

115TH CONGRESS
2D SESSION

[S. or H. R.] _____

To establish an independent United States Immigration Court under Article I of the Constitution, and for other purposes.

IN THE SENATE / HOUSE OF REPRESENTATIVES

_____, 2018

Mr./Ms. _____ introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To establish an independent United States Immigration Court under Article I of the Constitution, and for other purposes.

1 *Be it enacted by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENTS TO**
4 **IMMIGRATION AND NATIONALITY**
5 **ACT; TABLE OF CONTENTS.**

6 (a) SHORT TITLE.—This Act may be cited as the
7 “Immigration Court Act”.

8 (b) IMMIGRATION AND NATIONALITY ACT
9 AMENDMENTS.—Whenever in this Act an amendment or repeal is
10 expressed as the amendment or repeal of a title, chapter, section

1 or other provision, the reference shall be considered to be made
2 to that section or provision in the Immigration and Nationality
3 Act (ch. 477, 66 Stat. 163, 8 U.S.C. § 1101 et seq.), as amended
4 before the enactment of this Act.

5 (c) TABLE OF CONTENTS.—The table of contents of this Act
6 is as follows:

7 Sec. 1. Short title; amendments to Immigration and Nationality Act; table of
8 contents.

9 Sec. 2. Establishment of Immigration Court.

10 Sec. 3. Technical and conforming provisions.

11 Sec. 4. Effective date; transitional provisions.

12 Sec. 5. Study of consolidating review for all immigration-related adjudication.

13 **SEC. 2. ESTABLISHMENT OF IMMIGRATION COURT.**

14 Title I is amended—

15 (a) by inserting the following after the title heading:

16 **“CHAPTER 1—DEFINITIONS AND POWERS”**; and

17 (b) by adding at the end the following new chapter:

18 **“CHAPTER 2—UNITED STATES IMMIGRATION COURT**

19 **“SUBCHAPTER I—ORGANIZATION AND JURISDICTION**

20 “Sec.

21 “111. Status and structure.

22 “112. Composition.

23 “113. Jurisdiction; finality of decisions.

24 “114. Organization.

25 “115. Offices, duty stations, and residences.

26 “116. Times and places of sessions.

27 “117. Recall of retired judges.

28 **“SUBCHAPTER II—PROCEDURE**

29 “121. Proceedings.

30 “122. Scope of review.

31 “123. Filing and other fees.

1 “124. Representation of parties.

2 “125. Rules of practice and procedure; disqualification of judges.

3 “126. Contempt authority; assistance to the Court.

4 “127. Decisions.

5 “128. Availability of information.

6 “129. Publication of decisions.

7 “SUBCHAPTER III—MISCELLANEOUS PROVISIONS

8 “131. Employees.

9 “132. Budget and expenditures.

10 “133. Disposition of fees.

11 “134. Fees for transcripts of record, copies, and other Court services.

12 “135. Practice and registration fees.

13 “136. Judicial Conference of the Court.

14 “137. Administrative authority.

15 “138. Annual report.

16 “SUBCHAPTER IV—DECISIONS AND REVIEW

17 “141. When Court decisions become final.

18 “142. Review by the court of appeals.

19 “SUBCHAPTER V—JUDICIAL RETIREMENT

20 AND SURVIVOR BENEFIT PROGRAMS

21 “151. Retired pay and survivor annuities.

22 “152. Immigration Court Retirement Fund.

23 “153. Limitation on activities of retired judges.

24 “SUBCHAPTER I—ORGANIZATION AND JURISDICTION

25 “**SEC. 111.—STATUS AND STRUCTURE.**

26 “(a) STATUS OF THE COURT.—There is hereby established, under
27 Article I of the Constitution of the United States, a court of record to
28 be known as the United States Immigration Court.

29 “(b) COURT STRUCTURE.—The Immigration Court shall consist of
30 an appellate division and a trial division.

1 **“SEC. 112.—COMPOSITION.**

2 “(a)(1) APPELLATE DIVISION.—The appellate division shall be
3 composed of 18 immigration appeals judges, 1 of whom shall serve as
4 chief judge of the Court in accordance with section 114(b) of this title.

5 “(2) The immigration appeals judges shall be appointed by
6 the President, by and with the advice and consent of the Senate, solely
7 on the grounds of fitness to perform the duties of the office. Not more
8 than 9 of the immigration appeals judges may be members of the same
9 political party.

10 “(b)(1)(A) TRIAL DIVISION.—The trial division shall be
11 composed of immigration trial judges who are appointed by the
12 appellate division.

13 “(B) Based on its findings from the most recent survey
14 conducted under paragraph (C) and any other relevant information that
15 it may obtain, the appellate division shall from time to time establish
16 the number of immigration trial judges to be appointed under
17 paragraph (A) and assign incumbent and newly appointed judges to
18 serve such geographic areas within the judicial circuits (other than the
19 Federal Circuit) as the appellate division may define.

20 “(C) At least once in every four years, the appellate
21 division shall conduct a careful survey to determine the number of
22 immigration trial judge positions needed to provide for the expeditious
23 and effective administration of justice by the trial division, and to
24 determine the geographic areas to be served by such positions. In
25 conducting these surveys, the appellate division shall—

26 “(i) comprehensively review the continuing need for
27 existing positions as well as the need for additional positions

1 and the locations at which existing or additional positions are
2 needed;

3 “(ii) take into account local conditions, including the
4 areas and populations to be served, the transportation and
5 communication facilities available, the amount and
6 distribution of business expected to arise before the trial
7 division, and any other material factors; and

8 “(iii) consider suggestions from any interested parties,
9 including incumbent immigration trial judges and judges of
10 the United States district courts and courts of appeals in the
11 respective circuits, representatives of the United States
12 Departments of Homeland Security and Justice and other
13 agencies with responsibilities under this Act, bar
14 associations, and other parties having relevant experience or
15 information.

16 “(D) Immigration trial judges shall be selected for
17 appointment under paragraph (A) in accordance with standards and
18 procedures prescribed by the appellate division, which shall include
19 provision for public notice of all vacancies in immigration trial judge
20 positions, and for the establishment of merit selection panels,
21 composed of residents of the geographic areas to be served by the
22 respective positions, to assist with identifying and recommending the
23 persons best qualified to fill such positions.

24 “(2) In making appointments of immigration trial judges, the
25 appellate division shall determine in each instance that an effort has
26 been made to identify qualified candidates without regard to race,

1 color, sex, religion, or national origin, and that the person to be
2 appointed—

3 “(A) possesses, and has a reputation for, integrity and
4 good character;

5 “(B) is of sound physical and mental health;

6 “(C) possesses and has demonstrated commitment to
7 equal justice under law;

8 “(D) possesses and has demonstrated outstanding legal
9 ability and competence, as evidenced by substantial legal
10 experience, ability to deal with complex legal problems,
11 aptitude for legal scholarship and writing, and familiarity
12 with courts and court processes; and

13 “(E) exhibits demeanor, character, and personality that
14 indicate a judicial temperament.

15 “(3) No person may be appointed to serve as an immigration
16 trial judge if that person is, at the time of the person’s initial
17 appointment, related by blood or marriage to an immigration appeals
18 judge.

19 “(c) QUALIFICATIONS.—No person may be appointed to serve as
20 an immigration appeals judge or an immigration trial judge unless that
21 person is a member in good standing of the bar of a Federal court or of
22 the highest court of a State.

23 “(d)(1) TERM OF OFFICE.—Subject to paragraph (2) of this
24 subsection and section 4(c)(1) and (2) of the Immigration Court Act,
25 every immigration appeals judge and every immigration trial judge
26 shall serve for a term of 15 years, and until a successor is appointed
27 and has qualified, except that a judge may not continue to serve for

1 more than 1 year after the date on which the term of that judge would
2 otherwise expire under this subsection.

3 “(2) Any immigration appeals judge appointed to fill a
4 vacancy occurring before the expiration of the term for which the
5 judge’s predecessor was appointed shall serve only for the remainder
6 of such term.

7 “(e) TEMPORARY SERVICE ON APPELLATE DIVISION.—The chief
8 judge may designate an immigration trial judge to sit with the appellate
9 division whenever the business of that division so requires. An
10 immigration trial judge so designated may exercise all of the judicial
11 powers and duties of an immigration appeals judge in regular active
12 service with respect to proceedings before the appellate division that
13 are assigned to such judge individually or as a member of a panel or
14 the division sitting en banc.

15 “(f)(1) JUDICIAL SALARIES.—Each immigration appeals judge
16 shall receive a salary at an annual rate that is equal to the salary of a
17 United States District Judge.

