

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 21 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.

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

9 “(2) Based on its findings from the most recent survey
10 conducted under paragraph (3) and any other relevant information that
11 it may obtain, the appellate division shall from time to time establish
12 the number of immigration trial judges to be appointed under
13 paragraph (1) and assign incumbent and newly appointed judges to
14 serve such geographic areas within the judicial circuits (other than the
15 Federal Circuit) as the appellate division may define.

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

22 “(A) comprehensively review the continuing need for
23 existing positions as well as the need for additional positions
24 and the locations at which existing or additional positions
25 are needed;

26 “(B) take into account local conditions, including the
27 areas and populations to be served, the transportation and

1 communication facilities available, the amount and
2 distribution of business expected to arise before the trial
3 division, and any other material factors; and

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

12 “(4) Immigration trial judges shall be selected for
13 appointment under paragraph (1) in accordance with standards and
14 procedures prescribed by the appellate division, which shall include
15 provision for public notice of all vacancies in immigration trial judge
16 positions, and for the establishment of merit selection panels,
17 composed of residents of the geographic areas to be served by the
18 respective positions, to assist with identifying and recommending the
19 individuals best qualified to fill such positions.

20 “(c)(1) QUALIFICATIONS.—No individual may be appointed to
21 serve as an immigration appeals judge or an immigration trial judge
22 unless that individual is a member in good standing of the bar of a
23 Federal court or of the highest court of a State.

24 “(2) No individual may be appointed to serve as an
25 immigration trial judge if the individual is, at the time of the initial
26 appointment, related by blood or marriage to an immigration appeals
27 judge.

1 “(3) In appointing immigration appeals judges and
2 immigration trial judges, the President and the appellate division,
3 respectively, shall—

4 “(A) consider qualified candidates without regard to
5 race, color, sex, religion, national origin, or political
6 ideology or affiliation;

7 “(B) ensure that the career backgrounds of the
8 immigration appeals judges, viewed together, reflect a
9 balance of public and private sector legal experience; and

10 “(C) determine before making an appointment that the
11 individual to be appointed—

12 “(i) possesses, and has a reputation for, integrity and
13 good character;

14 “(ii) is of sound physical and mental health;

15 “(iii) possesses and has demonstrated commitment
16 to equal justice under law;

17 “(iv) possesses and has demonstrated outstanding
18 relevant legal ability and competence, including—

19 “a. substantial knowledge of immigration law
20 and practice.

21 “b. ability to deal with complex legal
22 problems,

23 “c. aptitude for legal scholarship and writing,
24 and

25 “d. familiarity with administrative as well as
26 judicial processes; and

1 “(v) exhibits demeanor, character, and personality
2 that indicate a judicial temperament.

3 “(d) TERM OF OFFICE.—Subject to section 4(b)(4)-(5) and (c)(1)-
4 (2) of the United States Immigration Court Act, every immigration
5 appeals judge and every immigration trial judge shall serve for a term
6 of 15 years, and until a successor is appointed and has qualified, except
7 that—

8 “(1) a judge may not continue to serve for more than 1 year
9 after the date on which the term of that judge is scheduled to expire
10 under this subsection; and

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

16 “(e) TEMPORARY SERVICE ON APPELLATE DIVISION.—The chief
17 judge may designate an immigration trial judge to sit with the appellate
18 division whenever the judicial business of that division so requires. An
19 immigration trial judge so designated may exercise all of the judicial
20 powers and duties of an immigration appeals judge in regular active
21 service with respect to proceedings before the appellate division that
22 are assigned to such judge individually or as a member of a panel or
23 the division sitting en banc.

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

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

4 “(g)(1) JUDICIAL DISCIPLINE.—An immigration appeals judge
5 may be removed from office by the President, and an immigration trial
6 judge may be removed from office by the appellate division, on
7 grounds of gross misconduct, neglect of duty, or incompetence,
8 engaging in the practice of law, or permanent mental or physical
9 disability, and for no other cause.

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

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

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

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

1 “(ii) The grounds for removal from office specified in
2 paragraph (1) of this subsection and the grounds for retirement
3 specified in section 151(g)(2) of this title shall provide a basis for a
4 determination pursuant to section 354(b) or 355 of title 28, United
5 States Code, and certification and transmittal by the Conference shall
6 be made to the President or, as the case may be, the appellate division
7 of the Court for consideration under paragraph (1) or, as the case may
8 be, section 151(g)(2) of this title.

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

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

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

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

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

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

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

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

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

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

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

14 “(3) credible fear determinations reviewable under section
15 235 of this Act, applications for asylum referred by the United
16 States Department of Homeland Security where the applicant is
17 barred from being placed in removal proceedings under section
18 240 of this Act, and referrals for protection under section
19 241(b)(3) of this Act where the individual is not in removal
20 proceedings and is barred from asylum under this Act;

21 “(4) proceedings arising under sections 274A, 274B, and
22 274C of this Act;

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

1 “(6) determinations of whether administrative actions arising
2 from applications filed during the pendency of removal
3 proceedings under section 240 of this Act have been unlawfully
4 withheld or unreasonably delayed;

5 “(7) disciplinary matters concerning practitioners before the
6 Court; and

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

11 “(c) LIMITATION.—The jurisdiction of the Court shall be subject
12 to subsection (g) of section 242 of this Act, and shall not extend to any
13 decision or action of the Attorney General or the Secretary of
14 Homeland Security, the authority for which is specified under title II of
15 this Act to be in the discretion of the Attorney General or the Secretary
16 of Homeland Security, other than granting relief from removal,
17 including where appropriate any related waiver available under the
18 authority of the Attorney General immediately before the effective date
19 of the United States Immigration Court Act.

