



NATIONAL ASSOCIATION OF IMMIGRATION JUDGES

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March 12, 2019

The Honorable José Enrique Serrano,
Chairman,
House Appropriations Committee, Commerce, Justice, Science and Related Agencies
Subcommittee
H-310, The Capitol
Washington, DC 20515

The Honorable Robert Aderholt,
Ranking Member,
House Appropriations Committee, Commerce, Justice, Science and Related Agencies
Subcommittee
H-310, The Capitol
Washington, DC 20515

Dear Chairman Serrano and Ranking Member Aderholt,

Thank you for holding a hearing on the issues facing the Immigration Court on March 7, 2019. As President of the National Association of Immigration Judges (NAIJ), representing the approximately 400 Immigration Judges across the country, I want to thank you and the Appropriations Committee for your strong support of Immigration Judges (IJs).

During the hearing, EOIR Director, Mr. James McHenry, made several statements in response to questions that do not accurately portray the entire reality we see in our courtrooms. It is our goal to provide you with a more complete picture of several of the issues addressed in that hearing from the perspective of the IJs.

Immigration Judges do not support quotas

Contrary to the impression left by the Director regarding NAIJ's position on numerical production quotas and deadlines as a basis for evaluating the performance of IJs, we have strenuously and consistently opposed implementation of these measures every step of the way, a position that has been made explicitly clear to EOIR throughout our engagement with the Agency. We have serious concerns that these metrics create a conflict of interest, will adversely affect thoughtful and deliberate decision making, and discourage judges from taking the time needed to fully evaluate novel or creative legal arguments. The current crushing workload is a serious enough impediment in affording adequate time for deliberation; the added pressure of production quotas and deadlines is unwarranted and counterproductive.

To further clarify, because of our unique status as attorney employees of the Department of Justice (rather than as judicial branch judges or Administrative Law Judges governed by the Administrative Procedures Act), we are precluded under federal labor law from preventing the imposition of quotas or from assuring that the substance of what they require of IJs is realistic while honoring our oath of office to provide due process in court proceedings. We are only allowed to bargain under labor law with respect to "impact and implementation" of these quotas, to address some protections for IJs being disciplined or faulted for poor performance, as was cited by Mr. McHenry. But such good faith bargaining on our part under labor law in no way detracts from our categorical opposition to the very concept of subjecting judges to numerical quotas and deadlines.

Mr. McHenry's assertion that our legal training and integrity as professionals will assure that we will not succumb to shortcuts or other actions to protect our self-interest in continued employment, or that we are creating a "false dichotomy" when we express the extremely negative impact of numerical quotas and deadlines, conveniently overlooks the realities of our jobs and the judicial canon of ethics that would disqualify any "regular judge" if faced with the same dilemma. We are raising these concerns in the context of already visible and untenable stress colleagues are experiencing due to the imposition of quotas in addition to the unconscionable workload we face daily. We are the canaries in the coal mine providing advance warning of the dangers ahead, and that production quotas and deadlines could not have been implemented at a worse time. As professionals with integrity, we have struggled for years at EOIR to do more with less and to accommodate shifting priorities that come with each new administration, but this latest round of policies has far exceeded any previous debilitating measures.

Mr. McHenry asserted that several other agencies have case completion quotas. This is not an accurate statement. No independent judge position in the country, faced with the high stakes traditional adversarial court proceedings over which we preside, is subject to individual production quotas and deadlines as a measure of whether or not they can maintain their position and continued employment. The very concept is contrary to the fundamental principles of the American judicial system. In fact, even in the context of Administrative Law Judges ("ALJ"), **Congress has specifically exempted ALJs from individual performance evaluations as a mechanism to ensure their independence from such measures and protect the integrity of their decisions.** Immigration Judges are provided with decisional independence, under 8 C.F.R.

1003.10(b) which states that “In deciding the individual cases before them . . ., *immigration judges shall exercise their independent judgment and discretion* and may take any action consistent with their authorities under the Act and regulations that is appropriate and necessary for the disposition of such cases.” However, we are not even provided with the mechanism that the ALJs have in protecting their decisional independence. This gap in protection is particularly troubling since IJs’ decisions have life and death consequences, and historically, 90% of IJ decisions are final decisions, not subject to any review by a higher administrative or judicial court.

Moreover, subjecting IJs to production quotas and deadlines tied to their individual performance evaluations will not only create a perception (hopefully not a reality) of interference with their decisional independence, but it will create an appealable issue in virtually every case. Doubt will be raised as to whether a judge’s decision is based on law or personal interest, knowing the judge’s performance rating depends on these metrics. Litigants will be incentivized to challenge every aspect of a judge’s handling of a case, including procedural rulings on continuances and scheduling, noting that there are now personal incentives for a judge to push more cases through the docket faster in order to keep his or her job. Instead of reducing the backlog, this will increase the backlog as appeals will abound, even to the point of flooding the circuit courts of appeal. The final adverse consequences of these measure will not be seen for years to come, long after the individuals responsible for imposing those measures are gone.

Immigration Judges are equally committed to combatting the backlog and have been doing more with less for years. We have explained to the Agency that these measures will actually increase rather than decrease the backlog. In contrast, there is an approach that will allow IJs to focus on the backlog without the unintended consequence of compromising the integrity of the Court or further compounding the problem by provoking appeals. The answer is to follow the advice of experts in the field, such as the American Bar Association, which have recognized that numeric standards do have a place in our Court system as a case management tool, but they do not have a place in individual judge performance evaluations. Specifically, numeric standards are commonly used to assess and evaluate where resource allocations are to be made or adjusted and identify training needs of judges. This empowers judges to improve their productivity, rather than punishing them or creating appealable issues. The Court can provide docket efficiencies and creative docket management approaches without pitting a judge’s individual performance measures (and thus his or her job) against the duties undertaken under our oath of office.

The problem is not the “culture”

Separately, the NAIJ takes great umbrage at the remarks made by the EOIR Director blaming the previous “culture” at EOIR for failing to emphasize completions as being at fault in what he characterizes as the trend of decreased Immigration Judge productivity prior to his arrival and boasting that he has “restor[ed] its reputation in the last 21 months.” He touted great improvements based on his assertion that the first quarter of 2019 is “on track to be the third highest in productivity in the past 36 years” and indicated it followed eight years of decline. Our review of the completion statistics over time show that this assertion mischaracterizes the facts and any recent high case completions is principally due to the addition of new IJs, rather than any claimed increase in IJ productivity.

In the Director's testimony he stated, "After eight consecutive years of declining or stagnant productivity between FY 2009 and FY 2016, EOIR is now in the middle of its third consecutive year of increased immigration court case completions." While the raw numbers do show some declining completions during that time period, the only year in which any increase in average individual IJ productivity is noted is in FY 2018, and even then by only a small margin. Therefore, the statement of a three year productivity increase is at best misleading. Looking at the completions averaged out per IJ, the number continued to drop each year, including for FY2017, **so there is actually only one year where the completions per IJ has increased - FY 2018, and that increase was only by 2.6%.** That is a fairly small increase (possibly even fitting the Director's definition of stagnant) and is likely attributed to factors other than addressing alleged declining IJ productivity. For example, in FY 2018, the Supreme Court issued the *Jennings v. Rodriguez* decision in which it limited the availability of bond hearings to a vast majority of individuals held in long term immigration detention. Prior to this decision, some courts in the nation (including the high volume courts in California) were devoting 10 to 20% of their time to bond hearings that do not count towards "case completions." In the absence of such demands on their hearing time, they were able to hear and complete more cases. The bottom line is that on a per IJ basis, there is only one year of increased completions and it was a statistically insignificant increase which is readily attributable to factors outside of any Agency initiative. We stand by our public statements that it is the frequent shifting of case and other priorities due to political pressures which have been a primary source of contribution to delay and backlogs of the cases before the Court, coupled with the chronic lack of sufficient numbers of IJs, judicial law clerks, support staff and modern technology.

The budget shortfall was predictable and preventable

At the hearing, a very legitimate concern was raised as to how EOIR could have been taken by surprise at the skyrocketing costs of our interpreter contract. This came as quite a shock to us as well, since cost of interpretation should be one of the easiest costs to project. Since our dockets are fully booked in the majority of our non-detained courts for three or more years, it is a simple matter to run calendars, see the language needs and calculate a baseline minimum of what the interpreter expense will be for a year or more at a time. Additionally, Mr. McHenry failed to mention a significant contributor to the interpreter costs at EOIR: a major change in the terms of the governing contract effective September 1, 2017. Before the contract modification, if a request for an interpreter was cancelled by 5:00 p.m. local time the day before the hearing, EOIR did not pay any penalty. In addition, the minimum time paid to an interpreter was two hours. After the September 1, 2017, contract modification, EOIR must cancel with at least 48 hours advance notice or be charged for three hours. In addition, the minimum time paid to an interpreter was increased to three hours. Therefore it was not merely increased demand that drove the costs of interpretation through the roof, but also the extremely disadvantageous contract modification. Even more inexcusable, other than a singular email in a myriad of emails we receive on a daily basis, there was no significant court-wide advisal of these changes or training of IJs made so that IJs and their assistants could be sure to minimize the impact of these changes. Instead, many IJs and their staff were completely unaware of the impact of the contract modifications to the Court's budget.