18 “(2) Each immigration trial judge shall receive a salary at an
19 annual rate that is equal to 92 percent of the salary of a United States
20 District Judge.

21 “(g)(1) JUDICIAL DISCIPLINE.—An immigration appeals judge
22 may be removed from office by the President, and an immigration trial
23 judge may be removed from office by the appellate division, on
24 grounds of misconduct, neglect of duty, engaging in the practice of
25 law, or violating section 115(c) of this title, and for no other cause.

1 “(2) Before a judge may be removed from office under this
2 subsection, the judge shall be provided with a full specification of the
3 reasons for the removal and an opportunity to be heard.

4 “(3)(A)(i) The appellate division shall prescribe rules,
5 consistent with the provisions of chapter 16 of title 28, United States
6 Code, establishing procedures for the filing of complaints with respect
7 to the conduct or disability of any immigration appeals judge or
8 immigration trial judge and for the investigation and resolution of such
9 complaints.

10 “(ii) In investigating and taking action under such rules
11 with respect to any such complaint, the appellate division shall have
12 the powers granted to a judicial council under such chapter.

13 “(B)(i) The provisions of sections 354(b) through 360 of
14 title 28, United States Code, regarding referral or certification to, and
15 petition for review in, the Judicial Conference of the United States and
16 action thereon, shall apply to the exercise by the appellate division of
17 the powers of a judicial council under subparagraph (A).

18 “(ii) The grounds for removal from office specified in
19 paragraph (1) of this subsection and the grounds for retirement under
20 section 151 of this title specified in section 7296(g)(2) of title 38,
21 United States Code, shall provide a basis for a determination pursuant
22 to section 354(b) or 355 of title 28, United States Code, and
23 certification and transmittal by the Conference shall be made to the
24 President or, as the case may be, the appellate division of the Court for
25 consideration under paragraph (1) or, as the case may be, section 151
26 of this title.

1 “(C)(i) With respect to hearings conducted pursuant to
2 subparagraph (A), the appellate division may exercise the authority
3 provided under section 1821 of title 28, United States Code, to pay the
4 fees and allowances described in that section.

5 “(ii) The appellate division shall have the power
6 provided under section 361 of title 28, United States Code, to award
7 reimbursement for the reasonable expenses described in that section.
8 Reimbursements under this subparagraph shall be made from funds
9 appropriated to the Court.

10 **“SEC. 113.—JURISDICTION; FINALITY OF DECISIONS.**

11 “(a) APPELLATE DIVISION.—The appellate division of the
12 Immigration Court shall have jurisdiction to hear and decide the
13 following matters:

14 “(1) appeals from decisions by immigration trial judges as
15 permitted in section 121(b) of this Act;

16 “(2) review of decisions by the United States Department of
17 Homeland Security on visa petitions filed under section 204 of this Act
18 to classify an alien described in sections 201(b)(2)(A)(i) and 203(a) of
19 this Act;

20 “(3) review of decisions in practitioner disciplinary
21 proceedings; and

22 “(4) review of decisions involving (including the mitigation
23 of) administrative fines and penalties imposed by the United States
24 Department of Homeland Security under the Act.

25 “(b) TRIAL DIVISION.—The trial division of the Court shall have
26 jurisdiction to hear and decide the following matters:

1 “(1) removal proceedings (including such applications for
2 relief or protection from removal as may be cognizable) under
3 sections 238 and 240 of this Act, and deportation and exclusion
4 proceedings initiated under prior law;

5 “(2) rescissions of lawful permanent residence status referred
6 for review under section 246 of this Act;

7 “(3) credible fear determinations reviewable under section
8 235 of this Act, applications for asylum referred by the United
9 States Department of Homeland Security where the applicant is
10 barred from being placed in removal proceedings under section
11 240 of this Act, and referrals for protection under section
12 241(b)(3) of this Act where the individual is not in removal
13 proceedings and is barred from asylum under this Act;

14 “(4) proceedings arising under sections 274A, 274B, and
15 274C of this Act;

16 “(5) determinations relating to bond, custody, or detention of
17 any alien who is in removal proceedings under section 240 of
18 this Act and in the custody of the United States Department of
19 Homeland Security;

20 “(6) determinations of whether administrative actions arising
21 from applications filed during the pendency of removal
22 proceedings under section 240 of this Act have been unlawfully
23 withheld or unreasonably delayed; and

24 “(7) such other proceedings authorized in title II of this Act
25 as may be designated by rules or regulations under this Act as
26 described in section 3(b)(2) of the Immigration Court Act.

1 “(c) LIMITATION.—The jurisdiction of the Court shall be subject
2 to subsections (f) and (g) of section 242 of this Act, and shall not
3 extend to any decision or action of the Attorney General or the
4 Secretary of Homeland Security, the authority for which is specified
5 under title II of this Act to be in the discretion of the Attorney General
6 or the Secretary of Homeland Security, other than granting relief from
7 removal, including where appropriate any related waiver available
8 under the authority of the Attorney General immediately before the
9 effective date of the Immigration Court Act.

10 “(d)(1) FINALITY AND APPELLATE REVIEW.—Decisions by the
11 trial division are subject to review as provided in 121(b) and 122 of
12 this title.

13 “(2) Decisions by the appellate division are subject to review
14 as provided in sections 122 and 142 of this title and, unless
15 subsequently modified or reversed by the appellate division, the court
16 of appeals for the respective judicial circuit, or the Supreme Court, are
17 binding on all immigration trial judges and all officers and employees
18 of executive agencies (as defined in section 105 of title 5, United
19 States Code) with powers, functions and duties under this Act and
20 other laws relating to the immigration and naturalization of aliens.

21 **“SEC. 114.—ORGANIZATION.**

22 “(a) COURT SEAL.—The Immigration Court shall have a seal
23 which shall be judicially noticed.

24 “(b)(1) CHIEF JUDGE OF THE COURT.—The chief judge shall be
25 the head of the Court, with authority to oversee administrative
26 operations for the appellate division and the Court as a whole in
27 addition to fulfilling regular judicial duties.

1 “(2) The chief judge shall be the immigration appeals judge
2 in regular active service who is senior in commission among the
3 immigration appeals judges who—

4 “(A) have served for 1 or more years;

5 “(B) are 64 years of age or under and have at least 3 years
6 remaining in term of office; and

7 “(C) have not previously served as chief judge.

8 “(3)(A) In any case in which there is no immigration appeals
9 judge in regular active service who meets the requirements under
10 paragraph (2), the immigration appeals judge in regular active service
11 who is senior in commission and meets subparagraph (A) or (B) and
12 subparagraph (C) of paragraph (2) shall act as the chief judge.

13 “(B) In any case under subparagraph (A) of this paragraph
14 in which there is no immigration appeals judge in regular active
15 service who meets subparagraph (A) or (B) and subparagraph (C) of
16 paragraph (2), the immigration appeals judge in regular active service
17 who is senior in commission and meets subparagraph (C) of paragraph
18 (2) shall act as the chief judge.

19 “(4) Except as provided in paragraph (5), an immigration
20 appeals judge shall serve as the chief judge under paragraph (2) for a
21 term of 5 years or until the judge becomes age 70, whichever occurs
22 first. If no other immigration appeals judge is eligible under paragraph
23 (2) to serve as chief judge upon the expiration of that term, the
24 incumbent shall continue to serve as chief judge until another
25 immigration appeals judge becomes eligible under that paragraph to
26 serve as chief judge.

1 “(5)(A) A judge shall cease to be chief judge before the end
2 of the term prescribed by paragraph (4) if such judge—

3 “(i) leaves regular active service as an immigration
4 appeals judge; or

5 “(ii) notifies the other immigration appeals judges in
6 writing that such judge desires to be relieved of the duties of
7 chief judge.

8 “(B) The service of a chief judge shall terminate under
9 subparagraph (A) on the date on which such judge leaves regular
10 active service or the date of the notification under subparagraph
11 (A)(ii), as the case may be.

12 “(6) If a chief judge is temporarily unable to perform the
13 duties of chief judge, those duties shall be performed by the
14 immigration appeals judge in regular active service who is present,
15 able and qualified to act, and is next in precedence.

16 “(7) Immigration appeals judges who have the same seniority
17 in commission shall be eligible for service as chief judge in accordance
18 with their relative precedence.

19 “(c)(1) CHIEF TRIAL JUDGES.—Each geographic area defined
20 under section 112(b)(1) of this title shall have a chief immigration trial
21 judge, with authority to oversee administrative operations of the trial
22 division for that area in addition to fulfilling regular judicial duties.
23 Each chief immigration trial judge may be delegated such
24 administrative authority conferred by or under this chapter on the chief
25 judge of the Court as the appellate division may determine.