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

23 “(2) Decisions by the appellate division are subject to review
24 as provided in sections 122 and 142 of this title and, unless
25 subsequently modified or reversed by the appellate division, the court
26 of appeals for the respective judicial circuit, or the Supreme Court, are
27 binding on all immigration trial judges and all officers and employees

1 of executive agencies (as defined in section 105 of title 5, United
2 States Code) with powers, functions and duties under this Act and
3 other laws relating to the immigration and naturalization of aliens.

4 **“SEC. 114.—ORGANIZATION.**

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

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

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

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

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

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

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

23 “(B) In any case under subparagraph (A) of this paragraph
24 in which there is no immigration appeals judge in regular active
25 service who meets subparagraph (A) or (B) and subparagraph (C) of
26 paragraph (2), the immigration appeals judge in regular active service

1 who is senior in commission and meets subparagraph (C) of paragraph
2 (2) shall act as the chief judge.

3 “(4) Except as provided in paragraph (5), an immigration
4 appeals judge shall serve as the chief judge under paragraph (2) for a
5 term of 5 years or until the judge becomes age 70, whichever occurs
6 first. If no other immigration appeals judge is eligible under paragraph
7 (2) to serve as chief judge upon the expiration of that term, the
8 incumbent shall continue to serve as chief judge until another
9 immigration appeals judge becomes eligible under that paragraph to
10 serve as chief judge.

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

13 “(i) leaves regular active service as an immigration
14 appeals judge; or

15 “(ii) notifies the other immigration appeals judges in
16 writing that such judge desires to be relieved of the duties of
17 chief judge.

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

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

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

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

11 “(2) The chief immigration trial judge in each geographic
12 area shall be the immigration trial judge serving in that area who is
13 designated to serve as chief immigration trial judge under rules
14 prescribed by the appellate division that are reasonably consistent with
15 the precedence standards set forth in paragraphs (2) through (7) of
16 subsection (b).

17 “(d)(1) APPELLATE DIVISION PROCEEDINGS.—Proceedings in the
18 appellate division shall be heard and decided by the immigration
19 appeals judges sitting en banc, in panels of two or more members, or
20 individually, as determined pursuant to rules prescribed by the
21 appellate division. Such rules shall also determine the manner in which
22 panels are formed and matters are assigned to panels and individual
23 judges.

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

1 “(B) In addressing non-adjudicative matters that directly
2 affect the trial division (including matters described in sections 131
3 and 132 of this title, but excluding the appointment or discipline of an
4 individual immigration trial judge under section 112), the appellate
5 division and its judges shall consult with, and give due consideration
6 to, the recommendations and views of the chief immigration trial
7 judges designated under subsection (c): Provided that the validity of
8 any action taken in such matters may not be questioned on grounds that
9 the action is inconsistent with any recommendation or views that may
10 be so obtained.

11 “(3)(A) A majority of the immigration appeals judges shall
12 constitute a quorum for the transaction of business conducted by the
13 appellate division en banc. A vacancy among such judges shall not
14 impair the powers or affect the duties of the division or of the
15 remaining immigration appeals judges.

16 “(B) A majority of the members of a panel of the appellate
17 division shall constitute a quorum for the transaction of the business of
18 the panel. A vacancy in a panel shall not impair the powers or affect
19 the duties of the panel or of the remaining members of the panel.

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

24 “(f) PRECEDENCE IN APPELLATE DIVISION.—The chief judge of the
25 Court shall have precedence and preside at any session of the appellate
26 division that such judge attends. The other immigration appeals judges
27 shall have precedence and preside in the appellate division according

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

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

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

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

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

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

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

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

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

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

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

13 “The times and places of sessions of the Immigration Court shall
14 be determined in accordance with rules prescribed by the appellate
15 division.

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

17 “(a)(1) IN GENERAL.—A retired immigration appeals judge or
18 immigration trial judge may be recalled for further service as an
19 immigration appeals judge or immigration trial judge in accordance
20 with this section. To be eligible to be recalled for such service, a
21 retired judge must at the time of the judge’s retirement provide to the
22 chief judge (or, in the case of the chief judge, to the clerk of the Court)
23 notice in writing that the retired judge is available for further service
24 on the Court in accordance with this section and is willing to be
25 recalled under this section.

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

1 “(A) a retired judge is an immigration appeals judge or
2 immigration trial judge who retires from the Court under section
3 151 of this title or under chapter 83 or 84 of title 5, United States
4 Code; and

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

7 “(b)(1)(A) RECALL PROCEDURE.—The chief judge may recall for
8 further service on the Court a recall-eligible retired judge in
9 accordance with this section. Such a recall shall be made upon written
10 certification by the chief judge that substantial service is expected to be
11 performed by the retired judge for such period, not to exceed 90 days
12 (or the equivalent), as determined by the chief judge to be necessary to
13 meet the needs of the Court.

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

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

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

22 “(II) sufficient resources to provide to such recall-
23 eligible judge appropriate administrative and office
24 support.