Video-teleconferencing is not a panacea

Another important issue raised in the hearing was the impact of increasing use of video-teleconference (VTC) technology. NAIJ shares deep concern over this issue and the paucity of information on how it affects the outcomes of hearings. While we do not have access to the statistics cited by Mr. McHenry, the statement that only 151 cases out of 29,000 held were adjourned for VTC malfunctioning does not comport with our experience. To the contrary, we were recently provided information forwarded to a media outlet through a FOIA request on continuances. Based on the data the Agency released to this source, in FY 2018, a total of 1,090 cases were adjourned due to video malfunctioning. This is more consistent with IJ reports to us that highlight the rampant problems with dropped connections, difficulty hearing or seeing individuals on the screens, extremely problematic issues with interpretation and coordination between telephonic interpreters and the VTC units. In addition, several IJs have shared with us that they have experienced serious health issues stemming from the lack of ergonomic planning in the installation of the VTC units and screens, as well as excessive time staring at screens. To our knowledge, the agencies which Mr. McHenry cited as successful users of VTC have an extremely different client base and type of hearings. They do not have the complex legal issues combined with non-English speakers who comprise a high percentage of those appearing before the Immigration Court, nor do they employ VTC for adversarial hearings where large numbers of respondents are unrepresented while the government has attorneys at virtually every case. (The figures on the percentage of individuals who have legal representation have inexplicably disappeared from the latest version of the EOIR Statistical Yearbook which changed its format, although the FY 2016 Yearbook showed 39% of respondents were not represented by counsel.)

Compromising on training is not the solution

Finally, the Director at times acknowledges the importance of training, yet he has indicated that “due to budget constraints,” the annual Immigration Judge Conference is being cancelled. This conference is the only time the entire IJ corps is brought together to train, share best practices and obtain in person Continuing Legal Education credits, which are required in many states to maintain a license to practice law. On-going and thoughtful training sessions are a key component of a highly qualified and well respected judge corps. It is deeply concerning that the Agency would compromise on training and would cancel our in-person training session. We encourage the Committee to find a way to continue with the annual training conference.

NAIJ is a willing, able and committed party in combating the backlogs and protecting the integrity of the Immigration Court. We hope that by sharing our realities on the job and on the bench would better inform our representatives on the Hill. Our judicial corps fully understands the urgency of this issue and stands ready to do our part to assure justice is provided in an efficient, effective, and fair manner.

Sincerely,



A. Ashley Tabaddor, President,
National Association of Immigration Judges

116TH CONGRESS
1ST 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

_____, 2019

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 “United
7 States 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. Retirement of judges.

22 “152. Survivor annuities.

23 “153. Immigration Court Retirement Fund.

24 “154. Limitation on activities of retired judges.

25 “SUBCHAPTER I—ORGANIZATION AND JURISDICTION

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

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

30 “(b) COURT STRUCTURE.—The Immigration Court shall consist of
31 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 United States Immigration
25 Court Act, every immigration appeals judge and every immigration
26 trial judge shall serve for a term of 15 years, and until a successor is
27 appointed and has qualified, except that a judge may not continue to

1 serve for more than 1 year after the date on which the term of that
2 judge is scheduled to expire under this subsection.

3 “(2) An immigration appeals judge who is appointed to fill a
4 vacancy occurring before the term of the preceding judge is scheduled
5 to expire, or is appointed after such term has already expired, shall
6 serve only for the remainder of such term or, as the case may be, for a
7 period that ends 15 years after the preceding judge’s term expired.

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

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

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

22 “(g)(1) JUDICIAL DISCIPLINE.—An immigration appeals judge
23 may be removed from office by the President, and an immigration trial
24 judge may be removed from office by the appellate division, on
25 grounds of gross misconduct, neglect of duty, or incompetence,
26 engaging in the practice of law, or permanent mental or physical
27 disability, 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
20 specified in section 151(g)(2) of this title shall provide a basis for a
21 determination pursuant to section 354(b) or 355 of title 28, United
22 States Code, and certification and transmittal by the Conference shall
23 be made to the President or, as the case may be, the appellate division
24 of the Court for consideration under paragraph (1) or, as the case may
25 be, section 151(g)(2) of this title.

26 “(C)(i) With respect to hearings conducted pursuant to
27 subparagraph (A), the appellate division may exercise the authority

1 provided under section 1821 of title 28, United States Code, to pay the
2 fees and allowances described in that section.

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

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

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

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

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

18 “(3) original proceedings and appeals in disciplinary matters
19 concerning practitioners before the Court; and

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

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

25 “(1) removal proceedings (including such applications for
26 relief or protection from removal as may be cognizable) under

1 sections 238 and 240 of this Act, and deportation and exclusion
2 proceedings initiated under prior law;

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

5 “(3) credible fear determinations reviewable under section
6 235 of this Act, applications for asylum referred by the United
7 States Department of Homeland Security where the applicant is
8 barred from being placed in removal proceedings under section
9 240 of this Act, and referrals for protection under section
10 241(b)(3) of this Act where the individual is not in removal
11 proceedings and is barred from asylum under this Act;

12 “(4) proceedings arising under sections 274A, 274B, and
13 274C of this Act;

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

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

22 “(7) disciplinary matters concerning practitioners before the
23 Court; and

24 “(8) any other proceedings authorized under title II of this
25 Act to be conducted before an immigration judge immediately
26 before the effective date of the United States Immigration Court
27 Act.

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

1 whom section 151(c)(1) of this title applies and who has, in the
2 aggregate, served at least 5 years of recalled service on the Court under
3 this section.

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

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

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

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

26 “(2) Nothing in this section affects the right of a judge who
27 retired under chapter 83 or 84 of title 5, United States Code, to serve as

1 a reemployed annuitant in accordance with the provisions of title 5,
2 United States Code.

3 SUBCHAPTER II—PROCEDURE

4 **“SEC. 121.—PROCEEDINGS.**

5 “(a) ORIGINAL MATTERS.—Proceedings may be initiated in the
6 Immigration Court as provided in title II of this Act. Except as
7 otherwise provided in section 113(a) of this title, all proceedings
8 before the Court shall originate in the trial division.

9 “(b) APPEALS.—Any party thereto may appeal to the appellate
10 division any final decision or, to the extent permitted by rule
11 prescribed by the appellate division, any interlocutory decision of an
12 immigration trial judge in a proceeding within 30 calendar days
13 following the decision: Provided that a determination of no credible
14 fear or no reasonable fear may not be appealed.

15 **“SEC. 122.—SCOPE OF REVIEW.**

16 “(a)(1) IN GENERAL.—In any proceeding before either division of
17 the Immigration Court, to the extent necessary to its decision and when
18 presented with respect to matters within its jurisdiction, the
19 immigration trial judge or, as the case may be, the appellate division
20 shall—

21 “(A) consider de novo all relevant questions of law, the
22 interpretation of constitutional, statutory, and regulatory
23 provisions, and the meaning or applicability of the terms of any
24 administrative action;

25 “(B) compel administrative action unlawfully withheld or
26 unreasonably delayed;

1 “(C) when reviewing administrative decisions, findings of
2 fact, conclusions of law, rules, and regulations, hold unlawful
3 and set aside administrative action found to be—

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

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

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

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

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

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

18 “(b) REVIEW BY APPELLATE DIVISION.—(1) In considering an
19 appeal from an immigration trial judge decision, the appellate
20 division—

21 “(A) shall not review de novo the factual findings of the
22 immigration trial judge, but shall, if factual findings are
23 challenged, determine whether such findings are clearly
24 erroneous; and

25 “(B) shall conduct its review of the decision based on the
26 trial record upon which the decision was made.

1 “(2) Apart from taking judicial notice of commonly known
2 facts, such as current events and the contents of official documents, the
3 appellate division shall not engage in fact finding in the course of
4 deciding appeals from an immigration trial judge. If a party asserts that
5 the appellate division cannot properly resolve a matter without further
6 fact 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 “The appellate division may prescribe rules under which the
11 Court may charge and collect the following:

12 “(a) fees to file an appeal or a motion or application to open or
13 reconsider a matter, and fees for comparing, or preparing and
14 comparing, transcripts of the record of any proceedings before the
15 Court, or for copying any records, entries, or other papers and the
16 comparison and certification thereof, or for other, similar services
17 provided by the Court, which rules shall—

18 “(1) not permit such fees to exceed in amount the fees charged
19 and collected for the same or substantially similar purposes by
20 the clerks of the district courts, or, as appropriate, the Department
21 of Homeland Security; and

22 “(2) provide procedures under which such fees may be waived
23 with respect to a matter brought by or on behalf of, or service
24 provided for, a person who demonstrates that the fee will impose
25 a hardship on that person, which decision to grant a waiver may
26 not be reviewed.