26 “(2) The chief immigration trial judge in each geographic
27 area shall be the immigration trial judge serving in that area who is

1 designated to serve as chief immigration trial judge under rules
2 prescribed by the appellate division that are reasonably consistent with
3 the precedence standards set forth in paragraphs (2) through (7) of
4 subsection (b).

5 “(d)(1) APPELLATE DIVISION PROCEEDINGS.—Proceedings in the
6 appellate division shall be heard and decided by the immigration
7 appeals judges sitting en banc, in panels of two or more members, or
8 individually, as determined pursuant to rules prescribed by the
9 appellate division. Such rules shall also determine the manner in which
10 panels are formed and matters are assigned to panels and individual
11 judges.

12 “(2)(A) The appellate division shall exercise en banc its
13 authority to make appointments, prescribe rules or other procedures,
14 and otherwise address non-adjudicative matters for the Court.

15 “(B) In addressing non-adjudicative matters that directly
16 affect the trial division (including matters described in sections 131
17 and 132 of this title, but excluding the appointment or discipline of an
18 individual immigration trial judge under section 112), the appellate
19 division and its judges shall consult with, and give due consideration
20 to, the recommendations and views of the chief immigration trial
21 judges designated under subsection (c): Provided that the validity of
22 any action taken in such matters may not be questioned on grounds that
23 the action is inconsistent with any recommendation or views that may
24 be so obtained.

25 “(3)(A) A majority of the immigration appeals judges shall
26 constitute a quorum for the transaction of business conducted by the
27 appellate division en banc. A vacancy among such judges shall not

1 impair the powers or affect the duties of the division or of the
2 remaining immigration appeals judges.

3 “(B) A majority of the members of a panel of the appellate
4 division shall constitute a quorum for the transaction of the business of
5 the panel. A vacancy in a panel shall not impair the powers or affect
6 the duties of the panel or of the remaining members of the panel.

7 “(e) TRIAL DIVISION PROCEEDINGS.—Every proceeding in the trial
8 division shall be heard and decided by an immigration trial judge
9 sitting alone, with matters assigned to such judges in a manner
10 determined by rules prescribed by the appellate division.

11 “(f) PRECEDENCE IN APPELLATE DIVISION.—The chief judge of the
12 Court shall have precedence and preside at any session of the appellate
13 division that such judge attends. The other immigration appeals judges
14 shall have precedence and preside in the appellate division according
15 to the seniority of their original commissions and, for judges whose
16 commissions bear the same date, according to seniority in age.

17 “(g)(1) AUTHORITY OF TRIAL JUDGES.—In considering and
18 deciding matters that come before them, immigration trial judges shall
19 record and receive evidence, administer oaths, examine and cross-
20 examine the alien and any witnesses, set deadlines, and render findings
21 of fact and conclusions of law.

22 “(2) Immigration trial judges shall determine applications for
23 relief which may properly be raised in proceedings before the trial
24 division, and shall exercise such discretion conferred upon the
25 Attorney General by law as may be necessary for the just and equitable
26 disposition of matters that come before them.

1 “(3) Immigration trial judges may order and take depositions,
2 issue subpoenas requiring the attendance and testimony of witnesses
3 and the production of documents or other evidence, and order
4 responses to written interrogatories.

5 **“SEC. 115.—OFFICES, DUTY STATIONS, AND RESIDENCES.**

6 “(a) COURT OFFICES.—The principal office of the Immigration
7 Court shall be in the Washington, D.C., metropolitan area, but the
8 Court shall maintain additional offices wherever needed, and may sit at
9 any place, within the United States.

10 “(b)(1) DUTY STATIONS OF JUDGES.—Except as provided in
11 paragraph (2), the official duty station of each immigration appeals
12 judge shall be the principal office of the Court, and the official duty
13 station of each immigration trial judge shall be the office of the Court
14 in the geographic area for which the judge is appointed to serve.

15 “(2) The place where a recall-eligible retired immigration
16 appeals judge or immigration trial judge under section 117(a)(2)(B) of
17 this title maintains the actual abode in which such judge customarily
18 lives shall be considered the judge’s official duty station.

19 “(c)(1) RESIDENCY OF JUDGES.—Each immigration appeals judge
20 shall reside within 50 miles of the principal office of the Court, and
21 each immigration trial judge shall reside within the geographic area for
22 which such judge is appointed to serve.

23 “(2) Paragraph (1) shall not apply to retired immigration
24 appeals judges and immigration trial judges who are recall-eligible
25 under section 117(a)(2)(B) of this title.

1 **“SEC. 116.—TIMES AND PLACES OF SESSIONS.**

2 “The times and places of sessions of the Immigration Court shall
3 be determined in accordance with rules prescribed by the appellate
4 division.

5 **“SEC. 117.—RECALL OF RETIRED JUDGES.**

6 “(a)(1) IN GENERAL.—A retired immigration appeals judge or
7 immigration trial judge may be recalled for further service as an
8 immigration appeals judge or immigration trial judge in accordance
9 with this section. To be eligible to be recalled for such service, a
10 retired judge must at the time of the judge’s retirement provide to the
11 chief judge (or, in the case of the chief judge, to the clerk of the Court)
12 notice in writing that the retired judge is available for further service
13 on the Court in accordance with this section and is willing to be
14 recalled under this section.

15 “(2) For the purposes of this section—

16 “(A) a retired judge is an immigration appeals judge or
17 immigration trial judge who retires from the Court under section
18 151 of this title or under chapter 83 or 84 of title 5, United States
19 Code; and

20 “(B) a recall-eligible retired judge is a retired judge who
21 has provided a notice under paragraph (1).

22 “(b)(1)(A) RECALL PROCEDURE.—The chief judge may recall for
23 further service on the Court a recall-eligible retired judge in
24 accordance with this section. Such a recall shall be made upon written
25 certification by the chief judge that substantial service is expected to be
26 performed by the retired judge for such period, not to exceed 90 days

1 (or the equivalent), as determined by the chief judge to be necessary to
2 meet the needs of the Court.

3 “(B)(i) A recall-eligible judge may request that the chief
4 judge recall the recall-eligible judge for a period of service not to
5 exceed 90 days (or the equivalent).

6 “(ii) The chief judge shall approve a request made by a
7 recall-eligible judge pursuant to clause (i) unless the chief judge
8 certifies, in writing, that the Court does not have—

9 “(I) sufficient work to assign such recall-eligible
10 judge during the period of recalled service; or

11 “(II) sufficient resources to provide to such recall-
12 eligible judge appropriate administrative and office
13 support.

14 “(iii) At any time during the period of recalled service
15 of a judge who is recalled pursuant to clause (i), the chief judge may
16 terminate such recalled service if the chief judge makes a written
17 certification described in clause (ii).

18 “(2) A recall-eligible retired judge shall not be recalled for
19 more than 90 days (or the equivalent) during any calendar year without
20 the judge’s consent.

21 “(3) If a recall-eligible retired judge is recalled by the chief
22 judge in accordance with this section and (other than in the case of a
23 judge who has previously during that calendar year served at least 90
24 days (or the equivalent) of recalled service on the court) declines (other
25 than by reason of disability) to perform the service to which recalled,
26 the chief judge shall remove that retired judge from the status of a
27 recall-eligible judge. This paragraph shall not apply to a judge who

1 retired under section 151 of this title after meeting the age and service
2 requirements set forth in section 7296 of title 38, United States Code,
3 and who has, in the aggregate, served at least 5 years of recalled
4 service on the Court under this section.

5 “(4) A recall-eligible retired judge who becomes permanently
6 disabled and as a result of that disability is unable to perform further
7 service on the Court shall be removed from the status of a recall-
8 eligible judge. Determination of such a disability shall be made
9 pursuant to section 112(g)(3) or 151 of this title.

10 “(c) AUTHORITY OF RECALLED JUDGES.—A retired judge who is
11 recalled under this section may exercise all of the judicial powers and
12 duties of an immigration appeals judge or immigration trial judge in
13 regular active service, but shall not be counted for purposes of the
14 number of judges of the Court authorized by law.

15 “(d) COMPENSATION FOR RECALL SERVICE.—A retired judge who
16 is recalled under this section shall be paid, during the period for which
17 the judge serves in recall status, pay at the rate of pay in effect under
18 section 112(f) of this title for the position of immigration appeals judge
19 or immigration trial judge from which the individual retired, less the
20 amount of the judge’s annuity under the applicable provisions of
21 chapter 83 or 84 of title 5, United States Code, or the judge’s annuity
22 under section 151 of this title and section 7296(c)(1)(A) of title 38,
23 United States Code, whichever is applicable.