25 “(iii) At any time during the period of recalled service
26 of a judge who is recalled pursuant to clause (i), the chief judge may

1 terminate such recalled service if the chief judge makes a written
2 certification described in clause (ii).

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

6 “(3) If a recall-eligible retired judge is recalled by the chief
7 judge in accordance with this section and (other than in the case of a
8 judge who has previously during that calendar year served at least 90
9 days (or the equivalent) of recalled service on the court) declines (other
10 than by reason of disability) to perform the service to which recalled,
11 the chief judge shall remove that retired judge from the status of a
12 recall-eligible judge. This paragraph shall not apply to a judge to
13 whom section 151(c)(1) of this title applies and who has, in the
14 aggregate, served at least 5 years of recalled service on the Court under
15 this section.

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

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

26 “(d) COMPENSATION FOR RECALL SERVICE.—A retired judge who
27 is recalled under this section shall be paid, during the period for which

1 **“SEC. 122.—SCOPE OF REVIEW.**

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

7 “(A) consider de novo all relevant questions of law, the
8 interpretation of constitutional, statutory, and regulatory
9 provisions, and the meaning or applicability of the terms of any
10 administrative action;

11 “(B) compel administrative action unlawfully withheld or
12 unreasonably delayed;

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

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

18 “(ii) contrary to constitutional right, power, privilege,
19 or immunity;

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

22 “(iv) without observance of procedure required by law;

23 and

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

26 “(2) When appropriate to the resolution of matters arising
27 within the jurisdiction of the Court, the appellate division shall request

1 from the Attorney General a determination or ruling on a question of
2 law as described in the proviso in section 103(a)(1) of this title.

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

6 “(A) shall not review de novo the factual findings of the
7 immigration trial judge, but shall, if factual findings are
8 challenged, determine whether such findings are clearly
9 erroneous; and

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

12 “(2) Apart from taking judicial notice of commonly known
13 facts, such as current events and the contents of official documents, the
14 appellate division shall not engage in fact finding in the course of
15 deciding appeals from an immigration trial judge. If a party asserts that
16 the appellate division cannot properly resolve a matter without further
17 fact finding, the party must file a motion for remand and the appellate
18 division, if it determines that additional fact finding is required, may
19 remand the proceeding to the immigration trial judge.

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

21 “The appellate division may prescribe rules under which the
22 Court may charge and collect the following:

23 “(a) fees to file an appeal or a motion or application to open or
24 reconsider a matter, and fees for comparing, or preparing and
25 comparing, transcripts of the record of any proceedings before the
26 Court, or for copying any records, entries, or other papers and the

1 comparison and certification thereof, or for other, similar services
2 provided by the Court, which rules shall—

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

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

12 “(b) reasonable periodic registration fees which may be imposed
13 on persons admitted to practice before the Court, and on persons
14 (other than immigration appeals judges and immigration trial judges)
15 participating at judicial conferences convened pursuant to section
16 134 or in other Court-sponsored activities, and shall be available to
17 the Court for the following purposes:

18 “(1) conducting investigations and proceedings, including
19 employing independent counsel, to pursue disciplinary matters;
20 and

21 “(2) defraying the expenses of—

22 “(A) judicial conferences convened pursuant to section
23 134; and

24 “(B) other activities and programs of the Court that are
25 intended to support and foster communication and
26 relationships between the Court and persons practicing before
27 the Court or the study, understanding, public

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

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

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

21 **“SEC. 126.—CONTEMPT AUTHORITY; ASSISTANCE TO**
22 **THE COURT.**

23 “(a) CONTEMPT AUTHORITY.—In accordance with rules
24 prescribed by the appellate division of the Court, the appellate division
25 and any immigration trial judge shall have authority, after affording
26 notice and an opportunity to be heard, to sanction by civil money

1 penalty any action or inaction in contempt of the Court’s lawful
2 authority in proceedings before such division or judge.

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

9 **“SEC. 127.—DECISIONS.**

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

18 “(b) TIMING AND METHOD.—A judge, panel or the appellate
19 division en banc shall make a determination upon any proceeding
20 before the Court, and upon any motion in connection with such a
21 proceeding, that is assigned to such judge or judges. The respective
22 judge or panel, or the appellate division, shall make a report of any
23 such determination which constitutes the final disposition of the
24 proceeding by such judge or judges.

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

26 “(a) PUBLIC RECORDS.—Except as provided in subsection (b) of
27 this section, all decisions of the Immigration Court and all briefs,

1 motions, documents, and exhibits received by the Court (including a
2 transcript of the stenographic report of the hearings) shall be public
3 records open to the inspection of the public.

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

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

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

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

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

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

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

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

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

21 **“SUBCHAPTER III—MISCELLANEOUS PROVISIONS**

22 **“SEC. 131.—EMPLOYEES.**

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

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

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

11 “(d) STAFF SALARIES.—The Court may fix and adjust the rates of
12 basic pay for the clerk and other employees of the Court without regard
13 to the provisions of chapter 51, subchapter III of chapter 53, or section
14 5373 of title 5, United States Code. To the maximum extent feasible,
15 the employees of the Court shall be compensated at rates consistent
16 with those for employees holding comparable positions in the judicial
17 branch.

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

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

25 “(g) INTERPRETERS.—The Court shall establish a program to
26 facilitate the use of qualified interpreters in proceedings before the
27 Court.