1 “(b) reasonable periodic registration fees which may be imposed
2 on persons admitted to practice before the Court, and on persons
3 (other than immigration appeals judges and immigration trial judges)
4 participating at judicial conferences convened pursuant to section
5 134 or in other Court-sponsored activities, and shall be available to
6 the Court for the following purposes:

7 “(1) conducting investigations and proceedings, including
8 employing independent counsel, to pursue disciplinary matters;
9 and

10 “(2) defraying the expenses of—

11 “(A) judicial conferences convened pursuant to section
12 134; and

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

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

20 Each party to a proceeding before the Immigration Court shall
21 have the privilege of being represented in such proceeding by counsel
22 of their choosing in accordance with rules prescribed under section 125
23 of this title: Provided that representation of non-governmental parties
24 shall be at no expense to the Government. Such rules shall—

25 “(a) provide for admission of qualified attorneys to practice
26 before the Court or, as appropriate, for admission of qualified non-
27 attorney representatives;

1 “(b) prescribe standards of practice and professional conduct,
2 which shall to the extent practicable apply to all practitioners; and

3 “(c) provide for disciplinary proceedings before the Court for
4 practitioners who do not comply with the prescribed standards.

5 **“SEC. 125.—RULES OF PRACTICE AND PROCEDURE;**
6 **DISQUALIFICATION OF JUDGES.**

7 “(a)(1) RULEMAKING AUTHORITY.—Subject to paragraph (2), the
8 Immigration Court shall conduct proceedings in its trial and appellate
9 divisions in accordance with the procedural requirements set forth in
10 title II of this Act and, except as provided in that title or otherwise by
11 law, such rules of practice and procedure as the appellate division
12 prescribes. Those rules may authorize the immigration trial judges in
13 each geographic area defined under section 112(b)(1) of this title to
14 prescribe local rules for that area which are consistent with the rules
15 prescribed by the appellate division.

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

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

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

10 **“SEC. 126.—CONTEMPT AUTHORITY; ASSISTANCE TO**
11 **THE COURT.**

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

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

24 **“SEC. 127.—DECISIONS.**

25 “(a) PROCEDURE.—A decision in a proceeding before the
26 Immigration Court shall be made as quickly as practicable. In a
27 proceeding heard by a panel of the appellate division or en banc, the

1 decision shall be made by a majority vote of the judges hearing the
2 matter in accordance with procedures established by the division.
3 Whether made by a single judge, panel, or en banc appellate division,
4 the decision rendered in a proceeding shall, subject to section 141 of
5 this title, be the decision of the Court.

6 “(b) TIMING AND METHOD.—A judge, panel or the appellate
7 division en banc shall make a determination upon any proceeding
8 before the Court, and upon any motion in connection with such a
9 proceeding, that is assigned to such judge or judges. The respective
10 judge or panel, or the appellate division, shall make a report of any
11 such determination which constitutes the final disposition of the
12 proceeding by such judge or judges.

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

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

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

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

7 “(c)(1) RULES.—The appellate division shall prescribe rules, in
8 accordance with section 125(a) of this title, to protect privacy and
9 security concerns relating to all filing of documents and the public
10 availability under this subsection of documents retained by the Court
11 or filed electronically with the Court.

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

15 “(3) The rules prescribed under paragraph (1) shall take into
16 consideration best practices in Federal and State courts to protect
17 private information or otherwise maintain necessary information
18 security.

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

20 “(a) IN GENERAL.—Decisions of the appellate division of the
21 Immigration Court shall be published in such form and manner as may
22 be best adapted for public information and use. The appellate division
23 may make such exceptions, or may authorize the chief judge to make
24 such exceptions, to the requirement for publication in the preceding
25 sentence as may be appropriate. Decisions of the trial division of the
26 Court may also be published in appropriate circumstances as
27 determined under rules established by the appellate division.

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

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

8 “SUBCHAPTER III—MISCELLANEOUS PROVISIONS

9 “**SEC. 131.—EMPLOYEES.**

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

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

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

24 “(d) STAFF SALARIES.—The Court may fix and adjust the rates of
25 basic pay for the clerk and other employees of the Court without regard
26 to the provisions of chapter 51, subchapter III of chapter 53, or section
27 5373 of title 5, United States Code. To the maximum extent feasible,

1 the employees of the Court shall be compensated at rates consistent
2 with those for employees holding comparable positions in the judicial
3 branch.

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

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

11 “(g) INTERPRETERS.—The Court shall establish a program to
12 facilitate the use of qualified interpreters in proceedings before the
13 Court.

14 “(h)(1) VOLUNTARY SERVICES.—The Court may accept and
15 utilize voluntary services and uncompensated (gratuitous) services,
16 including services as authorized by section 3102(b) of title 5, United
17 States Code, and may accept, hold, administer, and utilize gifts and
18 bequests of personal property for the purposes of aiding or facilitating
19 the work of the Court. Gifts or bequests of money to the Court shall be
20 covered into the Treasury.

21 “(2) The Court shall maintain, through agreements with legal
22 service and other non-profit organizations, a legal orientation program
23 that explains the Court’s procedures and provides other related, basic
24 legal information to individuals who are or may become parties to
25 proceedings before the Court.

26 “(i) EXERCISE OF COURT AUTHORITY.—The appellate division of
27 the Court shall exercise the authority conferred on the Court under this

1 section and section 132 of this title. Except with respect to the
2 appointment and removal of the clerk of the Court, the appellate
3 division may delegate such authority, as appropriate, to the chief judge
4 of the Court, chief immigration trial judges, or the clerk of the Court.

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

8 “(k) ELIGIBILITY FOR LIFE INSURANCE COVERAGE.—For purposes
9 of chapter 87 of title 5, United States Code, an immigration appeals
10 judge or immigration trial judge who is in regular active service or
11 retired under section 151 of this title or chapter 83 or 84 of title 5,
12 United States Code, shall be treated as an employee described in
13 section 8701(a)(5) of title 5, United States Code.

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

15 “(a) COURT BUDGET.—The budget of the Immigration Court, as
16 approved and submitted by the Court for inclusion in the budget of the
17 President for any fiscal year, shall be included in that budget without
18 review within the executive branch.

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

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

26 “(A) directly, or

27 “(B) by transfer to—

1 “(i) the Director of the Administrative Office of the
2 United States Courts,

3 “(ii) another court established under Article I of the
4 Constitution, or

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

7 to cover the expense of such administrative support and guidance
8 (including budgetary and financial, payroll and personnel, protective
9 and security, recordkeeping and statistical, and information technology
10 services) as the Court may request and the Director, court, or agency
11 may agree to provide from time to time.

12 “(c) METHOD AND SOURCE OF EXPENDITURES.—All expenditures
13 of the Court shall be allowed and paid upon presentation of itemized
14 vouchers signed by the certifying officer designated by the chief judge.
15 Except as provided in section 123(b) of this title, all such expenditures
16 shall be paid out of moneys appropriated for purposes of the Court.

17 **“SEC. 133.—DISPOSITION OF FEES.**

18 “Except for amounts received pursuant to section 123(b) of this
19 title, all fees received by the Immigration Court shall be covered into
20 the Treasury as miscellaneous receipts.

21 **“SEC. 134.—JUDICIAL CONFERENCE OF THE COURT.**

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

1 representation and active participation at such conference by persons
2 admitted to practice before the Court and by other persons active in the
3 legal profession.

4 **“SEC. 135.—ADMINISTRATIVE AUTHORITY.**

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

13 **“SEC. 136.—ANNUAL REPORT.**

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

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

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

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

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

26 “(A) the Court as a whole,

27 “(B) the clerk of the Court,

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

1 “(12) the number of proceedings pending before the Court
2 more than 18 months at the end of such fiscal year;

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

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

7 “(A) the time required of each judge for disposition of
8 each type of proceeding,

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

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

11 “SUBCHAPTER IV—DECISIONS AND REVIEW

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

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

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

1 “(1) upon the expiration of the time allowed for filing a
2 petition for certiorari with the Supreme Court of the United States,
3 if the decision of the Immigration Court is affirmed or the petition
4 for review is dismissed by the United States court of appeals and no
5 petition for certiorari is duly filed;

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

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

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

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

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

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

1 “(C) the decision of the United States court of appeals has
2 been affirmed by the Supreme Court,
3 then the decision of the Immigration Court rendered in accordance
4 with the mandate of the United States court of appeals shall become
5 final upon the expiration of 30 days from the time such decision of the
6 Immigration Court was rendered, unless within such 30 days either the
7 Secretary or the petitioner has instituted proceedings to have such
8 decision corrected so that it will accord with the mandate, in which
9 event the decision of the Immigration Court shall become final when
10 so corrected.

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

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

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

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

19 then the decision of the Immigration Court rendered upon such
20 rehearing shall become final in the same manner as though no prior
21 decision of the Immigration Court had been rendered.

