455 of title 28,  
4 United States Code, shall apply to all immigration judges  
5 and proceedings of the Immigration Courts.

6 **“SEC. 622. IMMIGRATION COURTS RULES OF PRACTICE AND**  
7 **PROCEDURE.**

8 “(a) IN GENERAL.—Exercising its en banc authority,  
9 the appellate division shall promulgate rules of practice  
10 and procedure before the trial division and the appellate  
11 division, including—

12 “(1) rules governing the representation of par-  
13 ties, which shall—

14 “(A) provide for the admission of qualified  
15 attorneys to practice before the Immigration  
16 Courts and, as appropriate, for the admission of  
17 qualified non-attorney representatives;

18 “(B) prescribe standards of practice and  
19 professional conduct, which shall apply to all at-  
20 torneys and practitioners that appear before the  
21 Immigration Courts; and

22 “(C) provide for disciplinary proceedings  
23 before the Immigration Courts for attorneys  
24 and practitioners who do not comply with the  
25 standards described in subparagraph (B);



1           “(2) rules governing the exercise of the appel-  
2 late division’s en banc authority over adjudicative  
3 matters, including decisions of an appellate division  
4 panel;

5           “(3) rules setting forth the types of matters  
6 that are appropriate for review by a single appellate  
7 judge;

8           “(4) subject to section 621(e), rules governing  
9 the issuance of opinions and written orders, and  
10 precedent decisions;

11           “(5) rules governing the use of video teleconfer-  
12 encing technology or other similar technologies,  
13 which shall be prohibited in proceedings where the  
14 alien’s eligibility for relief from removal is being  
15 evaluated, unless the alien consents to its use;

16           “(6) procedures, consistent with section  
17 602(f)(2) for receiving, investigating, and resolving  
18 complaints regarding the conduct of immigration  
19 judges; and

20           “(7) all other policies, and procedures assigned  
21 to the appellate division as described in this title.

22           “(b) LOCAL RULES.—Each chief trial judge may es-  
23 tablish local rules of practice and procedure, provided  
24 that—

1           “(1) such rules are consistent with the provi-  
2           sions of this title;

3           “(2) a majority of immigration trial judges on  
4           the immigration trial court of that chief judge con-  
5           cur to the local rules; and

6           “(3) the chief judge approves the local rules.

7           “(c) IMMIGRATION COURT FEES.—

8           “(1) IN GENERAL.—The appellate division shall  
9           prescribe rules which provide for the collection of  
10          reasonable filing fees and other fees, as appropriate.  
11          Each such fee may not exceed the fee charged and  
12          collected for the same or a substantially similar pur-  
13          pose by the Federal district courts or the Depart-  
14          ment of Homeland Security.

15          “(2) WAIVER.—Rules promulgated by the ap-  
16          pellate division shall include procedures under which  
17          any such fee may be waived in the case of financial  
18          hardship.

19          “(d) PUBLICATION OF RULES AND FEES.—The ad-  
20          ministrative division shall maintain a public website that  
21          contains or consolidates current information on all rules  
22          and fees of the Immigration Courts, including all local  
23          rules established under this subsection.

1 **“SEC. 623. REPRESENTATION OF PARTIES AND OTHER AS-**  
2 **SISTANCE.**

3 “(a) **RIGHT TO COUNSEL.**—In any proceeding before  
4 the Immigration Courts, the person or party concerned  
5 shall have the privilege of being represented (at no expense  
6 to the Government) by such counsel, authorized to practice  
7 before the Immigration Courts, of their own choosing.

8 “(b) **INTERPRETERS.**—The Immigration Courts shall  
9 establish a program to ensure the use of qualified inter-  
10 preters in proceedings before the Immigration Courts.

11 “(c) **LEGAL ORIENTATION PROGRAM.**—The Immi-  
12 gration Courts shall maintain, through agreements with  
13 legal services and other non-profit organizations, a legal  
14 orientation program that explains the Court’s procedures  
15 and provides basic legal information to individuals who are  
16 or may become parties to proceedings before the Immigra-  
17 tion Courts.

18 **“SEC. 624. AVAILABILITY OF INFORMATION.**

19 “(a) **PUBLICATION OF PRECEDENT DECISIONS.**—  
20 Precedent decisions of the appellate division shall be pub-  
21 lished in such form and manner as may be best adapted  
22 for public information and use.