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

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

13 “(i) EXERCISE OF COURT AUTHORITY.—The appellate division of
14 the Court shall exercise the authority conferred on the Court under this
15 section and section 132 of this title. Except with respect to the
16 appointment and removal of the clerk of the Court, the appellate
17 division may delegate such authority, as appropriate, to the chief judge
18 of the Court, chief immigration trial judges, or the clerk of the Court.

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

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

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

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

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

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

13 “(A) directly, or

14 “(B) by transfer to—

15 “(i) the Director of the Administrative Office of the
16 United States Courts,

17 “(ii) another court established under Article I of the
18 Constitution, or

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

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

26 “(c) METHOD AND SOURCE OF EXPENDITURES.—All expenditures
27 of the Court shall be allowed and paid upon presentation of itemized

1 vouchers signed by the certifying officer designated by the chief judge.
2 Except as provided in section 123(b) of this title, all such expenditures
3 shall be paid out of moneys appropriated for purposes of the Court.

4 **“SEC. 133.—DISPOSITION OF FEES.**

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

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

9 “The chief judge of the Immigration Court may summon the
10 immigration appeals judges and immigration trial judges to an annual
11 judicial conference, at a time and place that the chief judge designates,
12 for the purpose of considering the business of the Court and
13 recommending means of improving the administration of justice within
14 the Court’s jurisdiction. The appellate division shall establish rules for
15 representation and active participation at such conference by persons
16 admitted to practice before the Court and by other persons active in the
17 legal profession.

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

19 “Notwithstanding any other provision of law, the Immigration
20 Court may exercise, for purposes of management, administration, and
21 expenditure of funds of the Court, the authorities provided for such
22 purposes by any provision of law (including any limitation with respect
23 to such provision of law) applicable to a court of the United States (as
24 that term is defined in section 451 of title 28, United States Code),
25 except to the extent that such provision of law is inconsistent with a
26 provision of this chapter.

1 **“SEC. 136.—ANNUAL REPORT.**

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

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

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

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

12 “(3) the total number of dispositions by each of the
13 following:

14 “(A) the Court as a whole,

15 “(B) the clerk of the Court,

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

17 “(D) a multi-member panel of the appellate division, and

18 “(E) the appellate division sitting en banc;

19 “(4) the number of each type of disposition by the Court,
20 including settlement, affirmation, remand, vacation, dismissal,
21 reversal, grant, and denial;

22 “(5) the median time from commencement to disposition by
23 each of the following:

24 “(A) the Court as a whole,

25 “(B) the clerk of the Court,

26 “(C) a single judge of the Court, and

1 “(D) multiple judges of the Court (including a multi-
2 member panel of the appellate division or the division en banc).

3 “(6) the median time from commencement to disposition of a
4 proceeding by the Court;

5 “(7) the median time from filing an application under section
6 2412 of title 28, United States Code, to disposition by the Court;

7 “(8) the median time from the completion of briefing
8 requirements by the parties to disposition by the appellate division;

9 “(9) the number of oral arguments before the appellate
10 division;

11 “(10) the number of cases appealed to the United States
12 courts of appeals;

13 “(11) the number and status of pending proceedings before
14 the Court and applications described in paragraph (2) at the end of
15 such fiscal year;

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

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

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

22 “(A) the time required of each judge for disposition of
23 each type of proceeding,

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

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

1 “SUBCHAPTER IV—DECISIONS AND REVIEW

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

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

9 “(b) APPELLATE DIVISION.—A final decision by the appellate
10 division in a proceeding by shall become a final decision for the Court,
11 conclusive for all purposes and with respect to all questions of law and
12 fact, and not subject to review by any other court by mandamus or
13 otherwise if, upon the expiration of the time allowed, under title II of
14 this Act, for filing a petition for review of such decision, no such
15 petition is duly filed. If a petition is filed within such time, such a
16 decision shall become final—

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

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

25 “(3) upon the expiration of 30 days from the date of issuance
26 of the mandate of the Supreme Court, if that Court directs that the

1 decision of the Immigration Court be affirmed or the case
2 dismissed.

3 “(c)(1) MODIFICATION OR REVERSAL ON APPEAL.—If the Supreme
4 Court directs that the decision of the Immigration Court be modified or
5 reversed, the decision of the Immigration Court rendered in accordance
6 with the mandate of the Supreme Court shall become final upon the
7 expiration of 30 days from the time it was rendered, unless within such
8 30 days either party to the case has instituted proceedings to have such
9 decision corrected to accord with the mandate, in which event the
10 decision of the Immigration Court shall become final when so
11 corrected.

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

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

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

17 “(C) 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 in accordance
20 with the mandate of the United States court of appeals shall become
21 final upon the expiration of 30 days from the time such decision of the
22 Immigration Court was rendered, unless within such 30 days either the
23 Secretary or the petitioner has instituted proceedings to have such
24 decision corrected so that it will accord with the mandate, in which
25 event the decision of the Immigration Court shall become final when
26 so corrected.

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

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

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

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

9 then the decision of the Immigration Court rendered upon such
10 rehearing shall become final in the same manner as though no prior
11 decision of the Immigration Court had been rendered.