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

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

26 “(a) IN GENERAL.—After a decision of the United States
27 Immigration Court is entered by the appellate division in a proceeding,

1 a party to the proceeding may obtain review of the decision, by the
2 United States court of appeals for the judicial circuit wherein venue
3 lies, as provided in title II of this Act. Review of any such decision by
4 the court of appeals shall be limited to determination of whether the
5 Immigration Court validly relied on a rule of law or of any statute or
6 regulation or any interpretation thereof (other than a determination as
7 to a factual matter) in making the decision.

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

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

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

25 “(B) contrary to constitutional right, power, privilege, or
26 immunity;

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

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

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

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

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

9 “(3) Nothing in this section or any other provision of this
10 chapter shall be construed to permit the court of appeals or any other
11 court to exercise jurisdiction that exceeds the limits set forth in section
12 242 of this Act.

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

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

21 “SUBCHAPTER V—JUDICIAL RETIREMENT
22 AND SURVIVOR BENEFIT PROGRAMS

23 “**SEC. 151.—RETIREMENT OF JUDGES.**

24 “(a) DEFINITIONS.—For purposes of this section:

25 “(1) The term “Court” means the United States
26 Immigration Court.

1 “(2) The term ‘‘judge’’ means an immigration appeals
2 judge or an immigration trial judge.

3 “(b)(1) ELIGIBILITY TO RETIRE.—A judge who meets the age and
4 service requirements set forth in the following table may retire:

5 “6515

6 “6614

7 “6713

8 “6812

9 “6911

10 “7010

11 “(2) A judge who is not reappointed following the expiration
12 of the term for which appointed may retire upon the completion of that
13 term if the judge has served as a judge of the Court for 15 years or
14 more.

15 “(3) A judge who becomes permanently disabled and as a
16 result of that disability is unable to perform the duties of the office
17 shall retire.

18 “(c)(1) RETIRED PAY.—A judge retires under subsection (b) and
19 elects under subsection (d) to receive retired pay under this subsection
20 shall (except as provided in paragraph (2)) receive retired pay as
21 follows:

22 “(A) In the case of a judge who is a recall-eligible
23 retired judge under section 117(a)(2)(B) of this title, the
24 retired pay of the judge shall (subject to section 117(d)(2) of
25 this title) be the rate of pay applicable to that judge at the
26 time of retirement, as adjusted from time to time under
27 subsection (f)(3).

1 “(B) In the case of a judge other than a recall-eligible
2 retired judge, the retired pay of the judge shall be the rate of
3 pay applicable to that judge at the time of retirement.

4 “(2) An individual who serves as a judge for less than 10
5 years and who retires under subsection (b)(3) of this section and elects
6 under subsection (d) of this section to receive retired pay under this
7 subsection shall receive retired pay at a rate equal to one-half of the
8 rate of pay in effect at the time of retirement.

9 “(3) Retired pay under this subsection shall begin to accrue
10 on the day following the day on which the individual’s salary as judge
11 ceases to accrue and shall continue to accrue during the remainder of
12 the individual’s life. Retired pay under this subsection shall be paid in
13 the same manner as the salary of a judge.

14 “(d)(1) RETIREMENT ELECTION.—A judge may elect to receive
15 retired pay under subsection (c) of this section. Such an election—

16 “(A) may be made only while an individual is a judge
17 (except that, in the case of an individual who fails to be
18 reappointed as judge at the expiration of a term of office, the
19 election may be made at any time before the date after the
20 day on which the individual’s successor takes office); and

21 “(B) may not be revoked after the retired pay begins to
22 accrue.

23 “(2) In the case of a judge other than the chief judge, such an
24 election shall be made by filing notice of the election in writing with
25 the chief judge. In the case of the chief judge, such an election shall be
26 made by filing notice of the election in writing with the Director of the
27 Office of Personnel Management.

1 “(3) The chief judge shall transmit to the Director of the
2 Office of Personnel Management a copy of each notice filed with the
3 chief judge under this subsection.

4 “(e) FORFEITURE OF RETIRED PAY.—If an individual for whom an
5 election to receive retired pay under subsection (c) is in effect accepts
6 compensation for employment with the United States, the individual
7 shall, to the extent of the amount of that compensation, forfeit all rights
8 to retired pay under subsection (c) of this section for the period for
9 which the compensation is received.

10 “(f)(1) CIVIL SERVICE RETIREMENT LAWS.—Except as otherwise
11 provided in this subsection, the provisions of the civil service
12 retirement laws (including the provisions relating to the deduction and
13 withholding of amounts from basic pay, salary, and compensation)
14 shall apply with respect to service as a judge as if this section had not
15 been enacted.

16 “(2) In the case of any individual who has filed an election
17 to receive retired pay under subsection (c) of this section—

18 “(A) no annuity or other payment shall be payable to
19 any person under the civil service retirement laws with
20 respect to any service performed by such individual
21 (whether performed before or after such election is filed and
22 whether performed as judge or otherwise) except as
23 authorized by section 8440d of title 5, United States Code;

24 “(B) no deduction for purposes of the Civil Service
25 Retirement and Disability Fund shall be made from retired
26 pay payable to that individual under subsection (c) of this
27 section or from any other salary, pay, or compensation

1 payable to that individual, for any period beginning after the
2 day on which such election is filed; and

3 “(C) such individual shall be paid the lump-sum credit
4 computed under section 8331(8) or 8401(a) of title 5, United
5 States Code, whichever applies, upon making application
6 therefor with the Office of Personnel Management.

7 “(3)(A) A cost-of-living adjustment provided by law in
8 annuities payable under civil service retirement laws shall apply to
9 retired pay under this section only in the case of retired pay computed
10 under paragraph (1)(A)(i) or (2) of subsection (c).

11 “(B) If such a cost-of-living adjustment would (but for
12 this subparagraph) result in the retired pay of a retired judge being in
13 excess of the annual rate of pay in effect for judges of the Court as
14 provided in section 112(f) of this title, such adjustment may be made
15 only in such amount as results in the retired pay of the retired judge
16 being equal to that annual rate of pay (as in effect on the effective date
17 of such adjustment).

18 “(g)(1) JUDICIAL DISABILITY.—To be eligible for retirement
19 under subsection (b)(3) of this section, a judge who becomes
20 permanently disabled and as a result of that disability is unable to
21 perform the duties of the office shall certify in writing to the President
22 (in the case of an immigration appeals judge) or the chief judge of the
23 Court (in the case of an immigration trial judge) that such permanent
24 disability exists. If the disability of the chief judge is so certified, the
25 retirement shall not take effect until concurred in by the President. If
26 the disability of any other immigration appeals judge is so certified, the
27 certificate furnished to the President shall also be signed by the chief

1 judge. The retirement of an immigration trial judge shall not take effect
2 until concurred in by the chief judge.

3 “(2) Whenever the President (in the case of an immigration
4 appeals judge) or the appellate division (in the case of an immigration
5 trial judge) finds that a judge has become permanently disabled and as
6 a result of that disability is unable to perform the duties of the office,
7 the President or, in the case of an immigration trial judge, the chief
8 judge of the Court shall, in removing such judge from office under
9 section 112(g) of this title, permit such judge to retire under subsection
10 (b)(3) of this section if the judge elects under subsection (d) to receive
11 retired pay under subsection (c).

12 “(h)(1) REVOCATION OF ELECTION.—An individual who has filed
13 an election to receive retired pay under subsection (c) of this section
14 may revoke such election at any time before the first day on which
15 retired pay would (but for such revocation) begin to accrue with
16 respect to such individual.

17 “(2) Any revocation under this subsection shall be made by
18 filing a notice of the election in writing with the Director of the Office
19 of Personnel Management. The Office of Personnel Management shall
20 transmit to the chief judge a copy of each notice filed under this
21 subsection.

22 “(3) In the case of a revocation under this subsection—

23 “(A) for purposes of this section, the individual shall be
24 treated as not having filed an election to receive retired pay
25 under subsection (c) of this section;

26 “(B) for purposes of section 152 of this title—

1 “(i) the individual shall be treated as not having
2 filed an election under section 152(b) of this title, and

3 “(ii) section 152(e) of this title shall not apply and
4 the amount credited to such individual’s account
5 (together with interest at 3 percent per year,
6 compounded on December 31 of each year to the date
7 on which the revocation is filed) shall be returned to the
8 individual;

9 “(C) no credit shall be allowed for any service as a
10 judge of the Court unless with respect to such service either
11 there has been deducted and withheld the amount required
12 by the civil service retirement laws or there has been
13 deposited in the Civil Service Retirement and Disability
14 Fund an amount equal to the amount so required, with
15 interest;

16 “(D) the Court shall deposit in the Civil Service
17 Retirement and Disability Fund an amount equal to the
18 additional amount it would have contributed to such Fund
19 but for the election under subsection (d); and

20 “(E) if subparagraphs (C) and (D) of this paragraph are
21 complied with, service on the Court shall be treated as
22 service with respect to which deductions and contributions
23 had been made during the period of service.