23 “(b) **PUBLICATION OF NON-PRECEDENT DECISIONS**  
24 **AND RECORDS.**—

25 “(1) **IN GENERAL.**—Subject to paragraph (2),  
26 all non-precedent decisions of the Immigration

1 Courts and all briefs, motions, documents, and ex-  
2 hibits received by such court (including hearing  
3 transcripts) shall be made available to the public.

4 “(2) CONFIDENTIAL INFORMATION.—The Im-  
5 migration Courts shall preserve the confidentiality of  
6 information relating to matters involving national se-  
7 curity, asylum and other forms of protection, and  
8 claims under the Violence Against Women Act (Pub-  
9 lic Law 103–322, title IV, 108 Stat. 1902), as  
10 amended, or any other applicable law. The Immigra-  
11 tion Courts may make any provision necessary to  
12 prevent the disclosure of confidential information in  
13 its proceedings and records, including requiring that  
14 such information be placed under seal to be opened  
15 only as directed by the Immigration Courts.

16 **“SEC. 625. SCOPE OF REVIEW AND APPEALS.**

17 “(a) IN GENERAL.—In any proceeding before the Im-  
18 migration Courts, the immigration judge shall—

19 “(1) consider de novo all constitutional claims  
20 and questions of law; and

21 “(2) compel administrative action on an appli-  
22 cation or petition filed by or on behalf of the alien  
23 that is unlawfully withheld or unreasonably delayed.

24 “(b) TRIAL DIVISION PROCEEDINGS.—The decision  
25 of an immigration trial judge shall be based only on the

1 evidence produced at the hearing and shall set forth the  
2 judge's findings of fact, reasoning to support discretionary  
3 determinations, and conclusions of law. Immigration trial  
4 judges may take judicial notice of commonly known facts.

5 “(c) REVIEW BY APPELLATE DIVISION.—

6 “(1) IN GENERAL.—In considering an appeal  
7 from an immigration trial judge decision, the appel-  
8 late division shall limit its review to the scope of  
9 issues raised on appeal and shall conduct its review  
10 of the decision based on the record of proceedings of  
11 the trial division.

12 “(2) FACT FINDING.—Aside from taking judi-  
13 cial notice of commonly known facts, the appellate  
14 division shall not engage in fact finding in consid-  
15 ering an appeal of an immigration trial judge deci-  
16 sion, and shall defer to the factual findings of the  
17 immigration trial judge unless such findings are  
18 challenged and determined to be clearly erroneous.

19 “(d) REVIEW BY THE UNITED STATES COURTS OF  
20 APPEALS.—A decision of the appellate division may be re-  
21 viewed by the United States court of appeals for the judi-  
22 cial circuit wherein venue lies, in accordance with section  
23 242, as applicable.”

1 **SEC. 3. EMPLOYEES.**

2 (a) CLERK OF THE COURT.—The chief judge may ap-  
3 point, and prescribe the duties for, a clerk of the court  
4 without regard to the provisions of title 5, United States  
5 Code, governing appointments in the competitive service.

6 (b) CHAMBERS STAFF.—Immigration judges may ap-  
7 point law clerks and secretaries, in such numbers as the  
8 appellate division approves, without regard to the provi-  
9 sions of title 5, United States Code, governing appoint-  
10 ments in the competitive service.

11 (c) OTHER COURT STAFF.—The clerk of the court  
12 and the chief administrative officer may appoint deputies  
13 and employees, in such numbers as the appellate division  
14 approves, without regard to the provisions of title 5,  
15 United States Code, governing appointments in the com-  
16 petitive service.

17 (d) STAFF SALARIES.—The appellate division may fix  
18 and adjust the rates of basic pay for the clerk, the chief  
19 administrative officer, and other employees of the Immi-  
20 gration Courts without regard to the provisions of chapter  
21 51, subchapter III of chapter 53, or section 5373 of title  
22 5, United States Code. To the maximum extent feasible,  
23 such employees shall be compensated at rates consistent  
24 with those for employees holding comparable positions in  
25 the judicial branch.

1           (e) PREFERENCE ELIGIBLES.—In making appoint-  
2 ments under subsections (a) through (c), preference shall  
3 be given, among equally qualified persons, to persons who  
4 are preference eligible (as defined in section 2108(3) of  
5 title 5, United States Code).

6           (f) EXPERTS AND CONSULTANTS.—The Immigration  
7 Courts may procure the services of experts and consult-  
8 ants as provided under section 3109 of title 5, United  
9 States Code.