24 “(e)(1) EFFECT ON CIVIL SERVICE RETIREMENT.—Except as
25 provided in subsection (d), a judge who is recalled under this section
26 who retired under chapter 83 or 84 of title 5, United States Code, shall
27 be considered to be a reemployed annuitant under that chapter.

1 “(C) hold unlawful and set aside administrative decisions,
2 findings (other than those described in subparagraph (D) and
3 subsection (b)), conclusions, rules, and regulations found to
4 be—

5 “(i) arbitrary, capricious, an abuse of discretion, or
6 otherwise not in accordance with law;

7 “(ii) contrary to constitutional right, power, privilege,
8 or immunity;

9 “(iii) in excess of statutory jurisdiction, authority, or
10 limitations, or in violation of a statutory right; or

11 “(iv) without observance of procedure required by law;
12 and

13 “(D) review de novo all findings of fact made in reaching
14 an administrative decision.

15 “(2) When appropriate to the resolution of matters arising
16 within the jurisdiction of the Court, the appellate division shall request
17 from the Attorney General a determination or ruling on a question of
18 law as described in the proviso in section 103(a)(1) of this title.

19 “(b)(1) REVIEW OF FACTUAL FINDINGS.—The appellate division
20 shall not review de novo the facts (including findings as to the
21 credibility of testimony) determined in a proceeding by an immigration
22 trial judge, and instead may determine only whether such findings are
23 clearly erroneous: Provided, however, that negative findings as to
24 credibility based primarily on witness demeanor may not be sustained.

25 “(2) The appellate division shall review the decision of an
26 immigration trial judge based on the trial record upon which the
27 decision is made. Apart from taking judicial notice of commonly

1 known facts, such as current events and the contents of official
2 documents (including reports of the Department of State), the appellate
3 division shall not engage in fact finding in the course of deciding
4 appeals from an immigration trial judge. If a party asserts that the
5 appellate division cannot properly resolve a matter without further fact
6 finding, the party must file a motion for remand and the appellate
7 division, if it determines that additional fact finding is required, may
8 remand the proceeding to the immigration trial judge.

9 **“SEC. 123.—FILING AND OTHER FEES.**

10 “(a) IN GENERAL.—The Immigration Court may, in accordance
11 with rules prescribed by the appellate division, impose on any non-
12 governmental party before the Court a fee to file an appeal under
13 section 121(b) of this title, to file a motion to reopen or reconsider a
14 matter, or to file or otherwise seek consideration of any other motion
15 or application as may be determined in such rule. No such fee may
16 exceed in amount the fee authorized by law to be charged and collected
17 for the same or substantially similar purpose by the clerks of the
18 district courts or, as the case may be, by the Department of Homeland
19 Security.

20 “(b) FEE WAIVER.—The rules prescribed under subsection (a)
21 shall establish procedures under which a fee imposed in accordance
22 with such rules may be waived in the case of a matter brought by or on
23 behalf of a person who demonstrates that the fee requirement will
24 impose a hardship on that person. A decision as to such a waiver shall
25 be final and not reviewable in any other court.

1 **“SEC. 124.—REPRESENTATION OF PARTIES.**

2 “(a) GOVERNMENTAL PARTIES.—The Government or any agency
3 or officer thereof which may be a party to proceedings before the
4 Immigration Court shall be represented in such proceedings by
5 attorneys from the respective agency or the United States Department
6 of Justice who shall be subject to the same rules of practice and
7 professional conduct as attorneys representing other parties before the
8 Court as provided in subsection (b).

9 “(b) NON-GOVERNMENTAL PARTIES.—All other parties to
10 proceedings before the Immigration Court, including proceedings
11 under section 126 of this title, shall have the privilege of being
12 represented in such proceedings, at no expense to the Government, by
13 counsel of their choosing in accordance with rules prescribed under
14 section 125 of this title. Such rules shall provide for the admission of
15 qualified attorneys to practice before the Court, and may permit
16 practice, as appropriate, by qualified non-attorneys who, to the extent
17 practicable, shall be subject to the same rules of practice and
18 professional conduct as attorneys practicing before the Court. Anyone
19 so admitted to practice shall be authorized to appear before the
20 appellate division or trial division at any location where such division
21 may be sitting.

22 **“SEC. 125.—RULES OF PRACTICE AND PROCEDURE;**

23 **DISQUALIFICATION OF JUDGES.**

24 “(a)(1) RULEMAKING AUTHORITY.—Subject to paragraph (2), the
25 Immigration Court shall conduct proceedings in its trial and appellate
26 divisions in accordance with the procedural requirements set forth in
27 title II of this Act and, except as provided in that title or otherwise by

1 law, such rules of practice and procedure as the appellate division
2 prescribes. Those rules may authorize the immigration trial judges in
3 each geographic area defined under section 112(b)(1) of this title to
4 prescribe local rules for that area which are consistent with the rules
5 prescribed by the appellate division.

6 “(2) The rules prescribed under paragraph (1) for proceedings
7 in the trial division may include (or authorize the presiding judge to
8 impose) reasonable restrictions concerning the relevancy, materiality,
9 and competency of evidence presented, but such rules shall
10 appropriately take into account whether non-governmental parties
11 are represented by counsel and other practical considerations that may
12 limit the availability of particular forms of evidence or the ability to
13 produce such evidence in these proceedings. In addition, any testimony
14 shall be given under oath or by affirmation under penalty of perjury,
15 and the Court shall not consider any information that is not available to
16 all parties and made part of the record of the proceeding.

17 “(3) The chief judge of the Court shall cause to be established
18 and maintained for the Court a publicly available website that contains,
19 or provides links to one or more websites that contain, current
20 information on the rules (including any local rules) prescribed under
21 paragraph (1).

22 “(b) DISQUALIFICATION OF JUDGES.—SHORT TITLE.—Section 455
23 of title 28, United States Code, shall apply to all immigration appeals
24 judges, immigration trial judges, and proceedings of the Immigration
25 Court.

1 **“SEC. 126.—CONTEMPT AUTHORITY; ASSISTANCE TO**
2 **THE COURT.**

3 “(a) CONTEMPT AUTHORITY.—In accordance with rules
4 prescribed by the appellate division of the Court, the appellate division
5 and any immigration trial judge shall have authority, after affording
6 notice and an opportunity to be heard, to sanction by civil money
7 penalty any action or inaction in contempt of the Court’s lawful
8 authority in proceedings before such division or judge.

9 “(b) ASSISTANCE TO THE COURT.—The Court shall have such
10 assistance in the carrying out of its lawful writ, process, order, rule,
11 decree, or command as is available to a court of the United States. The
12 United States marshal for a district in which the Court is sitting shall, if
13 requested by the chief judge, attend any session of the Court in that
14 district.

15 **“SEC. 127.—DECISIONS.**

16 “(a) PROCEDURE.—A decision in a proceeding before the
17 Immigration Court shall be made as quickly as practicable. In a
18 proceeding heard by a panel of the appellate division or en banc, the
19 decision shall be made by a majority vote of the judges hearing the
20 matter in accordance with procedures established by the division.
21 Whether made by a single judge, panel, or en banc appellate division,
22 the decision rendered in a proceeding shall, subject to section 141 of
23 this title, be the decision of the Court.

24 “(b) TIMING AND METHOD.—A judge, panel or the appellate
25 division en banc shall make a determination upon any proceeding
26 before the Court, and upon any motion in connection with such a
27 proceeding, that is assigned to such judge or judges. The respective

1 judge or panel, or the appellate division, shall make a report of any
2 such determination which constitutes the final disposition of the
3 proceeding by such judge or judges.

4 **“SEC. 128.—AVAILABILITY OF INFORMATION.**

5 “(a) PUBLIC RECORDS.—Except as provided in subsection (b) of
6 this section, all decisions of the Immigration Court and all briefs,
7 motions, documents, and exhibits received by the Court (including a
8 transcript of the stenographic report of the hearings) shall be public
9 records open to the inspection of the public.

10 “(b)(1) CONFIDENTIAL INFORMATION.—The Court may make any
11 provision necessary to prevent the disclosure of confidential
12 information in its proceedings and records, including a requirement
13 that such information be placed under seal to be opened only as
14 directed by the Court, and it shall preserve the confidentiality of
15 information as required by applicable law or regulation in
16 circumstances including but not limited to national security matters,
17 asylum claims, and cases involving the Violence Against Women Act
18 (Pub. L. No. 103-322, title IV, 108 Stat. 1902), as amended.

19 “(2) After the decision of the Court in a proceeding becomes
20 final, the Court may, upon motion of either party, permit the
21 withdrawal by the party entitled thereto of originals of books,
22 documents, and records, and of models, diagrams, and other exhibits,
23 submitted to the Court or the Court may, on its own motion, make such
24 other disposition thereof as it considers advisable.