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

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

16 “(a) IN GENERAL.—After a decision of the United States
17 Immigration Court is entered by the appellate division in a proceeding,
18 a party to the proceeding may obtain review of the decision, by the
19 United States court of appeals for the judicial circuit wherein venue
20 lies, as provided in title II of this Act. Review of any such decision by
21 the court of appeals shall be limited to determination of whether the
22 Immigration Court validly relied on a rule of law or of any statute or
23 regulation or any interpretation thereof (other than a determination as
24 to a factual matter) in making the decision.

25 “(b) SCOPE OF REVIEW.—The United States court of appeals shall
26 have exclusive jurisdiction to review and decide any challenge to the
27 validity of any statute or regulation or any interpretation thereof

1 brought in accordance with this section, and to interpret constitutional
2 and statutory provisions, to the extent presented and necessary to a
3 decision. The judgment of such court shall be final subject to review
4 by the Supreme Court upon certiorari, in the manner provided in
5 section 1254 of title 28, United States Code.

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

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

15 “(B) contrary to constitutional right, power, privilege, or
16 immunity;

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

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

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

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

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

25 “(3) Nothing in this section or any other provision of this
26 chapter shall be construed to permit the court of appeals or any other

1 court to exercise jurisdiction that exceeds the limits set forth in section
2 242 of this Act.

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

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

11 “SUBCHAPTER V—JUDICIAL RETIREMENT
12 AND SURVIVOR BENEFIT PROGRAMS

13 “SEC. 151.—RETIREMENT OF JUDGES.

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

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

17 “(2) The term “judge” means an immigration appeals
18 judge or an immigration trial judge.

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

21	“65	15
22	“66	14
23	“67	13
24	“68	12
25	“69	11
26	“70	10

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

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

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

12 “(A) In the case of a judge who is a recall-eligible
13 retired judge under section 117(a)(2)(B) of this title, the
14 retired pay of the judge shall (subject to section 117(d)(2) of
15 this title) be the rate of pay applicable to that judge at the
16 time of retirement, as adjusted from time to time under
17 subsection (f)(3).

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

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

26 “(3) Retired pay under this subsection shall begin to accrue
27 on the day following the day on which the individual’s salary as judge

1 ceases to accrue and shall continue to accrue during the remainder of
2 the individual's life. Retired pay under this subsection shall be paid in
3 the same manner as the salary of a judge.

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

6 “(A) may be made only while an individual is a judge
7 (except that, in the case of an individual who fails to be
8 reappointed as judge at the expiration of a term of office, the
9 election may be made at any time before the date after the
10 day on which the individual's successor takes office); and

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

13 “(2) In the case of a judge other than the chief judge, such an
14 election shall be made by filing notice of the election in writing with
15 the chief judge. In the case of the chief judge, such an election shall be
16 made by filing notice of the election in writing with the Director of the
17 Office of Personnel Management.

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

21 “(e) FORFEITURE OF RETIRED PAY.—If an individual for whom an
22 election to receive retired pay under subsection (c) is in effect accepts
23 compensation for employment with the United States, the individual
24 shall, to the extent of the amount of that compensation, forfeit all rights
25 to retired pay under subsection (c) of this section for the period for
26 which the compensation is received.

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

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

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

15 “(B) no deduction for purposes of the Civil Service
16 Retirement and Disability Fund shall be made from retired
17 pay payable to that individual under subsection (c) of this
18 section or from any other salary, pay, or compensation
19 payable to that individual, for any period beginning after the
20 day on which such election is filed; and

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

25 “(3)(A) A cost-of-living adjustment provided by law in
26 annuities payable under civil service retirement laws shall apply to

1 retired pay under this section only in the case of retired pay computed
2 under paragraph (1)(A)(i) or (2) of subsection (c).

3 “(B) If such a cost-of-living adjustment would (but for
4 this subparagraph) result in the retired pay of a retired judge being in
5 excess of the annual rate of pay in effect for judges of the Court as
6 provided in section 112(f) of this title, such adjustment may be made
7 only in such amount as results in the retired pay of the retired judge
8 being equal to that annual rate of pay (as in effect on the effective date
9 of such adjustment).

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

22 “(2) Whenever the President (in the case of an immigration
23 appeals judge) or the appellate division (in the case of an immigration
24 trial judge) finds that a judge has become permanently disabled and as
25 a result of that disability is unable to perform the duties of the office,
26 the President or, in the case of an immigration trial judge, the chief
27 judge of the Court shall, in removing such judge from office under

1 section 112(g) of this title, permit such judge to retire under subsection
2 (b)(3) of this section if the judge elects under subsection (d) to receive
3 retired pay under subsection (c).

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

9 “(2) Any revocation under this subsection shall be made by
10 filing a notice of the election in writing with the Director of the Office
11 of Personnel Management. The Office of Personnel Management shall
12 transmit to the chief judge a copy of each notice filed under this
13 subsection.

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

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

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

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

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

1 “(C) no credit shall be allowed for any service as a
2 judge of the Court unless with respect to such service either
3 there has been deducted and withheld the amount required
4 by the civil service retirement laws or there has been
5 deposited in the Civil Service Retirement and Disability
6 Fund an amount equal to the amount so required, with
7 interest;

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

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

16 “(i)(1) PAYROLL CONTRIBUTIONS.—Beginning with the next pay
17 period after the Director of the Office of Personnel Management
18 receives a notice under subsection (d) of this section that a judge has
19 elected to receive retired pay under this section, the Director shall
20 deduct and withhold 1 percent of the salary of such judge. Amounts
21 shall be so deducted and withheld in a manner determined by the
22 Director. Amounts deducted and withheld under this subsection shall
23 be deposited in the Treasury of the United States to the credit of the
24 Immigration Court Judges Retirement Fund. Deductions under this
25 subsection from the salary of a judge shall terminate upon the
26 retirement of the judge or upon the completion of 15 years of service

1 for which either deductions under this subsection or a deposit under
2 subsection (j) of this section has been made, whichever occurs first.