10 **SEC. 4. BUDGET AND EXPENDITURES.**

11           (a) COURT BUDGET.—For each fiscal year, the budg-  
12 et of the Immigration Courts shall be established by the  
13 Immigration Courts, without review or modification by the  
14 executive branch, and shall be included in the budget of  
15 the President as submitted.

16           (b) PERMISSIBLE COURT EXPENDITURES.—

17               (1) The Immigration Courts may make such ex-  
18 penditures (including expenditures for personal serv-  
19 ices and rent at the seat of Government and else-  
20 where, and for law books, books of reference, and  
21 periodicals) as may be necessary to execute effi-  
22 ciently the judicial and administrative functions vest-  
23 ed in the Courts.

1           (2) The Immigration Courts may receive and  
2           expend funds appropriated to the Courts for pur-  
3           poses of paragraph (1) either—

4                   (A) directly, or

5                   (B) by transfer to—

6                         (i) the Director of the Administrative  
7                         Office of the United States Courts,

8                         (ii) another court established under  
9                         Article I of the Constitution, or

10                        (iii) an executive agency as defined in  
11                        section 105 of title 5, United States Code,

12           to cover the expense of such administrative support  
13           and guidance (including budgetary and financial,  
14           payroll and personnel, protective and security, rec-  
15           ordkeeping and statistical, and information tech-  
16           nology services) as the Court may request and the  
17           Director, court, or agency may agree to provide from  
18           time to time.

19           (c) **METHOD AND SOURCE OF EXPENDITURES.**—All  
20           expenditures of the Immigration Courts shall be allowed  
21           and paid upon presentation of itemized vouchers signed  
22           by the certifying officer designated by the chief judge.

23           **SEC. 5. ANNUAL REPORT.**

24           (a) **IN GENERAL.**—Not later than April 1 of each  
25           year, the chief judge shall submit to the Committee on



1 the Judiciary of the House of Representatives and the  
2 Committee on the Judiciary of the Senate, a report sum-  
3 marizing the workload of the Immigration Courts for the  
4 preceding fiscal year.

5 (b) CONTENTS.—The report described in subsection  
6 (a) shall contain—

7 (1) demographic information, including the age,  
8 gender, and nationality of respondents appearing be-  
9 fore the Immigration Courts, and rates at which  
10 such respondents are represented by counsel;

11 (2) outcomes of removal proceedings, including  
12 grant rates for immigration relief, disaggregated by  
13 geographical area and immigration trial judge;

14 (3) outcomes of bond hearings, disaggregated  
15 by geographical area and immigration trial court;

16 (4) the number of cases currently pending be-  
17 fore the trial and appellate divisions of the Immigra-  
18 tion Courts, and the change in such number from  
19 the prior fiscal year;

20 (5) the average number of days for which a re-  
21 spondent waits to have their case heard,  
22 disaggregated by geographical area; and

23 (6) any information requested by the Commit-  
24 tees named in subsection (a), provided such request  
25 is timely and reasonable.

1 **SEC. 6. EFFECTIVE DATE; TRANSITIONAL PROVISIONS.**

2 (a) EFFECTIVE DATE.—The provisions of and  
3 amendments made by this Act shall take effect on the first  
4 day of the first full fiscal year after the date of the enact-  
5 ment of this Act, provided that such date is not less than  
6 180 days after the date of the enactment of this Act in  
7 which case the provisions of and amendments made by this  
8 Act shall take effect on the first day of the second full  
9 fiscal year after the date of the enactment of this Act.

10 (b) TRANSITION PERIOD AND APPOINTMENT OF IN-  
11 TERIM IMMIGRATION JUDGES.—

12 (1) TRANSITION PERIOD.—The transition pe-  
13 riod described in this section shall be the 4-year pe-  
14 riod beginning on the effective date of this Act.

15 (2) INTERIM IMMIGRATION JUDGES.—

16 (A) IN GENERAL.—The President shall  
17 designate interim immigration judges to serve  
18 in the appellate division and trial division dur-  
19 ing the transition period. Such judges shall  
20 have the authority to exercise all powers of an  
21 immigration judge as provided in title VI of the  
22 Immigration and Nationality Act (8 U.S.C. 601  
23 et seq.).