25 “(c)(1) RULES.—The appellate division shall prescribe rules, in
26 accordance with section 125(a) of this title, to protect privacy and
27 security concerns relating to all filing of documents and the public

1 availability under this subsection of documents retained by the Court
2 or filed electronically with the Court.

3 “(2) The rules prescribed under paragraph (1) shall be
4 consistent to the extent practicable with rules addressing privacy and
5 security issues throughout the Federal courts.

6 “(3) The rules prescribed under paragraph (1) shall take into
7 consideration best practices in Federal and State courts to protect
8 private information or otherwise maintain necessary information
9 security.

10 **“SEC. 129.—PUBLICATION OF DECISIONS.**

11 “(a) IN GENERAL.—Decisions of the appellate division of the
12 Immigration Court shall be published in such form and manner as may
13 be best adapted for public information and use. The appellate division
14 may make such exceptions, or may authorize the chief judge to make
15 such exceptions, to the requirement for publication in the preceding
16 sentence as may be appropriate. Decisions of the trial division of the
17 Court may also be published in appropriate circumstances as
18 determined under rules established by the appellate division.

19 “(b) PROOF OF COURT DECISIONS.—Such authorized publication
20 shall be competent evidence of the decisions of the Immigration Court
21 therein contained in all courts of the United States and of the several
22 States without any further proof or authentication thereof.

23 “(c) AVAILABILITY OF PUBLISHED DECISIONS.—Such publications
24 shall be subject to sale in the same manner and upon the same terms as
25 other public documents.

1 “SUBCHAPTER III—MISCELLANEOUS PROVISIONS

2 **“SEC. 131.—EMPLOYEES.**

3 “(a) CLERK OF THE COURT.—The Immigration Court may appoint
4 a clerk of the Court without regard to the provisions of title 5, United
5 States Code, governing appointments in the competitive service. The
6 clerk shall serve at the pleasure of the Court.

7 “(b) CHAMBERS STAFF.—The immigration appeals judges and
8 immigration trial judges, respectively, may appoint law clerks and
9 secretaries, in such numbers as the Court may approve, without regard
10 to the provisions of title 5, United States Code, governing
11 appointments in the competitive service. Any such law clerk or
12 secretary shall serve at the pleasure of the appointing judge.

13 “(c) OTHER COURT STAFF.—The clerk of the Court, with the
14 approval of the Court, may appoint necessary deputies and employees
15 without regard to the provisions of title 5, United States Code,
16 governing appointments in the competitive service.

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

24 “(e) PREFERENCE ELIGIBLES.—In making appointments under
25 subsections (a) through (c) of this section, preference shall be given,
26 among equally qualified persons, to persons who are preference
27 eligibles (as defined in section 2108(3) of title 5, United States Code).

1 “(f) EXPERTS AND CONSULTANTS.—The Court may procure the
2 services of experts and consultants under section 3109 of title 5, United
3 States Code.

4 “(g) INTERPRETERS.—The Court shall establish a program to
5 facilitate the use of qualified interpreters in proceedings before the
6 Court.

7 “(h) VOLUNTARY SERVICES.—The Court may accept and utilize
8 voluntary services and uncompensated (gratuitous) services, including
9 services as authorized by section 3102(b) of title 5, United States
10 Code, and may accept, hold, administer, and utilize gifts and bequests
11 of personal property for the purposes of aiding or facilitating the work
12 of the Court. Gifts or bequests of money to the Court shall be covered
13 into the Treasury.

14 “(i) AUTHORITY OF CHIEF JUDGE.—The chief judge of the Court,
15 acting with the concurrence of a majority of the other immigration
16 appeals judges, shall exercise the authority conferred on the Court
17 under this section and section 132 of this title. The chief judge may
18 exercise that authority without such concurrence at any time when
19 fewer than 2 other immigration appeals judges are in office.

20 “(j) EXEMPTION.—The Court shall not be considered to be an
21 agency within the meaning of section 3132(a)(1) of title 5, United
22 States Code.

23 “(k) ELIGIBILITY FOR LIFE INSURANCE COVERAGE.—For purposes
24 of chapter 87 of title 5, United States Code, an immigration appeals
25 judge or immigration trial judge who is in regular active service or
26 retired under section 151 of this title or chapter 83 or 84 of title 5,

1 United States Code, shall be treated as an employee described in
2 section 8701(a)(5) of title 5, United States Code.

3 **“SEC. 132.—BUDGET AND EXPENDITURES.**

4 “(a) COURT BUDGET.—The budget of the Immigration Court, as
5 submitted by the chief judge on behalf of the Court for inclusion in the
6 budget of the President for any fiscal year, shall be included in that
7 budget without review within the executive branch.

8 “(b)(1) PERMISSIBLE COURT EXPENDITURES.—The Court may
9 make such expenditures (including expenditures for personal services
10 and rent at the seat of Government and elsewhere, and for law books,
11 books of reference, and periodicals) as may be necessary to execute
12 efficiently the judicial and administrative functions vested in the Court.

13 “(2) The Court may receive and expend funds appropriated to
14 the Court for purposes of paragraph (1) either—

15 “(A) directly, or

16 “(B) by transfer to—

17 “(i) the Director of the Administrative Office of the
18 United States Courts,

19 “(ii) another court established under Article I of the
20 Constitution, or

21 “(iii) an executive agency as defined in section 105 of
22 title 5, United States Code,

23 to cover the expense of such administrative support and guidance
24 (including budgetary and financial, payroll and personnel, protective
25 and security, recordkeeping and statistical, and information technology
26 services) as the Court may request and the Director, court, or agency
27 may agree to provide from time to time.

1 periodic registration fee on persons admitted to practice before the
2 Court. The appellate division may also impose a reasonable
3 registration fee on persons (other than immigration appeals judges and
4 immigration trial judges) participating at judicial conferences
5 convened pursuant to section 136 of this title or in any other Court-
6 sponsored activity.

7 “(b) PERMISSIBLE USE OF FEE REVENUES.—Amounts received by
8 the Court under subsection (a) of this section shall be available to the
9 Court for the following purposes:

10 “(1) Conducting investigations and proceedings, including
11 employing independent counsel, to pursue disciplinary matters.

12 “(2) Defraying the expenses of—

13 “(A) judicial conferences convened pursuant to section
14 136 of this title; and

15 “(B) other activities and programs of the Court that are
16 intended to support and foster communication and relationships
17 between the Court and persons practicing before the Court or the
18 study, understanding, public commemoration, or improvement
19 of immigration law or the work of the Court.

20 **“SEC. 136.—JUDICIAL CONFERENCE OF THE COURT.**

21 “The chief judge of the Immigration Court may summon the
22 immigration appeals judges and immigration trial judges to an annual
23 judicial conference, at a time and place that the chief judge designates,
24 for the purpose of considering the business of the Court and
25 recommending means of improving the administration of justice within
26 the Court’s jurisdiction. The appellate division shall establish rules for
27 representation and active participation at such conference by persons

1 admitted to practice before the Court and by other persons active in the
2 legal profession.

3 **“SEC. 137.—ADMINISTRATIVE AUTHORITY.**

4 “Notwithstanding any other provision of law, the Immigration
5 Court may exercise, for purposes of management, administration, and
6 expenditure of funds of the Court, the authorities provided for such
7 purposes by any provision of law (including any limitation with respect
8 to such provision of law) applicable to a court of the United States (as
9 that term is defined in section 451 of title 28, United States Code),
10 except to the extent that such provision of law is inconsistent with a
11 provision of this chapter.

12 **“SEC. 138.—ANNUAL REPORT.**

13 “(a) IN GENERAL.—The chief judge of the Immigration Court
14 shall submit each year to the Committees on the Judiciary of the Senate
15 and House of Representatives a report summarizing the workload of
16 the Court for the fiscal year ending during the preceding year.