24 “(i)(1) PAYROLL CONTRIBUTIONS.—Beginning with the next pay
25 period after the Director of the Office of Personnel Management
26 receives a notice under subsection (d) of this section that a judge has
27 elected to receive retired pay under this section, the Director shall

1 deduct and withhold 1 percent of the salary of such judge. Amounts
2 shall be so deducted and withheld in a manner determined by the
3 Director. Amounts deducted and withheld under this subsection shall
4 be deposited in the Treasury of the United States to the credit of the
5 Immigration Court Judges Retirement Fund. Deductions under this
6 subsection from the salary of a judge shall terminate upon the
7 retirement of the judge or upon the completion of 15 years of service
8 for which either deductions under this subsection or a deposit under
9 subsection (j) of this section has been made, whichever occurs first.

10 “(2) Each judge who makes an election under subsection (d)
11 of this section shall be considered to agree to the deductions from
12 salary which are made under paragraph (1) of this subsection.

13 “(j) CONTRIBUTIONS FOR PRIOR SERVICE.—A judge who makes an
14 election under subsection (d) of this section shall deposit, for service
15 on the Court performed before the election for which contributions
16 may be made under this section, an amount equal to 1 percent of the
17 salary received for the first years, not exceeding 15 years, of that
18 service. Retired pay may not be allowed until a deposit required by this
19 subsection has been made.

20 “(k) TREATMENT OF CONTRIBUTIONS.—The amounts deducted
21 and withheld under subsection (i) of this section, and the amounts
22 deposited under subsection (j) of this section, shall be deposited in the
23 Immigration Court Retirement Fund for credit to individual accounts in
24 the name of each judge from whom such amounts are received.

25 **“SEC. 152.—SURVIVOR ANNUITIES.**

26 “(a) DEFINITIONS.—For purposes of this section:

1 “(1) The term “Court” means the United States
2 Immigration Court.

3 “(2) The term “judge” means an immigration appeals
4 judge or immigration trial judge who is in regular active service
5 or who has retired under section 151 of this title.

6 “(3) The term “pay” means salary received under section
7 112(f) of this title and retired pay received under section 151 of
8 this title.

9 “(4) The term “retirement fund” means the Immigration
10 Court Retirement Fund established under section 153 of this
11 title.

12 “(5) The term “surviving spouse” means a surviving
13 spouse of an individual who—

14 “(A) was married to such individual for at least 1 year
15 immediately preceding the individual’s death, or

16 “(B) is a parent of issue by the marriage.

17 “(6) The term “dependent child” has the meaning given
18 the term “child” in section 376(a)(5) of title 28, United States
19 Code.

20 “(7) The term “Member of Congress” means a
21 Representative, a Senator, a Delegate to Congress, or the
22 Resident Commissioner of Puerto Rico.

23 “(8) The term “assassination” as applied to a judge shall
24 have the meaning provided that term in section 376(a)(7) of title
25 28, United States Code, as applied to a judicial official.

26 “(b) ELECTION TO PARTICIPATE.—A judge may become a
27 participant in the annuity program under this section by filing a written

1 election under this subsection while in office or within 6 months after
2 the date on which the judge marries if the judge has retired under
3 section 151 of this title. Any such election shall be made in such
4 manner as may be prescribed by the appellate division.

5 “(c) PAYROLL CONTRIBUTIONS.—There shall be deducted and
6 withheld each pay period from the pay of a judge who has made an
7 election under subsection (b) of this section a sum equal to that
8 percentage of the judge’s pay that is the same as provided for the
9 deduction from the salary or retirement salary of a judge of the United
10 States Court of Federal Claims for the purpose of a survivor annuity
11 under section 376(b)(1)(B) of title 28, United States Code. Amounts so
12 deducted and withheld shall be deposited in the retirement fund. A
13 judge who makes an election under subsection (b) of this section shall
14 be considered by that election to agree to the deductions from the
15 judge’s pay required by this subsection.

16 “(d)(1) CONTRIBUTIONS FOR PRIOR SERVICE.—A judge who
17 makes an election under subsection (b) of this section shall deposit,
18 with interest at 3 percent per year compounded on December 31 of
19 each year, to the credit of the retirement fund, an amount equal to 3.5
20 percent of the judge’s pay and of the judge’s basic salary, pay, or
21 compensation for service as a Member of Congress, and for any other
22 civilian service within the purview of section 8332 of title 5, United
23 States Code. Each such judge may elect to make such deposits in
24 installments during the judge’s period of service in such amount and
25 under such conditions as may be determined in each instance by the
26 chief judge. Notwithstanding the failure of a judge to make such
27 deposit, credit shall be allowed for the service rendered, but the annual

1 annuity of the surviving spouse of such judge shall be reduced by an
2 amount equal to 10 percent of the amount of such deposit, computed as
3 of the date of the death of such judge, unless the surviving spouse
4 elects to eliminate such service entirely from credit under subsection
5 (k) of this section. However, a deposit shall not be required from a
6 judge for any year with respect to which deductions from the judge's
7 pay, or a deposit, were actually made (and not withdrawn) under the
8 civil service retirement laws.

9 “(2) The interest required under the first sentence of
10 paragraph (1) shall not be required for any period—

11 “(A) during which a judge was separated from any
12 service described in section 376(d)(2) of title 28, United
13 States Code; and

14 “(B) during which the judge was not receiving retired
15 pay based on service as a judge or receiving any retirement
16 salary as described in section 376(d)(1) of title 28, United
17 States Code.

18 “(e) REFUND OF CONTRIBUTIONS.—If the service of a judge who
19 makes an election under subsection (b) of this section terminates other
20 than pursuant to the provisions of section 151 of this title, or if any
21 judge ceases to be married after making the election under subsection
22 (b) of this section and revokes (in a writing filed as provided in
23 subsection (b) of this section) such election, the amount credited to the
24 judge's individual account (together with interest at 3 percent per year
25 compounded on December 31 of each year to the date of the judge's
26 relinquishment of office) shall be returned to the judge. For the
27 purpose of this section, the service of a judge making an election under

1 subsection (b) of this section shall be considered to have terminated
2 pursuant to section 151 of this title if—

3 “(1) the judge is not reappointed following expiration of the
4 term for which appointed; and

5 “(2) at or before the time of the expiration of that term, the
6 judge is eligible for and elects to receive retired pay under
7 section 151 of this title.

8 “(f)(1) WHEN ANNUITIES ARE PAYABLE.—If a judge who makes
9 an election under subsection (b) of this section dies after having
10 rendered at least 18 months of civilian service (computed as prescribed
11 in subsection (l) of this section), for the last 18 months of which the
12 salary deductions provided for by subsection (c) of this section or the
13 deposits required by subsection (d) of this section have actually been
14 made (and not withdrawn) or the salary deductions required by the
15 civil service retirement laws have actually been made (and not
16 withdrawn)—

17 “(A) if the judge is survived by a surviving spouse but
18 not by a dependent child, there shall be paid to the surviving
19 spouse an annuity beginning with the day of the death of the
20 judge, in an amount computed as provided in subsection (k)
21 of this section; or

22 “(B) if the judge is survived by a surviving spouse and a
23 dependent child or children, there shall be paid to the
24 surviving spouse an immediate annuity in an amount
25 computed as provided in subsection (k) of this section and
26 there shall also be paid to or on behalf of each such child an
27 immediate annuity equal to the lesser of—

1 “(i) 10 percent of the average annual pay of such
2 judge (determined in accordance with subsection (k) of
3 this section), or

4 “(ii) 20 percent of such average annual pay, divided
5 by the number of such children; or

6 “(C) if the judge is not survived by a surviving spouse
7 but is survived by a dependent child or children, there shall
8 be paid to or on behalf of each such child an immediate
9 annuity equal to the lesser of—

10 “(i) 20 percent of the average annual pay of such
11 judge (determined in accordance with subsection (k) of
12 this section), or

13 “(ii) 40 percent of such average annual pay, divided
14 by the number of such children.

15 “(2) The annuity payable to a surviving spouse under this
16 subsection shall be terminated—

17 “(A) upon the surviving spouse’s death; or

18 “(B) upon the remarriage of the surviving spouse before
19 age 55.

20 “(3) The annuity payable to a child under this subsection
21 shall be terminated upon the child’s death.

22 “(4) In case of the death of a surviving spouse of a judge
23 leaving a dependent child or children of the judge surviving the spouse,
24 the annuity of such child or children under paragraph (1)(B) of this
25 subsection shall be recomputed and paid as provided in paragraph
26 (1)(C) of this subsection. In any case in which the annuity of a
27 dependent child is terminated, the annuities of any remaining

1 dependent child or children, based upon the service of the same judge,
2 shall be recomputed and paid as though the child whose annuity was so
3 terminated had not survived the judge.

4 “(5) If a judge dies as a result of an assassination and leaves
5 a survivor or survivors who are otherwise entitled to receive annuity
6 payments under this section, the 18-month requirement in the matter in
7 paragraph (1) preceding subparagraph (A) shall not apply.