24 (B) APPELLATE DIVISION.—Each indi-  
25 vidual serving as a Board member on the Board  
26 of Immigration Appeals of the Executive Office

1 for Immigration Review on the date that is the  
2 day before the effective date of this Act shall be  
3 eligible for designation as an interim immigra-  
4 tion appeals judge. If there are more than 21  
5 members of the Board of Immigration Appeals  
6 on the day before the effective date of this Act,  
7 the 21 members most senior in commission  
8 shall be eligible for designation.

9 (C) TRIAL DIVISION.—Each individual  
10 serving as an immigration judge in the Execu-  
11 tive Office for Immigration Review on the date  
12 that is the day before the effective date of this  
13 Act shall be eligible for designation as an in-  
14 terim immigration trial judge. In making such  
15 appointments, such individuals shall be given  
16 priority consideration, and the President may  
17 appoint such other interim immigration trial  
18 judges as appropriate.

19 (D) TERM OF SERVICE.—An interim immi-  
20 gration judge may serve until the transition pe-  
21 riod has ended and a successor is appointed, or  
22 for a period not to exceed 5 years, whichever is  
23 shorter.

24 (e) FIRST APPOINTMENTS TO THE UNITED STATES  
25 IMMIGRATION COURTS.—

1 (1) APPELLATE DIVISION.—

2 (A) IN GENERAL.—Notwithstanding sec-  
3 tion 601(b)(2)(B) of the Immigration and Na-  
4 tionality Act as added by this Act, the first 21  
5 immigration appeals judges appointed after the  
6 transition period shall, as determined by the  
7 President, serve for the following terms:

8 (i) 7 immigration appeals judges shall  
9 each serve for a term of 5 years.

10 (ii) 7 immigration appeals judges shall  
11 each serve for a period of 10 years.

12 (iii) 7 immigration appeals judges  
13 shall each serve for a period of 15 years.

14 (B) SUCCESSION.—Each immigration ap-  
15 peals judge described in subparagraph (A) may  
16 continue to serve after the expiration of the  
17 designated term if such judge is reappointed in  
18 accordance with section 601(b)(2)(B) of the Im-  
19 migration and Nationality Act as added by this  
20 Act.

21 (2) TRIAL DIVISION.—Not later than 180 days  
22 before the transition period has ended, the appellate  
23 division shall establish procedures and requirements  
24 related to the appointment of immigration trial  
25 judges.

1           (3) CLARIFICATION.—Notwithstanding para-  
2           graphs (1) and (2) and section 601 of the Immigra-  
3           tion and Nationality Act, as added by this Act, any  
4           individual appointed to fill an immigration judge va-  
5           cancy during the transition period described in sub-  
6           section (b)(1) shall serve only until the transition pe-  
7           riod has ended and until a successor is appointed in  
8           accordance with section 602 of the Immigration and  
9           Nationality Act, but not more than 1 year after the  
10          end of the transition period.

11 **SEC. 7. INSTITUTIONAL TRANSFER; CONTINUITY OF PRO-**  
12                           **CEEDINGS.**

13           (a) EXISTING PRECEDENT.—

14           (1) IN GENERAL.—Precedential decisions by the  
15           Attorney General or the Board of Immigration Ap-  
16           peals under title II of the Immigration and Nation-  
17           ality Act (8 U.S.C. 1151 et seq.) that were issued  
18           before the effective date of this Act shall continue to  
19           serve as precedent in proceedings before the Immi-  
20           gration Courts unless explicitly overruled by such  
21           court.

22           (2) RULES.—To the extent that such rules are  
23           consistent with this Act, the rules of the Attorney  
24           General that were in effect before the effective date

1 of this Act, shall remain in effect until amended or  
2 revoked by the appellate division.

3 (b) INSTITUTIONAL TRANSFER.—

4 (1) EXECUTIVE OFFICE FOR IMMIGRATION RE-  
5 VIEW.—

6 (A) IN GENERAL.—Except as provided in  
7 subparagraph (B), all functions under the Ex-  
8 ecutive Office for Immigration Review on the  
9 date that is the day before the effective date of  
10 this Act are transferred to the Immigration  
11 Courts on the effective date of this Act.

12 (B) EXCEPTIONS.—

13 (i) OCAHO.—The Office of the Chief  
14 Administrative Hearing Officer and the  
15 functions of the Executive Office for Immi-  
16 gration Review that support such office  
17 shall remain under the Department of Jus-  
18 tice.