17 “(b) CONTENT OF REPORT.—Each report under subsection (a)
18 shall include, with respect to the fiscal year covered by such report, the
19 following information:

20 “(1) the number of proceedings brought to the Court;

21 “(2) the number of applications filed with the Court under
22 section 2412 of title 28, United States Code;

23 “(3) the total number of dispositions by each of the
24 following:

25 “(A) the Court as a whole,

26 “(B) the clerk of the Court,

27 “(C) a single judge of the trial division,

- 1 “(D) a multi-member panel of the appellate division, and
2 “(E) the appellate division sitting en banc;
- 3 “(4) the number of each type of disposition by the Court,
4 including settlement, affirmation, remand, vacation, dismissal,
5 reversal, grant, and denial;
- 6 “(5) the median time from commencement to disposition by
7 each of the following:
- 8 “(A) the Court as a whole,
9 “(B) the clerk of the Court,
10 “(C) a single judge of the Court, and
11 “(D) multiple judges of the Court (including a multi-
12 member panel of the appellate division or the division en banc).
- 13 “(6) the median time from commencement to disposition of a
14 proceeding by the Court;
- 15 “(7) the median time from filing an application under section
16 2412 of title 28, United States Code, to disposition by the Court;
- 17 “(8) the median time from the completion of briefing
18 requirements by the parties to disposition by the appellate division;
- 19 “(9) the number of oral arguments before the appellate
20 division;
- 21 “(10) the number of cases appealed to the United States
22 courts of appeals;
- 23 “(11) the number and status of pending proceedings before
24 the Court and applications described in paragraph (2) at the end of
25 such fiscal year;
- 26 “(12) the number of proceedings pending before the Court
27 more than 18 months at the end of such fiscal year;

1 “(13) a summary of any service performed for the Court by
2 a recalled retired judge of the Court; and

3 “(14) an assessment of the workload of each judge of the
4 Court, including consideration of the following:

5 “(A) the time required of each judge for disposition of
6 each type of proceeding,

7 “(B) the number of proceedings heard by the Court, and

8 “(C) the average workload of other Federal judges.

9 “SUBCHAPTER IV—DECISIONS AND REVIEW

10 “**SEC. 141.—WHEN COURT DECISIONS BECOME FINAL.**

11 “(a) TRIAL DIVISION.—A final decision by an immigration trial
12 judge in a proceeding shall become a final decision for the Court,
13 conclusive for all purposes and with respect to all questions of law and
14 fact, and not subject to review by any other court by mandamus or
15 otherwise, upon the expiration of the time allowed for filing of an
16 appeal to the appellate division under section 121 of this title.

17 “(b) APPELLATE DIVISION.—A final decision by the appellate
18 division in a proceeding by shall become a final decision for the Court,
19 conclusive for all purposes and with respect to all questions of law and
20 fact, and not subject to review by any other court by mandamus or
21 otherwise if, upon the expiration of the time allowed, under title II of
22 this Act, for filing a petition for review of such decision, no such
23 petition is duly filed. If a petition is filed within such time, such a
24 decision shall become final—

25 “(1) upon the expiration of the time allowed for filing a
26 petition for certiorari with the Supreme Court of the United States,
27 if the decision of the Immigration Court is affirmed or the petition

1 for review is dismissed by the United States court of appeals and no
2 petition for certiorari is duly filed;

3 “(2) upon the denial of a petition for certiorari, if the decision
4 of the Immigration Court is affirmed or the petition for review is
5 dismissed by the United States court of appeals; or

6 “(3) upon the expiration of 30 days from the date of issuance
7 of the mandate of the Supreme Court, if that Court directs that the
8 decision of the Immigration Court be affirmed or the case
9 dismissed.

10 “(c)(1) MODIFICATION OR REVERSAL ON APPEAL.—If the Supreme
11 Court directs that the decision of the Immigration Court be modified or
12 reversed, the decision of the Immigration Court rendered in accordance
13 with the mandate of the Supreme Court shall become final upon the
14 expiration of 30 days from the time it was rendered, unless within such
15 30 days either party to the case has instituted proceedings to have such
16 decision corrected to accord with the mandate, in which event the
17 decision of the Immigration Court shall become final when so
18 corrected.

19 “(2) If the decision of the Immigration Court is modified or
20 reversed by the United States court of appeals and if—

21 “(A) the time allowed for filing a petition for certiorari
22 has expired and no such petition has been duly filed,

23 “(B) the petition for certiorari has been denied, or

24 “(C) the decision of the United States court of appeals has
25 been affirmed by the Supreme Court,

26 then the decision of the Immigration Court rendered in accordance
27 with the mandate of the United States court of appeals shall become

1 final upon the expiration of 30 days from the time such decision of the
2 Immigration Court was rendered, unless within such 30 days either the
3 Secretary or the petitioner has instituted proceedings to have such
4 decision corrected so that it will accord with the mandate, in which
5 event the decision of the Immigration Court shall become final when
6 so corrected.

7 “(d) REMAND AND REHEARING.—If the Supreme Court orders a
8 rehearing, or if the case is remanded by the United States court of
9 appeals to the Immigration Court for a rehearing, and if—

10 “(1) the time allowed for filing a petition for certiorari has
11 expired and no such petition has been duly filed,

12 “(2) the petition for certiorari has been denied, or

13 “(3) the decision of the United States court of appeals has
14 been affirmed by the Supreme Court,

15 then the decision of the Immigration Court rendered upon such
16 rehearing shall become final in the same manner as though no prior
17 decision of the Immigration Court had been rendered.

18 “(e) MANDATE DEFINED.—As used in this section, the term
19 “mandate”, in case a mandate has been recalled before the expiration
20 of 30 days from the date of issuance thereof, means the final mandate.

21 **“SEC. 142.—REVIEW BY THE COURT OF APPEALS.**

22 “(a) IN GENERAL.—After a decision of the United States
23 Immigration Court is entered by the appellate division in a proceeding,
24 a party to the proceeding may obtain review of the decision, by the
25 United States court of appeals for the judicial circuit wherein venue
26 lies, as provided in title II of this Act. Review of any such decision by
27 the court of appeals shall be limited to determination of whether the

1 Immigration Court validly relied on a rule of law or of any statute or
2 regulation or any interpretation thereof (other than a determination as
3 to a factual matter) in making the decision.

4 “(b) SCOPE OF REVIEW.—The United States court of appeals shall
5 have exclusive jurisdiction to review and decide any challenge to the
6 validity of any statute or regulation or any interpretation thereof
7 brought in accordance with this section, and to interpret constitutional
8 and statutory provisions, to the extent presented and necessary to a
9 decision. The judgment of such court shall be final subject to review
10 by the Supreme Court upon certiorari, in the manner provided in
11 section 1254 of title 28, United States Code.

12 “(c)(1) REVIEWABLE QUESTIONS.—The court of appeals shall
13 decide all relevant questions of law, including interpreting
14 constitutional and statutory provisions. The court shall hold unlawful
15 and set aside any finding or conclusion (other than a determination as
16 to a factual matter), or rule or regulation or interpretation thereof, that
17 was relied upon in the decision of the Immigration Court that the court
18 of appeals finds to be—

19 “(A) arbitrary, capricious, an abuse of discretion, or
20 otherwise not in accordance with law;

21 “(B) contrary to constitutional right, power, privilege, or
22 immunity;

23 “(C) in excess of statutory jurisdiction, authority, or
24 limitations, or in violation of a statutory right; or

25 “(D) without observance of procedure required by law.

26 “(2) Except to the extent that an appeal under this chapter
27 presents a constitutional issue, the court of appeals shall not review—

1 “(A) a challenge to a factual determination, or

2 “(B) a challenge to a law, rule, or regulation as applied to
3 the facts of a particular case.

4 “(3) Nothing in this section or any other provision of this
5 chapter shall be construed to permit the court of appeals or any other
6 court to exercise jurisdiction that exceeds the limits set forth in section
7 242 of this Act.

8 “(d)(1) REVIEWING COURT AUTHORITY AND RULES.—Upon
9 review in accordance with this section, the court of appeals shall have
10 power to affirm or, if the decision of the Immigration Court is not in
11 accordance with law, to modify or reverse the decision of the
12 Immigration Court or to remand the matter, as appropriate.

13 “(2) Rules for review of decisions of the Immigration Court
14 shall be those prescribed by the Supreme Court under section 2072 of
15 title 28, United States Code.

16 “SUBCHAPTER V—JUDICIAL RETIREMENT
17 AND SURVIVOR BENEFIT PROGRAMS

18 “**SEC. 151.—RETIRED PAY AND SURVIVORS ANNUITIES.**

19 “(a) IN GENERAL.—The provisions of sections 7296 and 7297 of
20 title 38, United States Code, regarding—

21 “(1) the retirement, retired pay, and associated elections,
22 payroll deductions and other contributions of judges of the United
23 States Court of Appeals for Veterans Claims appointed on or after
24 the date of enactment of the Veterans’ Benefits Improvement Act of
25 2008, and

26 “(2) the annuities payable to the survivors of judges of the
27 United States Court of Appeals for Veterans Claims, and the

1 associated elections, payroll deductions, and other contributions of
2 said judges
3 shall also apply for said purposes to immigration appeals judges and
4 immigration trial judges and their survivors.