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

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

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

18 **“SEC. 152.—SURVIVOR ANNUITIES.**

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

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

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

25 “(3) The term “pay” means salary received under section
26 112(f) of this title and retired pay received under section 151 of
27 this title.

1 “(4) The term “retirement fund” means the Immigration
2 Court Retirement Fund established under section 153 of this
3 title.

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

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

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

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

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

15 “(8) The term “assassination” as applied to a judge shall
16 have the meaning provided that term in section 376(a)(7) of title
17 28, United States Code, as applied to a judicial official.

18 “(b) ELECTION TO PARTICIPATE.—A judge may become a
19 participant in the annuity program under this section by filing a written
20 election under this subsection while in office or within 6 months after
21 the date on which the judge marries if the judge has retired under
22 section 151 of this title. Any such election shall be made in such
23 manner as may be prescribed by the appellate division.

24 “(c) PAYROLL CONTRIBUTIONS.—There shall be deducted and
25 withheld each pay period from the pay of a judge who has made an
26 election under subsection (b) of this section a sum equal to that
27 percentage of the judge’s pay that is the same as provided for the

1 deduction from the salary or retirement salary of a judge of the United
2 States Court of Federal Claims for the purpose of a survivor annuity
3 under section 376(b)(1)(B) of title 28, United States Code. Amounts so
4 deducted and withheld shall be deposited in the retirement fund. A
5 judge who makes an election under subsection (b) of this section shall
6 be considered by that election to agree to the deductions from the
7 judge's pay required by this subsection.

8 “(d)(1) CONTRIBUTIONS FOR PRIOR SERVICE.—A judge who
9 makes an election under subsection (b) of this section shall deposit,
10 with interest at 3 percent per year compounded on December 31 of
11 each year, to the credit of the retirement fund, an amount equal to 3.5
12 percent of the judge's pay and of the judge's basic salary, pay, or
13 compensation for service as a Member of Congress, and for any other
14 civilian service within the purview of section 8332 of title 5, United
15 States Code. Each such judge may elect to make such deposits in
16 installments during the judge's period of service in such amount and
17 under such conditions as may be determined in each instance by the
18 chief judge. Notwithstanding the failure of a judge to make such
19 deposit, credit shall be allowed for the service rendered, but the annual
20 annuity of the surviving spouse of such judge shall be reduced by an
21 amount equal to 10 percent of the amount of such deposit, computed as
22 of the date of the death of such judge, unless the surviving spouse
23 elects to eliminate such service entirely from credit under subsection
24 (k) of this section. However, a deposit shall not be required from a
25 judge for any year with respect to which deductions from the judge's
26 pay, or a deposit, were actually made (and not withdrawn) under the
27 civil service retirement laws.

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

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

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

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

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

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

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

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

15 “(B) if the judge is survived by a surviving spouse and a
16 dependent child or children, there shall be paid to the
17 surviving spouse an immediate annuity in an amount
18 computed as provided in subsection (k) of this section and
19 there shall also be paid to or on behalf of each such child an
20 immediate annuity equal to the lesser of—

21 “(i) 10 percent of the average annual pay of such
22 judge (determined in accordance with subsection (k) of
23 this section), or

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

26 “(C) if the judge is not survived by a surviving spouse
27 but is survived by a dependent child or children, there shall

1 be paid to or on behalf of each such child an immediate
2 annuity equal to the lesser of—

3 “(i) 20 percent of the average annual pay of such
4 judge (determined in accordance with subsection (k) of
5 this section), or

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

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

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

11 “(B) upon the remarriage of the surviving spouse before
12 age 55.

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

15 “(4) In case of the death of a surviving spouse of a judge
16 leaving a dependent child or children of the judge surviving the spouse,
17 the annuity of such child or children under paragraph (1)(B) of this
18 subsection shall be recomputed and paid as provided in paragraph
19 (1)(C) of this subsection. In any case in which the annuity of a
20 dependent child is terminated, the annuities of any remaining
21 dependent child or children, based upon the service of the same judge,
22 shall be recomputed and paid as though the child whose annuity was so
23 terminated had not survived the judge.

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

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

5 “(h)(1) REFUNDS TO SURVIVORS.—If—

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

8 “(i) before having rendered 5 years of civilian
9 service computed as prescribed in subsection (l) of this
10 section, or

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

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

18 the total amount credited to the individual account of such judge (with
19 interest at 3 percent per year, compounded on December 31 of each
20 year, to the date of the death of such judge) shall be paid in the manner
21 specified in paragraph (2) of this subsection.

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

26 “(A) to the beneficiary or beneficiaries whom the
27 judge designated in writing filed before death with the chief

1 judge (except that in the case of the chief judge such
2 designation shall be filed before death in accordance with
3 internal operating procedures established by the appellate
4 division);

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

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

8 “(D) to the parents of the judge or the survivor of
9 them;

10 “(E) to the executor or administrator of the estate of
11 the judge; or

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

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

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

21 “(5) In a case in which the annuities of all persons entitled to
22 annuity based upon the service of a judge terminate before the
23 aggregate amount of annuity paid equals the total amount credited to
24 the individual account of such judge (with interest at 3 percent per
25 year, compounded on December 31 of each year to the date of the
26 death of the judge), the difference shall be paid, upon establishment of

1 a valid claim therefor, in the order of precedence prescribed in
2 paragraph (2) of this subsection.