19 (ii) OTHER FUNCTIONS.—The func-  
20 tions of the Executive Office for Immigra-  
21 tion Review that are not necessary or ap-  
22 propriate for transfer to the Immigration  
23 Courts shall be reassigned to other agen-  
24 cies within the Department of Justice or

1                   dissolved at the discretion of the Attorney  
2                   General.

3                   (2) TRANSFER AND ALLOCATION OF APPRO-  
4                   PRIATIONS AND PERSONNEL.—Except as provided in  
5                   this section, the personnel of the Executive Office  
6                   for Immigration Review employed in connection with  
7                   the functions transferred by this section, and the as-  
8                   sets, liabilities, contracts, property, records, and un-  
9                   expended balance of appropriations, authorizations,  
10                  allocations, and other funds employed, held, used,  
11                  arising from, available to, or to be made available to,  
12                  the Executive Office for Immigration Review, in con-  
13                  nection with the functions transferred by this sec-  
14                  tion, subject to section 202 of the Budget and Ac-  
15                  counting Procedures Act of 1950, shall be trans-  
16                  ferred to the Immigration Courts on the effective  
17                  date of this Act. Unexpended funds transferred pur-  
18                  suant to this paragraph shall be used only for the  
19                  purposes for which the funds were originally author-  
20                  ized and appropriated.

21                  (3) PENDING CASES.—

22                         (A) IN GENERAL.—The enactment of this  
23                         Act shall not result in any loss of rights or pow-  
24                         ers, interruption of jurisdiction, or prejudice to  
25                         matters under title II of the Immigration and

1 Nationality Act (8 U.S.C. 1151 et seq.) which  
2 are pending before the Board of Immigration  
3 Appeals or an immigration judge on the effective  
4 date of this Act.

5 (B) TRANSFER.—All proceedings under  
6 title II of the Immigration and Nationality Act  
7 (8 U.S.C. 1151 et seq.) which are pending before  
8 the Board of Immigration Appeals or an  
9 immigration judge on the effective date of this  
10 Act shall be transferred to the Immigration  
11 Courts to proceed before the trial division or  
12 the appellate division as appropriate.

13 **SEC. 8. REVIEW BY THE JUDICIAL CONFERENCE; CON-**  
14 **SULTATION REQUIREMENTS.**

15 The Judicial Conference of the United States shall  
16 conduct a review of adjudications in the United States Im-  
17 migration Courts at least once every four years, as part  
18 of its comprehensive survey of business in the courts of  
19 the United States conducted pursuant to title 28, section  
20 331. At the conclusion of its review, the Judicial Con-  
21 ference shall submit a report of its findings to the appel-  
22 late division and the Committee on the Judiciary of the  
23 House of Representatives and the Committee on the Judi-  
24 ciary of the Senate. The Committees shall cause to have  
25 such report printed in the Congressional Record.



1 **SEC. 9. TECHNICAL AND CONFORMING PROVISIONS.**

2 (a) IN GENERAL.—The Immigration and Nationality  
3 Act (8 U.S.C. 1101 et seq.) is amended—

4 (1) in section 101(b), by amending paragraph  
5 (4) to read as follows:

6 “(4) The term ‘immigration judge’ means an  
7 immigration appeals judge or immigration trial  
8 judge appointed to serve in the United States Immi-  
9 gration Courts established under title VI.”;

10 (2) in section 238(a)(1)—

11 (A) by striking “Attorney General” and in-  
12 serting “Immigration Courts”; and

13 (B) by striking “Service” and inserting  
14 “Department of Homeland Security”.

15 (3) in section 238(a)(2), by striking “Attorney  
16 General” each place such term appears and inserting  
17 “Secretary of Homeland Security”;

18 (4) in section 238(a)(3)—

19 (A) by amending subparagraph (A) to read  
20 as follows:

21 “(A) Notwithstanding any other provision  
22 of law, in the case of any alien convicted of an  
23 aggravated felony, removal proceedings, and  
24 any administrative appeals thereof, shall be  
25 completed, to the extent possible, before the

1 alien’s release from incarceration for the under-  
2 lying aggravated felony.”.