5 “(b) DEFINITIONS.—For purposes of subsection (a), any reference
6 in sections 7296 and 7297 of title 38, United States Code, to—

7 “(1) ‘the Court of Appeals for Veterans Claims’ or ‘the
8 Court’ shall refer instead to the Immigration Court or, with respect
9 to prescribing the manner in which certain elections are made or
10 beneficiaries are designated, to the appellate division of the
11 Immigration Court;

12 “(2) ‘the chief judge’ shall mean the chief judge of the
13 Immigration Court;

14 “(3) a ‘judge’ shall mean an immigration appeals judge or
15 immigration trial judge who is in active service or, as the case may
16 be, has retired under subsection (a);

17 “(4) any other provision in chapter 72 of title 38, United
18 States Code, shall refer instead to the corresponding provision in
19 this title;

20 “(5) ‘the President’ with respect to certain functions that are
21 performed when a judge seeks or is declared to retire on grounds of
22 permanent disability shall, when an immigration trial judge is
23 involved, refer instead respectively to the chief judge or the
24 appellate division of the Immigration Court; and

25 “(6) ‘the Court of Appeals for Veterans Claims Retirement
26 Fund’ shall refer instead to the Immigration Court Retirement Fund
27 established in section 152 of this title.

1 **“SEC. 152.—IMMIGRATION COURT RETIREMENT FUND.**

2 “(a) FUND ESTABLISHED.—There is established in the Treasury a
3 fund known as the Immigration Court Retirement Fund.

4 “(b) PERMISSIBLE USE OF FUND.—Amounts in the fund are
5 available for the payment of judges’ retired pay, annuities, refunds, and
6 allowances under section 151 of this title.

7 “(c) DEPOSITS TO FUND.—Amounts deposited by, or deducted
8 and withheld from the salary and retired pay of, a judge under section
9 151 of this title shall be deposited in the fund and credited to an
10 individual account of the judge.

11 “(d) ANNUAL ESTIMATES.—The chief judge of the Immigration
12 Court shall submit to the President an annual estimate of the
13 expenditures and appropriations necessary for the maintenance and
14 operation of the fund, and such supplemental and deficiency estimates
15 as may be required from time to time for the same purposes, according
16 to law.

17 “(e)(1) ACTUARIAL REVIEW.—The chief judge of the Court may
18 cause periodic examinations of the retirement fund to be made by an
19 actuary, who may be an actuary employed by another department of
20 the Government temporarily assigned for the purpose.

21 “(2)(A) Subject to the availability of appropriations, there
22 shall be deposited in the Treasury to the credit of the retirement
23 fund, not later than the close of each fiscal year, such amounts as
24 may be required to reduce to zero the unfunded liability (if any) of
25 the fund. Such deposits shall be taken from sums available for that
26 fiscal year for the payment of the expenses of the Court.

1 “(B) For purposes of subparagraph (A) of this paragraph,
2 the term “unfunded liability”, with respect to any fiscal year,
3 means the amount estimated by the chief judge to be equal to the
4 excess (as of the close of that fiscal year) of—

5 “(i) the present value of all benefits payable from the
6 fund (determined on an annual basis in accordance with
7 section 9503 of title 31, United States Code), over

8 “(ii) the sum of—

9 “(I) the present values of future deductions and
10 future deposits under section 151 of this title, and

11 “(II) the balance in the fund as of the close of the
12 fiscal year.

13 “(C) For purposes of subparagraph (B), the term “present
14 value” includes a value determined by an actuary with respect to a
15 payment that may be made under subsection (b) from the retirement
16 fund within the contemplation of law.

17 “(D) Amounts deposited in the retirement fund under this
18 paragraph shall not be credited to the account of any individual.

19 “(f) FUND INVESTMENT.—The Secretary of the Treasury shall
20 invest from time to time, in interest-bearing securities of the United
21 States, such portions of the retirement fund as in such Secretary’s
22 judgment may not be immediately required for payments from the
23 fund. The income derived from such investments shall constitute a part
24 of the fund.

25 “(g) For purpose of section 255(g)(1)(B) of the Balanced Budget
26 and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(B)),

1 the retirement fund shall be treated in the same manner as the Claims
2 Judges' Retirement Fund.

3 **“SEC. 153.—LIMITATION ON ACTIVITIES OF RETIRED**
4 **JUDGES.**

5 “(a) IN GENERAL.—A retired immigration appeals judge or
6 immigration trial judge who is recall-eligible under section
7 117(a)(2)(B) of this title and who in the practice of law represents (or
8 supervises or directs the representation of) a client in making any claim
9 relating to immigration against the United States or any agency thereof
10 shall, pursuant to such section, be considered to have declined recall
11 service and be removed from the status of a recall-eligible judge. The
12 retired pay of such a judge, pursuant to section 151 of this title, shall be
13 the retired pay received by the judge at the time of the removal from
14 recall status.

15 “(b) EFFECT OF RECALL STATUS.—A recall-eligible judge shall be
16 considered to be an officer or employee of the United States, but only
17 during periods when the judge is serving in recall status. Any
18 prohibition, limitation, or restriction that would otherwise apply to the
19 activities of a recall-eligible judge shall apply only during periods
20 when the judge is serving in recall status.”

21 **SEC. 3. TECHNICAL AND CONFORMING PROVISIONS.**

22 (a)(1) OTHER CHANGES TO IMMIGRATION AND NATIONALITY
23 ACT.—Section 101(b)(4) is amended to read as follows:

24 “(4) The terms ‘Immigration Court’ and, unless the
25 context otherwise requires, ‘the Court’ mean the United States
26 Immigration Court established in section 111 of this Act.”

1 (2) Section 240(b)(1) is repealed.

2 (3) Section 242(a) is amended by adding:

3 “(6) The Government or any agency or officer thereof
4 which may be a party to proceedings before the Immigration Court
5 may appeal a final decision in such proceedings by the appellate
6 division of the Court by filing a petition for review with the court of
7 appeals for the judicial circuit wherein venue lies.

8 “(7) For purposes of judicial review under this section and
9 section 142 of this Act, the venue of a proceeding before the court
10 of appeals is in the judicial circuit in which an immigration trial
11 judge of the Immigration Court issued the original underlying
12 decision in the matter or, as the case may be, in which the
13 underlying administrative action reviewed by the appellate division
14 of the Court occurred.”

15 (4) Section 246 is amended by replacing “Attorney General”
16 with “Secretary of Homeland Security” each time it appears, striking
17 out the second sentence, and adding:

18 “The Secretary shall immediately refer any such
19 rescission to the Immigration Court for review upon request of the
20 person whose status has been rescinded.”

21 (5) Section 274A(e)(3)(B) is amended by striking out the
22 second sentence.

23 (6) Section 274A(e)(7) is repealed.

24 (7) Section 274B(e)(2) is repealed.

25 (8) Section 274C(d)(2)(B) is amended by striking out the
26 second sentence.

27 (9) Section 274C(d)(4) is repealed.

1 (b)(1) CONSTRUCTION OF EXISTING REFERENCES.—To the extent
2 consistent with this Act, every reference in title I or title II of the
3 Immigration and Nationality Act, as amended, or in any rule or
4 regulation prescribed thereunder, to the Board of Immigration Appeals,
5 an immigration judge or administrative law judge, or any
6 administrative appeal, hearing, review, or other proceeding before such
7 board or judge, shall be deemed to refer, as the context may require, to
8 the Immigration Court established in section 111 of the Immigration
9 and Nationality Act, as added by this Act, to the appropriate division or
10 judge of the Court, or to the corresponding proceedings under this Act
11 before such Court, division, or judge.

12 (2) To the extent consistent with this Act, every reference in
13 the Immigration and Nationality Act, as amended, to the authority of
14 the Attorney General to prescribe rules or regulations with respect to
15 the Executive Office for Immigration Review in the United States
16 Department of Justice, or to the Board of Immigration Appeals, or to
17 immigration judges or administrative law judges, or to administrative
18 appeals, hearings, reviews, or other proceedings conducted under title
19 II of the Immigration and Nationality Act, as amended, by such office,
20 board, or judges, shall be deemed instead to confer rulemaking
21 authority on the appellate division of the Immigration Court
22 established in section 111 of the Immigration and Nationality Act, as
23 added by this Act.

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

26 (1) in paragraph (8) by inserting “of the Immigration Court,”
27 after “Court of Appeals for Veterans Claims,”; and

1 (2) in paragraph (10) by inserting “Immigration Court,” after
2 “Court of Appeals for Veterans Claims,”.

3 **SEC. 4. EFFECTIVE DATE; TRANSITIONAL PROVISIONS.**

4 (a) EFFECTIVE DATE.—The amendments made by this Act shall
5 take effect on October 1, [*the year next following the year in which this*
6 *legislation is enacted*], or upon the expiration of 1 year following the
7 date of enactment, whichever occurs later.