3 “(6) Any accrued annuity remaining unpaid upon the
4 termination (other than by death) of the annuity of any individual
5 based upon the service of a judge shall be paid to that individual. Any
6 accrued annuity remaining unpaid upon the death of an individual
7 receiving an annuity based upon the service of a judge shall be paid,
8 upon the establishment of a valid claim therefor, in the following order
9 of precedence:

10 “(A) to the executor or administrator of the estate of
11 that person; or

12 “(B) after 30 days after the date of the death of such
13 individual, to such individual or individuals as may appear
14 in the judgment of the chief judge to be legally entitled
15 thereto.

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

17 “(i) PAYMENTS TO THOSE UNDER LEGAL DISABILITY.—When a
18 payment under this section is to be made to a minor, or to a person
19 mentally incompetent or under other legal disability adjudged by a
20 court of competent jurisdiction, the payment may be made to the
21 person who is constituted guardian or other fiduciary by the law of the
22 State of residence of such claimant or is otherwise legally vested with
23 the care of the claimant or the claimant’s estate. If no guardian or other
24 fiduciary of the person under legal disability has been appointed under
25 the laws of the State of residence of the claimant, the chief judge shall
26 determine the person who is otherwise legally vested with the care of
27 the claimant or the claimant’s estate.

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

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

10 “(A) The product of—

11 “(i) 1.5 percent of the judge’s average annual pay;

12 and

13 “(ii) the sum of the judge’s years of judicial
14 service, the judge’s years of prior allowable service as a
15 Member of Congress, the judge’s years of prior
16 allowable service performed as a member of the Armed
17 Forces, and the judge’s years, not exceeding 15, of prior
18 allowable service performed as a congressional
19 employee (as defined in section 2107 of title 5, United
20 States Code); and

21 “(B) three-fourths of 1 percent of the judge’s average
22 annual pay multiplied by the judge’s years of allowable
23 service not counted under subparagraph (A) of this
24 paragraph.

25 “(2) An annuity computed under this subsection may not
26 exceed 50 percent of the judge’s average annual pay and may not be
27 less than 25 percent of such average annual pay. Such annuity shall be

1 further reduced in accordance with subsection (d) of this section (if
2 applicable).

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

9 “(1) COMPUTATION OF CREDITABLE SERVICE.—Subject to
10 subsection (d) of this section, the years of service of a judge which are
11 allowable as the basis for calculating the amount of the annuity of the
12 judge’s surviving spouse shall include the judge’s years of service as a
13 judge of the Court, the judge’s years of service as a Member of
14 Congress, the judge’s years of active service as a member of the
15 Armed Forces not exceeding 5 years in the aggregate and not including
16 any such service for which credit is allowed for the purposes of
17 retirement or retired pay under any other provision of law, and the
18 judge’s years of any other civilian service within the purview of
19 section 8332 of title 5, United States Code.

20 “(m) OTHER SPOUSAL ANNUITIES.—Nothing contained in this
21 section shall be construed to prevent a surviving spouse eligible
22 therefor from simultaneously receiving an annuity under this section
23 and any annuity to which such spouse would otherwise be entitled
24 under any other law without regard to this section, but in computing
25 such other annuity service used in the computation of such spouse’s
26 annuity under this section shall not be credited.

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

8 “(o) PERIODIC ADJUSTMENT OF ANNUITY.—Each survivor annuity
9 payable from the retirement fund shall be increased at the same time
10 as, and by the same percentage by which, annuities payable from the
11 Judicial Survivors’ Annuities Fund are increased pursuant to section
12 376(m) of title 28, United States Code.

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

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

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

21 “(B) a retired judge who is recall-eligible under section
22 117(a)(2)(B) of this title;

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

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

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

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

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

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

10 “(c) DEPOSITS TO FUND.—Amounts deposited by, or deducted
11 and withheld from the salary and retired pay of, a judge under section
12 151 or 152 of this title shall be deposited in the fund and credited to an
13 individual account of the judge.

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

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

24 “(2)(A) Subject to the availability of appropriations, there
25 shall be deposited in the Treasury to the credit of the fund, not later
26 than the close of each fiscal year, such amounts as may be required
27 to reduce to zero the unfunded liability (if any) of the fund. Such

1 deposits shall be taken from sums available for that fiscal year for
2 the payment of the expenses of the Court.

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

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

10 “(ii) the sum of—

11 “(I) the present values of future deductions under
12 sections 151(i) and 152(c) of this title and future deposits
13 under sections 151(j) and 152(d) of this title, and

14 “(II) the balance in the fund as of the close of the
15 fiscal year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 established in section 111 of the Immigration and Nationality Act, as
2 added by this Act.

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

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

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

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

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

14 (2) The period of 4 years immediately following the effective
15 date of this Act shall be ‘the transition period’ for purposes of this
16 section.