3 (B) in subparagraph (B), by striking “Attorney  
4 General” and inserting “Secretary of  
5 Homeland Security”;

6 (5) in section 238(a)(4)(A) by striking “Attorney  
7 General” and inserting “administrative council  
8 of the Immigration Courts”;

9 (6) in section 238(b)(1) by striking “Attorney  
10 General” and inserting “immigration judge”;

11 (7) in section 238(b)(3)—

12 (A) by striking “Attorney General” and in-  
13 serting “Secretary of Homeland Security”; and

14 (B) by striking “apply for” and inserting  
15 “seek”;

16 (8) in section 238(b) by amending paragraph  
17 (4) to read as follows—

18 “(4) In any proceeding under this subsection—

19 “(A) the alien shall—

20 “(i) be given reasonable notice of the  
21 charges and of the opportunity described  
22 in subparagraph (C);

23 “(ii) have the privilege of being rep-  
24 resented (at no expense to the government)  
25 by such counsel, authorized to practice in

1 such proceedings, as the alien shall choose;

2 and

3 “(iii) have a reasonable opportunity to

4 inspect the evidence and rebut the charges;

5 and

6 “(B) the immigration judge shall ensure

7 that—

8 “(i) a determination is made for the

9 record that the individual upon whom the

10 notice for the proceeding under this section

11 is served (either in person or by mail) is,

12 in fact, the alien named in such notice; and

13 “(ii) a record is maintained for judi-

14 cial review.”.

15 (9) in section 238(b)(5)—

16 (A) by striking “Attorney General” and in-

17 serting “immigration judge”; and

18 (B) by striking “Attorney General’s” and

19 inserting “immigration judge’s”;

20 (10) by redesignating the second subsection (c)

21 of section 238 as subsection (d) and in the newly

22 designated subsection (d)—

23 (A) by striking “Commissioner” in each

24 place such term appears and inserting “Sec-

25 retary of Homeland Security”;

1 (B) by striking “Attorney General” in each  
2 place such term appears and inserting “Sec-  
3 retary of Homeland Security”; and

4 (C) by striking “Service” in paragraph  
5 (2)(B) and inserting “Secretary of Homeland  
6 Security”; and

7 (11) in section 239(a) by striking “Attorney  
8 General” in each place such term appears and in-  
9 serting “Immigration Courts”;

10 (12) in section 239(b)(2) by striking “Attorney  
11 General” and inserting “Immigration Courts”;

12 (13) in section 239(b)(3) by striking “Attorney  
13 General” and inserting “immigration judge”;

14 (14) in section 239(d)(1) by striking “Attorney  
15 General” and inserting “immigration judge”;

16 (15) in section 240(b)—

17 (A) by striking paragraphs (1) and (6) and  
18 renumbering subsequent paragraphs accord-  
19 ingly;

20 (B) by amending paragraph (1) as redesign-  
21 nated by this paragraph to read as follows:

22 “(1) FORM OF PROCEEDING.—

23 “(A) IN GENERAL.—The proceeding may  
24 take place—

25 “(i) in person; or

1                   “(ii) subject to subparagraph (B),  
2                   through video conference.

3                   “(B) CONSENT REQUIRED IN CERTAIN  
4                   CASES.—An evidentiary hearing on the merits  
5                   may only be conducted through video teleconfer-  
6                   ence with the consent of the alien involved.”.

7                   (C) in paragraph (2) as redesignated by  
8                   this paragraph, by striking “Attorney General”  
9                   and inserting “immigration judge”;

10                  (D) in paragraph (3) as redesignated by  
11                  this paragraph—

12                   (i) in the matter preceding subpara-  
13                   graph (A), by striking “, under regulations  
14                   of the Attorney General”

15                   (ii) in subparagraph (A) by striking “,  
16                   at no expense to the government, by coun-  
17                   sel of the alien’s choosing who is author-  
18                   ized to practice in such proceedings” and  
19                   inserting “in accordance with section  
20                   623(a)”;

21                  (E) in paragraph (4)(A) as redesignated  
22                  by this paragraph—

23                   (i) by striking “Service” and inserting  
24                   “Government”; and

1                   (ii) by amending the last sentence to  
2                   read as follows: “Written notice shall be  
3                   considered sufficient for purposes of this  
4                   subparagraph if provided at the most re-  
5                   cent address provided under section  
6                   239(a)(1)(F).”;

7                   (16) in section 240(c)(2), in the matter fol-  
8                   lowing subparagraph (B), by striking “Attorney  
9                   General” and inserting “Secretary of Homeland Se-  
10                  curity.”;

11                  (17) in section 240(c)(3)—

12                   (A) by striking “service” in the heading  
13                   and inserting “Government”; and

14                   (B) by striking “Service” in each place  
15                   such term appears and inserting “Govern-  
16                   ment”;