8 (b)(1) FIRST APPOINTMENTS TO THE COURT.—The President shall
9 nominate individuals for appointment to all positions of immigration
10 appeals judge authorized in section 112(a) of the Immigration and
11 Nationality Act, as added by this Act, no later than 90 days following
12 the effective date of this Act.

13 (2) The appellate division of the Immigration Court shall
14 establish procedures for the selection of individuals for appointment to
15 all positions of immigration trial judge authorized under section 112(b)
16 of the Immigration and Nationality Act, as added by this Act, no later
17 than 180 days following the effective date of this Act.

18 (3) It is the sense of Congress that, for the initial
19 appointments of immigration appeals judges and immigration trial
20 judges under section 112(a)(2) and (b)(1) of the Immigration and
21 Nationality Act, as added by this Act, the individuals to be considered
22 for appointment should include the incumbent immigration appeals
23 judges and immigration trial judges who have assumed office under
24 subsection (c) of this section if such judges request to be considered
25 and, in accordance with section 112(b) and (c) of said Act, are
26 determined to be qualified for continued service. Such judges should

1 receive consideration equal to that given all other candidates for the
2 respective positions.

3 (4) Notwithstanding the provisions of section 112(d) of the
4 Immigration and Nationality Act, as added by this Act, the first 18
5 immigration appeals judges appointed after the effective date of this
6 Act shall, as designated by the President, serve for the following terms:

7 (A) 6 of the immigration appeals judges shall each serve
8 for a term of 5 years starting from such effective date;

9 (B) 6 of the immigration appeals judges shall each serve
10 for a term of 10 years starting from such effective date; and

11 (C) 6 of the immigration appeals judges shall each serve
12 for a term of 15 years starting from such effective date.

13 Each such judge may continue to serve after the expiration of the
14 designated term until a successor is appointed and has qualified, but
15 not more than 1 year after the date on which the term of such judge
16 would otherwise expire under this paragraph.

17 (c)(1)(A) INTERIM JUDGES.—Except as provided in subparagraph
18 (B), each individual serving immediately before the effective date of
19 this Act as a permanent member of the Board of Immigration Appeals
20 in the Executive Office of Immigration Review of the United States
21 Department of Justice, shall become an immigration appeals judge of
22 the Immigration Court on such effective date, and shall continue
23 thereafter in that position until a successor is appointed and has
24 qualified in accordance with section 112 of the Immigration and
25 Nationality Act, as added by this Act, but no longer than 2 years after
26 such effective date.

1 (B) If there are more than 18 permanent members of the
2 Board of Immigration Appeals on the effective date of this Act,
3 subparagraph (A) will apply to the 18 members who have the longest
4 periods of continuous service on the Board.

5 (2) Each individual serving immediately before the effective
6 date of this Act as a permanent immigration judge or administrative
7 law judge in the Executive Office of Immigration Review of the
8 United States Department of Justice, shall become an immigration trial
9 judge of the Immigration Court on such effective date, and shall
10 continue thereafter in that position for a term of 4 years and until a
11 successor is appointed and has qualified in accordance with section
12 112 of the Immigration and Nationality Act, as added by this Act.

13 (3) For an individual who becomes an immigration appeals
14 judge or immigration trial judge under paragraph (1) or (2), the period
15 of service, not to exceed 5 years, by such individual as a permanent
16 member of the Board of Immigration Appeals, immigration judge, or
17 administrative law judge in the Executive Office for Immigration
18 Review of the Department of Justice shall, if such individual elects to
19 receive retired pay under section 151 of the Immigration and
20 Nationality Act, as added by this Act, be included in the service of
21 such individual on the Immigration Court for purposes of said section
22 151.

23 (d) CONTINUITY OF PROCEEDINGS.—Under rules prescribed by
24 the appellate division of the Immigration Court with respect to removal
25 proceedings and asylum applications pending as of the effective date of
26 this Act, the appellate division shall be deemed to be a continuation of
27 the Board of Immigration Appeals, and the trial division of the Court

1 shall be deemed a continuation of the immigration judges and
2 administrative law judges who previously conducted proceedings
3 under title II of the Immigration and Nationality Act, as amended, for
4 the purposes of all powers, rights, and jurisdiction existing under prior
5 law.

6 (e)(1) EXISTING PRECEDENTS.—Decisions in prior administrative
7 proceedings under title II of the Immigration and Nationality Act, as
8 amended, shall continue to serve as precedent in proceedings before
9 the Immigration Court until modified or overruled by the Court.

10 (2) To the extent consistent with this Act, all rules or
11 regulations of the Attorney General as described in section 3(b)(2) of
12 this Act, and in force before the effective date thereof, shall remain in
13 effect until amended or revoked by the appellate division.

14 (f)(1) INSTITUTIONAL TRANSFER.—The Executive Office for
15 Immigration Review in the Department of Justice shall be abolished
16 and, subject to the provisions of this Act, all personnel and property of
17 that office (including appropriated funds) shall be transferred to the
18 Immigration Court.

19 (2) The enactment of this Act shall not result in any loss of
20 rights or powers, interruption of jurisdiction, or prejudice to matters
21 under title II of the Immigration and Nationality Act, as amended,
22 which are pending before the Board of Immigration Appeals, an
23 immigration judge, or an administrative law judge immediately before
24 the effective date of this Act.

25 (3) All administrative proceedings under title II of the
26 Immigration and Nationality Act, as amended, which are pending
27 before the Board of Immigration Appeals, an immigration judge, or an

1 administrative law judge immediately before the effective date of this
2 act shall be transferred to the Immigration Court to proceed before the
3 trial division or, as the case may be, the appellate division of the Court.

4 **SEC. 5. STUDY OF CONSOLIDATING RESPONSIBILITY**
5 **FOR REVIEW OF IMMIGRATION-RELATED**
6 **ADJUDICATION.**

7 (a) **IN GENERAL.**—The Attorney General, in consultation with the
8 Secretaries of State, Labor, and Homeland Security, shall conduct a
9 study of the potential for consolidating within the Immigration Court
10 responsibility for the conduct or review of all immigration-related
11 adjudications, and of the measures, funding and implementation
12 required to effect any such consolidation. The purpose is to develop a
13 consistent body of immigration-related precedential jurisprudence, and
14 to centralize and streamline the review of agency decisions under the
15 Immigration and Nationality Act, as amended, to the extent appropriate
16 and consistent with efficient judicial administration.

17 (b) **SCOPE OF STUDY.**—Such study shall evaluate the following:

18 (1) transferring to the Immigration Court the jurisdiction
19 currently exercised by the Administrative Appeals Office of the
20 United States Citizenship and Immigration Services, United States
21 Department of Homeland Security; and

22 (2) conferring jurisdiction on the Immigration Court to
23 review—

24 (A) adjudications of legal issues with regard to passports
25 and nationality that are made within the United States by the
26 Passport Office of the United States Department of State;

1 (B) adjudications of immigration-related matters by the
2 Board of Alien Labor Certification Appeals, Administrative
3 Review Board, and Office of Administrative Law Judges of the
4 United States Department of Labor; and

5 (C) any adjudications arising under titles I and II of the
6 Immigration and Nationality Act, as amended, that are not
7 otherwise addressed by this Act.

8 (c) REQUIRED ANALYSES.—Such study shall include an analysis
9 of costs and efficiency (including the reallocation of existing budget
10 and resources and the potential operational impact on the Immigration
11 Court) of centralizing these review functions, as well as any national
12 security implications.

13 (d) DEADLINE FOR COMPLETION.—Such study shall not be
14 commenced until the chief judge of the Immigration Court submits the
15 first annual report under Section 138 of the Immigration and
16 Nationality Act, as added by this Act, and shall be completed within 36
17 months after the date of said annual report. The Attorney General shall
18 transmit to the Congress and publish—

19 (1) not later than 12 months after the date of the first annual
20 report, a status report on such study; and

21 (2) not later than 24 months after the date of the status report,
22 a final report setting forth the findings of such study and, to the
23 extent that consolidation of additional immigration-related
24 adjudications within the Immigration Court is recommended, a plan
25 of action (including proposed legislation, as appropriate) and
26 timetable for such consolidation.

1 (e) CONGRESSIONAL PURPOSE.—It is the sense of Congress that
2 due process of law and prudent management of judicial and
3 adjudicative resources would be enhanced by developing a consistent
4 body of immigration-related precedential jurisprudence, and, where
5 feasible, centralizing and streamlining within the Immigration Court the
6 conduct or review of immigration-related adjudications arising under
7 the Immigration and Nationality Act, as amended.

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