8 “(g) DETERMINATION OF CERTAIN QUESTIONS.—Questions of
9 family relationships, dependency, and disability arising under this
10 section shall be determined in the same manner as such questions
11 arising under chapter 84 of title 5, United States Code, are determined.

12 “(h)(1) REFUNDS TO SURVIVORS.—If—

13 “(A) a judge making an election under subsection (b) of
14 this section dies while in office—

15 “(i) before having rendered 5 years of civilian
16 service computed as prescribed in subsection (l) of this
17 section, or

18 “(ii) after having rendered 5 years of such civilian
19 service but without a survivor entitled to annuity
20 benefits provided by subsection (f) of this section; or

21 “(B) the right of all persons entitled to an annuity under
22 subsection (f) of this section based on the service of such
23 judge terminates before a claim for such benefits has been
24 established,

25 the total amount credited to the individual account of such judge (with
26 interest at 3 percent per year, compounded on December 31 of each

1 year, to the date of the death of such judge) shall be paid in the manner
2 specified in paragraph (2) of this subsection.

3 “(2) An amount payable under paragraph (1) of this
4 subsection shall be paid, upon the establishment of a valid claim
5 therefor, to the person or persons surviving at the date title to the
6 payment arises, in the following order of precedence:

7 “(A) to the beneficiary or beneficiaries whom the
8 judge designated in writing filed before death with the chief
9 judge (except that in the case of the chief judge such
10 designation shall be filed before death in accordance with
11 internal operating procedures established by the appellate
12 division);

13 “(B) to the surviving spouse of the judge;

14 “(C) to the child or children of the judge (and the
15 descendants of any deceased children by representation);

16 “(D) to the parents of the judge or the survivor of
17 them;

18 “(E) to the executor or administrator of the estate of
19 the judge; or

20 “(F) to such other next of kin of the judge as may be
21 determined by the chief judge to be entitled under the laws
22 of the domicile of the judge at the time of the judge’s death.

23 “(3) Determination as to the surviving spouse, child, or
24 parent of a judge for the purposes of paragraph (2) of this subsection
25 shall be made without regard to the definitions in subsection (a) of this
26 section.

1 “(4) Payment under this subsection in the manner provided
2 in this subsection shall be a bar to recovery by any other person.

3 “(5) In a case in which the annuities of all persons entitled to
4 annuity based upon the service of a judge terminate before the
5 aggregate amount of annuity paid equals the total amount credited to
6 the individual account of such judge (with interest at 3 percent per
7 year, compounded on December 31 of each year to the date of the
8 death of the judge), the difference shall be paid, upon establishment of
9 a valid claim therefor, in the order of precedence prescribed in
10 paragraph (2) of this subsection.

11 “(6) Any accrued annuity remaining unpaid upon the
12 termination (other than by death) of the annuity of any individual
13 based upon the service of a judge shall be paid to that individual. Any
14 accrued annuity remaining unpaid upon the death of an individual
15 receiving an annuity based upon the service of a judge shall be paid,
16 upon the establishment of a valid claim therefor, in the following order
17 of precedence:

18 “(A) to the executor or administrator of the estate of
19 that person; or

20 “(B) after 30 days after the date of the death of such
21 individual, to such individual or individuals as may appear
22 in the judgment of the chief judge to be legally entitled
23 thereto.

24 Such payment shall be a bar to recovery by any other individual.

25 “(i) PAYMENTS TO THOSE UNDER LEGAL DISABILITY.—When a
26 payment under this section is to be made to a minor, or to a person
27 mentally incompetent or under other legal disability adjudged by a

1 court of competent jurisdiction, the payment may be made to the
2 person who is constituted guardian or other fiduciary by the law of the
3 State of residence of such claimant or is otherwise legally vested with
4 the care of the claimant or the claimant's estate. If no guardian or other
5 fiduciary of the person under legal disability has been appointed under
6 the laws of the State of residence of the claimant, the chief judge shall
7 determine the person who is otherwise legally vested with the care of
8 the claimant or the claimant's estate.

9 “(j) ANNUITY PAYMENTS.—Annuities under this section shall
10 accrue monthly and shall be due and payable in monthly installments
11 on the first business day of the month following the month or other
12 period for which the annuity has accrued. An annuity under this section
13 is not assignable, either in law or in equity, or subject to execution,
14 levy, attachment, garnishment, or other legal process.

15 “(k)(1) COMPUTATION OF ANNUITIES.—The annuity of the
16 surviving spouse of a judge making an election under subsection (b) of
17 this section shall be an amount equal to the sum of the following:

18 “(A) The product of—

19 “(i) 1.5 percent of the judge's average annual pay;

20 and

21 “(ii) the sum of the judge's years of judicial
22 service, the judge's years of prior allowable service as a
23 Member of Congress, the judge's years of prior
24 allowable service performed as a member of the Armed
25 Forces, and the judge's years, not exceeding 15, of prior
26 allowable service performed as a congressional

1 employee (as defined in section 2107 of title 5, United
2 States Code); and

3 “(B) three-fourths of 1 percent of the judge’s average
4 annual pay multiplied by the judge’s years of allowable
5 service not counted under subparagraph (A) of this
6 paragraph.

7 “(2) An annuity computed under this subsection may not
8 exceed 50 percent of the judge’s average annual pay and may not be
9 less than 25 percent of such average annual pay. Such annuity shall be
10 further reduced in accordance with subsection (d) of this section (if
11 applicable).

12 “(3) For purposes of this subsection, the term “average
13 annual pay”, with respect to a judge, means the average annual pay
14 received by the judge for judicial service (including periods in which
15 the judge received retired pay under section 151(d) of this title) or for
16 any other prior allowable service during the period of 3 consecutive
17 years in which the judge received the largest such average annual pay.

18 “(I) COMPUTATION OF CREDITABLE SERVICE.—Subject to
19 subsection (d) of this section, the years of service of a judge which are
20 allowable as the basis for calculating the amount of the annuity of the
21 judge’s surviving spouse shall include the judge’s years of service as a
22 judge of the Court, the judge’s years of service as a Member of
23 Congress, the judge’s years of active service as a member of the
24 Armed Forces not exceeding 5 years in the aggregate and not including
25 any such service for which credit is allowed for the purposes of
26 retirement or retired pay under any other provision of law, and the

1 judge's years of any other civilian service within the purview of
2 section 8332 of title 5, United States Code.

3 “(m) OTHER SPOUSAL ANNUITIES.—Nothing contained in this
4 section shall be construed to prevent a surviving spouse eligible
5 therefor from simultaneously receiving an annuity under this section
6 and any annuity to which such spouse would otherwise be entitled
7 under any other law without regard to this section, but in computing
8 such other annuity service used in the computation of such spouse's
9 annuity under this section shall not be credited.

10 “(n) WAIVER OF CIVIL SERVICE RETIREMENT BENEFITS.—A judge
11 making an election under subsection (b) of this section shall, at the
12 time of such election, waive all benefits under the civil service
13 retirement laws except section 8440d of title 5, United States Code.
14 Such a waiver shall be made in the same manner and shall have the
15 same force and effect as an election filed under section 151(d) of this
16 title.

17 “(o) PERIODIC ADJUSTMENT OF ANNUITY.—Each survivor annuity
18 payable from the retirement fund shall be increased at the same time
19 as, and by the same percentage by which, annuities payable from the
20 Judicial Survivors' Annuities Fund are increased pursuant to section
21 376(m) of title 28, United States Code.

22 “(p)(1) PURCHASE OF ADDITIONAL SERVICE CREDIT.—A covered
23 judge who makes an election under subsection (b) may purchase, in 3-
24 month increments, up to an additional year of credit for each year of
25 Federal judicial service completed, under the terms set forth in this
26 section.

1 “(2) In this subsection, the term ‘covered judge’ means any
2 of the following:

3 “(A) a judge in regular active service;

4 “(B) a retired judge who is recall-eligible under section
5 117(a)(2)(B) of this title;

6 “(C) a retired judge who would be recall-eligible under
7 section 117(a)(2)(B) of this title but for—

8 “(i) meeting the aggregate recall service
9 requirements under subsection (b)(3) of such section; or

10 “(ii) being permanently disabled as described by
11 subsection (b)(4) of such section.

12 **“SEC. 153.—IMMIGRATION COURT RETIREMENT FUND.**

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

15 “(b) PERMISSIBLE USE OF FUND.—Amounts in the fund are
16 available for the payment of judges’ retired pay under section 151 of
17 this title and of annuities, refunds, and allowances under section 152 of
18 this title.

19 “(c) DEPOSITS TO FUND.—Amounts deposited by, or deducted
20 and withheld from the salary and retired pay of, a judge under section
21 151 or 152 of this title shall be deposited in the fund and credited to an
22 individual account of the judge.

23 “(d) ANNUAL ESTIMATES.—The chief judge of the Immigration
24 Court shall submit to the President an annual estimate of the
25 expenditures and appropriations necessary for the maintenance and
26 operation of the fund, and such supplemental and deficiency estimates

1 as may be required from time to time for the same purposes, according
2 to law.