17                  (18) in section 240(c)(7)(C)(iv)(II)—

18                   (A) by striking “Attorney General” and in-  
19                   serting “immigration judge”; and

20                   (B) by striking “Immigration and Natu-  
21                   ralization Service” and inserting “Secretary of  
22                   Homeland Security”;

23                  (19) in section 240(c)(7)(C)(iv)(III)—

24                   (A) by striking “Attorney General” and in-  
25                   serting “immigration judge”; and

1 (B) by striking “Attorney General’s” and  
2 inserting “immigration judge’s”;

3 (20) in section 240(d) by amending the first  
4 sentence to read as follows: “An immigration judge  
5 may enter an order of removal stipulated to by the  
6 alien (or the alien’s representative) and the Govern-  
7 ment.

8 (21) in section 242(a)(2)(A) by striking “Attor-  
9 ney General” in each place such term appears and  
10 inserting “Secretary of Homeland Security”;

11 (22) in section 242(a)(2)(B)(ii), by striking  
12 “Attorney General” and inserting “the appellate divi-  
13 sion of the Immigration Courts” each place it ap-  
14 pears;

15 (23) in section 242(b)(2) by inserting “trial”  
16 after “immigration”;

17 (24) in section 242(b)(3)(A)—

18 (A) by striking “Attorney General” in the  
19 first sentence and inserting “United States”;  
20 and

21 (B) by amending the second sentence to  
22 read as follows: “The petition shall be served on  
23 the Attorney General and on the officer or em-  
24 ployee of the Department of Homeland Security

1 in charge of the district in which the final order  
2 of removal under section 240 was entered.”;

3 (25) in section 242(b)(4)(D) by striking “Attor-  
4 ney General’s” and inserting “immigration judge’s”;

5 (26) in section 242(b)(8) by striking “Attorney  
6 General” in each place such term appears and in-  
7 serting “Secretary of Homeland Security”;

8 (27) in section 242(e)(2)(C) by striking “as  
9 prescribed by the Attorney General”;

10 (28) in section 242(e)(3)(A)(ii) by striking “At-  
11 torney General” and inserting “Secretary of Home-  
12 land Security”;

13 (29) in section 242(g) by striking “Attorney  
14 General” and inserting “Secretary of Homeland Se-  
15 curity”; and

16 (30) in section 246(a)—

17 (A) by striking “Attorney General” and in-  
18 serting “Secretary of Homeland Security” each  
19 place it appears; and

20 (B) by striking the second sentence, and  
21 adding:

22 “Upon request of the individual whose status has  
23 been rescinded, the Secretary of Homeland Security shall  
24 refer such rescission to the United States Immigration



1 Courts for review in accordance with section  
2 604(b)(1)(B).”.

3 (b) CONSTRUCTION OF EXISTING REFERENCES.—To  
4 the extent consistent with this Act, each reference in the  
5 Immigration and Nationality Act (8 U.S.C. et seq.), or  
6 in any rule prescribed thereunder—

7 (1) to the Board of Immigration Appeals or an  
8 immigration judge, or any administrative appeal,  
9 hearing, review, or other proceeding before such  
10 Board or judge, shall be deemed to refer, as appro-  
11 priate, to the United States Immigration Courts es-  
12 tablished under title VI of the Immigration and Na-  
13 tionality Act, as added by this Act, to the appro-  
14 priate division of the Court, or to the corresponding  
15 proceedings under this Act before such Court; and

16 (2) to the authority of the Attorney General to  
17 prescribe rules with respect to the Executive Office  
18 for Immigration Review, the Board of Immigration  
19 Appeals, immigration judges, or administrative ap-  
20 peals, hearings, reviews, or other proceedings con-  
21 ducted under the Immigration and Nationality Act,  
22 by such Office, Board, or judges, shall be deemed to  
23 confer rulemaking authority on the appellate division  
24 of the United States Immigration Courts established

1 in title VI of the Immigration and Nationality Act,  
2 as added by this Act.

3 (c) FINANCIAL DISCLOSURE REPORTING.—Section  
4 109 of the Ethics in Government Act of 1978 (5 U.S.C.  
5 App.) is amended—

6 (1) in paragraph (8), by inserting “of the  
7 United States Immigration Courts,” after “Court of  
8 Appeals for Veterans Claims,”; and

9 (2) in paragraph (10), by inserting “United  
10 States Immigration Courts,” after “Court of Ap-  
11 peals for Veterans Claims”.