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(Original Signature of Member)

117TH CONGRESS
2D SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

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

Sec. 1. Short title; table of contents.

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

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

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

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

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

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

10 **“(a) ESTABLISHMENT.—**

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

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

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

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

7 “(b) APPELLATE DIVISION.—

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

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

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

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

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

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

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

12 “(3) CHIEF JUDGE.—

13 “(A) DESIGNATION.—

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

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

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

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

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

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

17 “(B) TERM OF OFFICE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 “(c) TRIAL DIVISION.—

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

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

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

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

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

18 “(3) CHIEF TRIAL JUDGES.—

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

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

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

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

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

17 “(d) ADMINISTRATIVE DIVISION.—

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

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

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

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

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

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

9 “(3) ADMINISTRATIVE COUNCIL.—

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

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

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

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

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

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

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

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

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

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

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

3 “(C) MERIT SELECTION PANEL.—

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

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

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

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

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

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

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

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

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

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

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

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

23 “(2) the corps of immigration judges—

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

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

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

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

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

21 “(e) SALARIES.—

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

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

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

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

17 “(f) REMOVAL.—

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

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

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

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

8 “(2) COMPLAINTS.—

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

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

graph (1) shall provide the basis for a determination to refer a complaint to the Judicial Conference, for further action by the Conference, and for certification and transmittal by the Conference of any complaint to the President.

“(g) RETIREMENT.—

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

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

“The immigration judge has attained age	And the years of service as an immigration judge are at least:
65	15
66	14
67	13
68	12
69	11
70	10

“(3) Any immigration judge who is not reappointed following the expiration of the term of his office may retire upon the completion of such term, if—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “(l) RETIREMENT FOR DISABILITY.—

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

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

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

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

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

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

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

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

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

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

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

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

13 “(n) THRIFT SAVINGS PLAN.—

14 “(1) ELECTION TO CONTRIBUTE.—

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

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

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

25 Except as otherwise provided in this subsection, the

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

5 “(3) SPECIAL RULES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

17 “(b) RECALL OF RETIRED JUDGES.—

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

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

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

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

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

22 “(c) REPORTING REQUIREMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **“SEC. 604. JURISDICTION.**

25 “(a) APPELLATE DIVISION JURISDICTION.—

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

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

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

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

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

19 “(b) TRIAL DIVISION JURISDICTION.—

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

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

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

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

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

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

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

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

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

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

11 **“SEC. 621. PROCEEDINGS.**

12 “(a) APPELLATE DIVISION PROCEEDINGS.—

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

20 “(2) PRECEDENCE IN APPELLATE DIVISION.—

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

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

4 “(b) TRIAL DIVISION PROCEEDINGS.—

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

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

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

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

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

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

3 “(c) CONTEMPT AUTHORITY.—

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

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

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

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

7 “(e) OPINIONS AND ORDERS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 “(c) IMMIGRATION COURT FEES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 “(c) REVIEW BY APPELLATE DIVISION.—

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

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

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

1 **SEC. 3. EMPLOYEES.**

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

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

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

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

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

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

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

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

16 (b) PERMISSIBLE COURT EXPENDITURES.—

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

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

4 (A) directly, or

5 (B) by transfer to—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (2) INTERIM IMMIGRATION JUDGES.—

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

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

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

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

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

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

1 (1) APPELLATE DIVISION.—

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

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

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

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

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

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

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

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

13 (a) EXISTING PRECEDENT.—

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

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

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

3 (b) INSTITUTIONAL TRANSFER.—

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

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

12 (B) EXCEPTIONS.—

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

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

1 dissolved at the discretion of the Attorney
2 General.

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

21 (3) PENDING CASES.—

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

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

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

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

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

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

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

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

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

10 (2) in section 238(a)(1)—

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

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

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

18 (4) in section 238(a)(3)—

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

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

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

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

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

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

11 (7) in section 238(b)(3)—

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

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

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

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

19 “(A) the alien shall—

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

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

1 such proceedings, as the alien shall choose;

2 and

3 “(iii) have a reasonable opportunity to

4 inspect the evidence and rebut the charges;

5 and

6 “(B) the immigration judge shall ensure

7 that—

8 “(i) a determination is made for the

9 record that the individual upon whom the

10 notice for the proceeding under this section

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

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

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

14 cial review.”.

15 (9) in section 238(b)(5)—

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

17 serting “immigration judge”; and

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

19 inserting “immigration judge’s”;

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

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

22 designated subsection (d)—

23 (A) by striking “Commissioner” in each

24 place such term appears and inserting “Sec-

25 retary of Homeland Security”;

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

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

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

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

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

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

16 (15) in section 240(b)—

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

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

22 “(1) FORM OF PROCEEDING.—

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

25 “(i) in person; or

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

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

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

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

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

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

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

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

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

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

11 (17) in section 240(c)(3)—

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

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

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

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

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

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

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

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

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

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

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

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

17 (24) in section 242(b)(3)(A)—

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

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

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

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

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

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

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

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

16 (30) in section 246(a)—

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

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

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

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

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

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

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

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

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

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

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