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

7 “(2)(A) Subject to the availability of appropriations, there
8 shall be deposited in the Treasury to the credit of the fund, not later
9 than the close of each fiscal year, such amounts as may be required
10 to reduce to zero the unfunded liability (if any) of the fund. Such
11 deposits shall be taken from sums available for that fiscal year for
12 the payment of the expenses of the Court.

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

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

20 “(ii) the sum of—

21 “(I) the present values of future deductions under
22 sections 151(i) and 152(c) of this title and future deposits
23 under sections 151(j) and 152(d) of this title, and

24 “(II) the balance in the fund as of the close of the
25 fiscal year.

26 “(C) For purposes of subparagraph (B), the term “present
27 value” includes a value determined by an actuary with respect to a

1 payment that may be made from the fund under subsection (b)
2 within the contemplation of law.

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

5 “(f) FUND INVESTMENT.—The Secretary of the Treasury shall
6 invest from time to time, in interest-bearing securities of the United
7 States, such portions of the fund as in such Secretary’s judgment may
8 not be immediately required for payments from the fund. The income
9 derived from such investments shall constitute a part of the fund.

10 “(g) For purpose of section 255(g)(1)(B) of the Balanced Budget
11 and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(B)),
12 the fund shall be treated in the same manner as the Claims Judges’
13 Retirement Fund.

14 **“SEC. 154.—LIMITATION ON ACTIVITIES OF RETIRED**
15 **JUDGES.**

16 “(a) IN GENERAL.—A retired immigration appeals judge or
17 immigration trial judge who is recall-eligible under section
18 117(a)(2)(B) of this title and who in the practice of law represents (or
19 supervises or directs the representation of) a client in making any claim
20 relating to immigration against the United States or any agency thereof
21 shall, pursuant to such section, be considered to have declined recall
22 service and be removed from the status of a recall-eligible judge. The
23 retired pay of such a judge, pursuant to section 151 of this title, shall be
24 the retired pay received by the judge at the time of the removal from
25 recall status.

26 “(b) EFFECT OF RECALL STATUS.—A recall-eligible judge shall be
27 considered to be an officer or employee of the United States, but only

1 during periods when the judge is serving in recall status. Any
2 prohibition, limitation, or restriction that would otherwise apply to the
3 activities of a recall-eligible judge shall apply only during periods
4 when the judge is serving in recall status.”

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

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

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

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

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

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

18 “(7) For purposes of judicial review under this section and
19 section 142 of this Act, the venue of a proceeding before the court
20 of appeals is in the judicial circuit in which an immigration trial
21 judge of the Immigration Court issued the original underlying
22 decision in the matter or, as the case may be, in which the
23 underlying administrative action reviewed by the appellate division
24 of the Court occurred.”

25 (4) Section 242(b)(3)(A) is amended in the first sentence by
26 replacing “Attorney General” with “United States”.

1 (5) Section 246 is amended by replacing “Attorney General”
2 with “Secretary of Homeland Security” each time it appears, striking
3 out the second sentence, and adding:

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

7 (6) Section 274A(e)(3)(B) is amended by striking out the
8 second sentence.

9 (7) Section 274A(e)(7) is repealed.

10 (8) Section 274B(e)(2) is repealed.

11 (9) Section 274C(d)(2)(B) is amended by striking out the
12 second sentence.

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

14 (b)(1) CONSTRUCTION OF EXISTING REFERENCES.—To the extent
15 consistent with this Act, every reference in title I or title II of the
16 Immigration and Nationality Act, as amended, or in any rule or
17 regulation prescribed thereunder, to the Board of Immigration Appeals,
18 an immigration judge or administrative law judge, or any
19 administrative appeal, hearing, review, or other proceeding before such
20 board or judge, shall be deemed to refer, as the context may require, to
21 the Immigration Court established in section 111 of the Immigration
22 and Nationality Act, as added by this Act, to the appropriate division or
23 judge of the Court, or to the corresponding proceedings under this Act
24 before such Court, division, or judge.

25 (2) To the extent consistent with this Act, every reference in
26 the Immigration and Nationality Act, as amended, to the authority of
27 the Attorney General to prescribe rules or regulations with respect to

1 the Executive Office for Immigration Review in the United States
2 Department of Justice, or to the Board of Immigration Appeals, or to
3 immigration judges or administrative law judges, or to administrative
4 appeals, hearings, reviews, or other proceedings conducted under title
5 II of the Immigration and Nationality Act, as amended, by such office,
6 board, or judges, shall be deemed instead to confer rulemaking
7 authority on the appellate division of the Immigration Court
8 established in section 111 of the Immigration and Nationality Act, as
9 added by this Act.

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

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

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

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

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

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

26 (2) The appellate division of the Immigration Court shall
27 establish procedures for the selection of individuals for appointment as

1 immigration trial judges under section 112(b)(1)(A) of the Immigration
2 and Nationality Act, as added by this Act, no later than 180 days
3 following the effective date of this Act: Provided that no immigration
4 trial judge shall be so appointed until a majority of the authorized
5 immigration appeals judges have been appointed under section
6 112(a)(2) of the Immigration and Nationality Act, as added by this Act,
7 and no immigration appeals judge serving under subsection (c)(1)(A)
8 of this section shall participate in the appointment of any immigration
9 trial judge.

10 (3) It is the sense of Congress that, for the initial
11 appointments of immigration appeals judges and immigration trial
12 judges under section 112(a)(2) and (b)(1) of the Immigration and
13 Nationality Act, as added by this Act, the individuals to be considered
14 for appointment should include the incumbent immigration appeals
15 judges and immigration trial judges who have assumed office under
16 subsection (c) of this section if such judges request to be considered
17 and, in accordance with section 112(b) and (c) of said Act, are
18 determined to be qualified for continued service. Such judges should
19 receive consideration equal to that given all other candidates for the
20 respective positions.

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

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

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

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

5 Each such judge may continue to serve after the expiration of the
6 designated term until a successor is appointed and has qualified, but
7 not more than 1 year after the date on which the term of such judge is
8 scheduled to expire under this paragraph.

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

19 (B) If there are more than 18 members of the Board of
20 Immigration Appeals on the effective date of this Act, subparagraph
21 (A) will apply to the 18 members who have the longest periods of
22 continuous service on the Board.

23 (2) Each individual serving immediately before the effective
24 date of this Act as an immigration judge or administrative law judge in
25 the Executive Office of Immigration Review of the United States
26 Department of Justice, shall become an immigration trial judge of the
27 Immigration Court on such effective date, and shall continue thereafter

1 in that position for a term of 4 years and until a successor is appointed
2 and has qualified in accordance with section 112 of the Immigration
3 and Nationality Act, as added by this Act.

4 (3) For an individual who becomes an immigration appeals
5 judge or immigration trial judge under paragraph (1) or (2), the period
6 of service, not to exceed 5 years, by such individual as a member of the
7 Board of Immigration Appeals, immigration judge, or administrative
8 law judge in the Executive Office for Immigration Review of the
9 Department of Justice shall, if such individual elects to receive retired
10 pay under section 151 of the Immigration and Nationality Act, as
11 added by this Act, be included in the service of such individual on the
12 Immigration Court for purposes of said section 151.

13 (d) CONTINUITY OF PROCEEDINGS.—Under rules prescribed by
14 the appellate division of the Immigration Court with respect to removal
15 proceedings and asylum applications pending as of the effective date of
16 this Act, the appellate division shall be deemed to be a continuation of
17 the Board of Immigration Appeals, and the trial division of the Court
18 shall be deemed a continuation of the immigration judges and
19 administrative law judges who previously conducted proceedings
20 under title II of the Immigration and Nationality Act, as amended, for
21 the purposes of all powers, rights, and jurisdiction existing under prior
22 law.

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

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

5 (f)(1) INSTITUTIONAL TRANSFER.—The Executive Office for
6 Immigration Review in the Department of Justice shall be abolished
7 and, subject to the provisions of this Act, the personnel and property of
8 that office (including appropriated funds) shall be transferred to the
9 Immigration Court.

10 (2) The enactment of this Act shall not result in any loss of
11 rights or powers, interruption of jurisdiction, or prejudice to matters
12 under title II of the Immigration and Nationality Act, as amended,
13 which are pending before the Board of Immigration Appeals, an
14 immigration judge, or an administrative law judge immediately before
15 the effective date of this Act.

16 (3) All administrative proceedings under title II of the
17 Immigration and Nationality Act, as amended, which are pending
18 before the Board of Immigration Appeals, an immigration judge, or an
19 administrative law judge immediately before the effective date of this
20 act shall be transferred to the Immigration Court to proceed before the
21 trial division or, as the case may be, the appellate division of the Court.