17 (b)(1) JUDICIAL PERSONNEL.—The President shall nominate
18 individuals for appointment to all positions of immigration appeals
19 judge authorized in section 112(a) of the Immigration and Nationality
20 Act, as added by this Act, no later than 90 days after the transition
21 period has ended.

22 (2) The appellate division of the Immigration Court shall
23 establish procedures for the selection of individuals for appointment as
24 immigration trial judges under section 112(b)(1)(A) of the Immigration
25 and Nationality Act, as added by this Act, no later than 180 days after
26 the effective date of this Act.

1 (3) It is the sense of Congress that, when immigration appeals
2 judges and immigration trial judges are first appointed under section
3 112(a)(2) and (b)(1) of the Immigration and Nationality Act, as added
4 by this Act, after the transition period, the individuals to be considered
5 for appointment should include the incumbent immigration appeals
6 judges and immigration trial judges who have been appointed under
7 paragraph (5) or have assumed office under subsection (c) of this
8 section if such judges request to be considered and, in accordance with
9 section 112(b) and (c) of said Act, are determined to be qualified for
10 continued service. Such judges should receive consideration equal to
11 that given all other candidates for the respective positions.

12 (4) Notwithstanding the provisions of section 112(d) of the
13 Immigration and Nationality Act, as added by this Act, the first 21
14 immigration appeals judges appointed after the transition period shall,
15 as designated by the President, serve for the following terms:

16 (A) 7 of the immigration appeals judges shall each serve
17 for a term of 5 years that commences immediately after the
18 transition period has ended;

19 (B) 7 of the immigration appeals judges shall each serve
20 for a term of 10 years that commences immediately after the
21 transition period has ended; and

22 (C) 7 of the immigration appeals judges shall each serve
23 for a term of 15 years that commences immediately after the
24 transition period has ended.

25 Each such judge may continue to serve after the expiration of the
26 designated term until a successor is appointed and has qualified, but

1 not more than 1 year after the date on which the term of such judge is
2 scheduled to expire under this paragraph.

3 (5) Notwithstanding the provisions of paragraph (4) and
4 section 112(d) of the Immigration and Nationality Act, as added by this
5 Act, if any immigration appeals judge or immigration trial judge dies,
6 resigns, or is removed or any new immigration trial judge position is
7 established during the transition period, the individual appointed to fill
8 the vacant position shall serve only until the transition period has
9 ended and until a successor is appointed and has qualified in
10 accordance with section 112 of the Immigration and Nationality Act,
11 as added by this Act, but not more than 1 year after the end of the
12 transition period.

13 (c)(1)(A) INTERIM JUDGES.—Except as provided in subparagraph
14 (B), each individual serving immediately before the effective date of
15 this Act as a member of the Board of Immigration Appeals in the
16 Executive Office of Immigration Review of the United States
17 Department of Justice, shall become an immigration appeals judge of
18 the Immigration Court on such effective date, and shall continue
19 thereafter in that position until the transition period has ended and until
20 a successor is appointed and has qualified in accordance with section
21 112 of the Immigration and Nationality Act, as added by this Act, but
22 not more than 1 year after the end of the transition period.

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

1 (2) Each individual serving immediately before the effective
2 date of this Act as an immigration judge or administrative law judge in
3 the Executive Office of Immigration Review of the United States
4 Department of Justice, shall become an immigration trial judge of the
5 Immigration Court on such effective date, and shall continue thereafter
6 in that position until the transition period has ended and until a
7 successor is appointed and has qualified in accordance with section
8 112 of the Immigration and Nationality Act, as added by this Act, but
9 not more than 1 year after the end of the transition period.

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

19 (d) CONTINUITY OF PROCEEDINGS.—Under rules prescribed by
20 the appellate division of the Immigration Court with respect to removal
21 proceedings and asylum applications pending as of the effective date of
22 this Act, the appellate division shall be deemed to be a continuation of
23 the Board of Immigration Appeals, and the trial division of the Court
24 shall be deemed a continuation of the immigration judges and
25 administrative law judges who previously conducted proceedings
26 under title II of the Immigration and Nationality Act, as amended, for

1 the purposes of all powers, rights, and jurisdiction existing under prior
2 law.

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

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

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

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

22 (3) All administrative proceedings under title II of the
23 Immigration and Nationality Act, as amended, which are pending
24 before the Board of Immigration Appeals, an immigration judge, or an
25 administrative law judge immediately before the effective date of this
26 Act shall be transferred to the Immigration Court to proceed before the
27 trial division or, as the case may be, the appellate division of the Court.

1 **SEC. 5. STUDY OF CONSOLIDATING RESPONSIBILITY**
2 **FOR REVIEW OF IMMIGRATION-RELATED**
3 **ADJUDICATION.**

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

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

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

19 (2) conferring jurisdiction on the Immigration Court to
20 review—

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

24 (B) adjudications of immigration-related matters by the
25 Board of Alien Labor Certification Appeals, Administrative
26 Review Board, and Office of Administrative Law Judges of the
27 United States Department of Labor; and

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

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

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

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

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

23 (e) CONGRESSIONAL PURPOSE.—It is the sense of Congress that
24 due process of law and prudent management of judicial and
25 adjudicative resources would be enhanced by developing a consistent
26 body of immigration-related precedential jurisprudence, and, where
27 feasible, centralizing and streamlining within the Immigration Court the

- 1 conduct or review of immigration-related adjudications arising under
- 2 the Immigration and Nationality Act, as amended.

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