22 **SEC. 5. STUDY OF CONSOLIDATING RESPONSIBILITY**
23 **FOR REVIEW OF IMMIGRATION-RELATED**
24 **ADJUDICATION.**

25 (a) IN GENERAL.—The Attorney General, in consultation with the
26 Secretaries of State, Labor, and Homeland Security, shall conduct a
27 study of the potential for consolidating within the Immigration Court

1 responsibility for the conduct or review of all immigration-related
2 adjudications, and of the measures, funding and implementation
3 required to effect any such consolidation. The purpose is to develop a
4 consistent body of immigration-related precedential jurisprudence, and
5 to centralize and streamline the review of agency decisions under the
6 Immigration and Nationality Act, as amended, to the extent appropriate
7 and consistent with efficient judicial administration.

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

9 (1) transferring to the Immigration Court the jurisdiction
10 currently exercised by the Administrative Appeals Office of the
11 United States Citizenship and Immigration Services, United States
12 Department of Homeland Security; and

13 (2) conferring jurisdiction on the Immigration Court to
14 review—

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

18 (B) adjudications of immigration-related matters by the
19 Board of Alien Labor Certification Appeals, Administrative
20 Review Board, and Office of Administrative Law Judges of the
21 United States Department of Labor; and

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

25 (c) REQUIRED ANALYSES.—Such study shall include an analysis
26 of costs and efficiency (including the reallocation of existing budget
27 and resources and the potential operational impact on the Immigration

1 Court) of centralizing these review functions, as well as any national
2 security implications.

3 (d) DEADLINE FOR COMPLETION.—Such study shall not be
4 commenced until the chief judge of the Immigration Court submits the
5 first annual report under Section 136 of the Immigration and
6 Nationality Act, as added by this Act, and shall be completed within 36
7 months after the date of said annual report. The Attorney General shall
8 transmit to the Congress and publish—

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

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

17 (e) CONGRESSIONAL PURPOSE.—It is the sense of Congress that
18 due process of law and prudent management of judicial and
19 adjudicative resources would be enhanced by developing a consistent
20 body of immigration-related precedential jurisprudence, and, where
21 feasible, centralizing and streamlining within the Immigration Court the
22 conduct or review of immigration-related adjudications arising under
23 the Immigration and Nationality Act, as amended.

Summary of Proposed “United States Immigration Court Act” (as of 1-16-2019)

Purpose of Legislation

To transfer to an independent court established under Article I of the Constitution the adjudicative functions under the Immigration and Nationality Act (INA) that were performed, prior to the legislation, by the Executive Office for Immigration Review (EOIR) in the U.S. Department of Justice.

Basic Features

The legislation establishes a “United States Immigration Court” with responsibility for functions of an adjudicative nature that had been performed under the INA and Justice Department regulations by EOIR’s immigration judges, administrative law judges, and Board of Immigration Appeals (BIA).

The new court is comprised of a trial division operating at various locations within the United States, and an appellate division based in the Washington, D.C. area.

The judges of the court have fixed terms of office and are removable only for cause. The judges in the appellate division are appointed by the President subject to Senate confirmation, and the judges in the trial division are appointed by the appellate division using a merit-selection process.

The substantive law of immigration and the corresponding enforcement and policy-determining responsibilities of the Departments of Homeland Security and Justice under the INA are unchanged. However, the legal precedents established in decisions of the new court’s appellate division are binding on those departments as well as other executive branch authorities with administrative responsibilities under the Act and other immigration-related laws.

Final decisions of the new court are subject to review in the regional U.S. courts of appeals under the same circumstances as EOIR’s administrative decisions had been reviewed by those courts, but only with respect to constitutional claims, issues of statutory or regulatory interpretation, or other questions of law. Findings of fact by the new court are not subject to further judicial review.

Jurisdiction

Jurisdiction is transferred to the new court with respect to all hearings, quasi-judicial decision making, and first-level appellate review authorized by pre-existing statute or regulation for proceedings arising under titles I and II of the INA.

The court’s trial division has jurisdiction generally corresponding to matters of the kind previously addressed in EOIR by immigration judges and administrative law judges.

The court’s appellate division has jurisdiction generally corresponding to matters of the kind previously addressed by the BIA, including appeals in proceedings that originate in the trial division.

Court Administration and Operations

Cases in the appellate division are heard by the judges sitting *en banc*, in panels of two or more members, or individually. Cases in the trial division are heard by individual judges. The appellate division sits *en banc* to exercise its administrative authority.

The appellate division has overall governance responsibility for the court, with specific authority to prescribe the court’s rules of practice and procedure, determine the geographic areas served by judges in the trial division, establish operating procedures with respect to the timing and location of court sessions and other matters, and participate in court staff appointments and management of the court’s budget.

The chief judge of the court is a judge in the appellate division determined by seniority and serves for a 5-year term. The chief judge takes a leading role with respect to appointing non-chambers court staff and, in general, is responsible for overseeing the court's administrative operations in addition to discharging his or her regular judicial duties.

Each geographic area served by the court's trial division has a chief trial judge who is also determined by seniority and, in addition to discharging his or her regular judicial duties, may exercise administrative authority locally as delegated by the appellate division, and is consulted on court administrative and governance issues directly affecting the trial division.

The court is empowered to use its appropriations to satisfy its administrative needs directly (i.e., through funding of its own employees, operations, and facilities), or to secure administrative support services on an agreed-upon, reimbursable basis from the Administrative Office of the U.S. Courts, another Article I court, or any executive agency.

The clerk of the court is appointed by the appellate division, and the clerk appoints other (non-chambers) court staff with the approval of the appellate division or, by delegation, the chief judge.

Each judge appoints chambers staff (secretaries and law clerks) to serve at his or her pleasure.

Judges

The appellate division consists of 18 "immigration appeals judges" with no more than 9 judges belonging to the same political party. These judges are appointed for 15-year terms that are staggered so that 6 judges come up for appointment every 5 years.

The number of "immigration trial judges" in the trial division is determined by the appellate division, subject to the availability of funding, based on periodic surveys of workload and resource needs. The appellate division establishes for each geographic area served by the trial division a merit selection panel that is responsible for advertising vacant positions, reviewing applications, conducting interviews, and recommending applicants to the appellate division for appointment as immigration trial judges for 15-year terms.

Immigration appeals judges receive the same salary as a U.S. district judge, and immigration trial judges receive a salary equivalent to 92% of the district judge salary (i.e., the same salary paid to bankruptcy judges and full-time magistrate judges in the judicial branch).

All judges of the court may elect to participate in retirement and survivor benefits that are equivalent to those afforded judges of the U.S. Court of Appeals for Veterans Claims (another Article I court) and similar to those available to bankruptcy judges and magistrate judges in the judicial branch.

Retired judges may be recalled, as needed, to temporary service on the court, and non-retired judges in the trial division may be designated, as needed, to sit temporarily on the appellate division.

Court Authorities and Responsibilities

The court's rulemaking authority includes power to regulate its own bar and establish procedures for admission of attorneys and others to practice before it.

The judges of the court may punish contempt of the court's authority by imposing civil money penalties (monetary fines) in accordance with rules prescribed by the appellate division.

The court may impose filing and similar fees that do not exceed in amount the analogous fees imposed in the district courts or by the Department of Homeland Security.

The records of the court are open to the public, but the court has authority to protect confidential information and is responsible for preserving confidentiality as otherwise required by law.

The court is generally required to publish its appellate decisions, but may make exceptions (e.g., for rulings without precedential value), and may authorize publication of trial decisions as appropriate. It must also submit annual statistical reports to the Senate and House Judiciary Committees.

The court has authority to hold periodic bench/bar conferences, similar to those authorized by other federal courts.

Technical, Conforming, and Transitional Provisions

Pre-existing references in the INA and Justice Department regulations to the BIA, immigration judges or administrative law judges, or to proceedings before such officials, are generally deemed to refer to the successor judges and/or proceedings in the new court.

The Attorney General's statutory authority to regulate EOIR adjudicators and proceedings is transferred to the new court's appellate division, and pre-existing Attorney General regulations that are consistent with the legislation remain in effect until modified or revoked by the appellate division.

The legislation takes effect on October 1 in the year immediately following the year in which it is enacted, or a year after enactment, whichever occurs later. At that time, EOIR is abolished and that office's personnel and assets (including funding) are transferred to the new court.

The BIA members and the immigration judges and administrative law judges in office immediately before the effective date continue in office as immigration appeals judges and immigration trial judges, respectively, until successors are appointed under the legislation, and the immigration trial judges may continue for four years to ensure appropriate continuity and permit sufficient time for the appellate division to make new appointments systemwide. Immigration appeals judges must be nominated by the President within 90 days after the legislation takes effect, and the merit selection process for immigration trial judges must be established by the appellate division within 180 days after the effective date. The legislation includes a "sense of Congress" statement that all qualified former BIA members, immigration judges, and administrative law judges who carry over to the new court and wish to continue serving should be fully considered for appointment to the court for 15-year terms.

Study

Beyond establishing a new Article I court to perform the adjudicative functions heretofore performed by EOIR, the legislation requires the Justice Department, in consultation with the Departments of State, Labor, and Homeland Security, to study and, within three years, report to Congress on the potential for consolidating within the new court the conduct or review of immigration-related adjudications that are currently performed by federal agencies other than EOIR.