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HOUSE OF REPRESENTATIVES
REPT. 117–649
Part 1

REAL COURTS, RULE OF LAW ACT OF 2022

DECEMBER 20, 2022.—Ordered to be printed

Mr. NADLER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 6577]

The Committee on the Judiciary, to whom was referred the bill (H.R. 6577) 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, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

(b) TABLE OF CONTENTS.—The table of contents for 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. Application 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.

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

(a) UNITED STATES IMMIGRATION COURTS.—The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by adding at the end the following:

"TITLE VI—UNITED STATES IMMIGRATION COURTS

"Subtitle A—Organization and Jurisdiction

"SEC. 601. ESTABLISHMENT AND STRUCTURE.

"(a) ESTABLISHMENT.—

"(1) IN GENERAL.—There is established, under article I of the Constitution of the United States, a system of courts of record to be known as the United States Immigration Courts (referred to in this Act as the 'Immigration Courts'). Each such court of record may be referred to as an 'immigration court'. The Immigration Courts is not an agency of, and shall be independent of, the executive branch of the Government.

"(2) DIVISIONS.—The Immigration Courts shall consist of an appellate division, a trial division, and an administrative division.

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

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

"(b) APPELLATE DIVISION.—

"(1) IN GENERAL.—The appellate division of the Immigration Courts shall be composed of 21 immigration appeals judges, one of whom shall serve as chief judge, in accordance with paragraph (3).

"(2) APPOINTMENT OF IMMIGRATION APPEALS JUDGES.—

"(A) IN GENERAL.—Each immigration appeals judge shall be appointed by the President, by and with the advice and consent of the Senate, consistent with the requirements described in section 602.

"(B) TERM OF OFFICE.—Each immigration appeals judge shall be appointed for a term of 15 years and may be reappointed for additional 15-year terms. An immigration appeals judge who is not reappointed for an additional term may continue to serve after the expiration of the prior term until the earlier of—

"(i) the date that a successor is appointed; or

"(ii) the date that is 1 year after the expiration of the prior term.

"(C) SPECIAL RULE.—If an immigration appeals judge does not serve the entirety of an appointed term, the resulting vacancy shall be filled by a successor appointed for the remainder of the term in accordance with this paragraph. At the conclusion of the term, such successor may be reappointed in accordance with subparagraph (B).

"(3) CHIEF JUDGE.—

"(A) DESIGNATION.—

"(i) IN GENERAL.—The chief judge shall be the immigration appeals judge who is most senior in appointment among the immigration appeals judges who, at that time of appointment to the appellate division—

"(I) have served for 1 or more years;

"(II) have at least 5 years remaining in their term of office as an immigration appeals judge; and

"(III) have not previously served as chief judge.

"(ii) ACTING CHIEF JUDGE.—If no immigration appeals judge in regular active service satisfies all of the requirements in clause (i), the immigration appeals judge who is most senior in commission and who has

not previously served as chief judge shall serve as acting chief judge until an immigration appeals judge becomes eligible under such clause.

"(iii) PRECEDENCE.—Immigration appeals judges who have the same seniority in commission shall be eligible for service as chief judge according to seniority in age.

"(B) TERM OF OFFICE.—

"(i) IN GENERAL.—Except as provided in clause (ii), the chief judge shall serve a term that shall end on the earliest of—

"(I) the date that is 5 years after the date that term begins;

"(II) the date that the judge is removed from service for cause in accordance with section 602(f);

"(III) the date that the judge leaves regular active service as an immigration appeals judge; and

"(IV) the date that the judge provides written notice to the other immigration appeals judges that such judge is resigning from service as chief judge.

"(ii) CONTINUATION OF SERVICE.—If, upon conclusion of the chief judge's term of office described in clause (i)(I), no other immigration appeals judge is eligible to assume the role of chief judge as provided in subparagraph (A), the incumbent shall continue to serve as chief judge until another immigration appeals judge becomes eligible.

"(4) EN BANC EXERCISE OF APPELLATE DIVISION AUTHORITY IN NON-ADJUDICATIVE MATTERS.—

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

"(i) appoint immigration trial judges to the trial division;

"(ii) remove immigration trial judges in accordance with section 602(f);

"(iii) appoint a chief administrative officer to the administrative division;

"(iv) promulgate rules and set policies and procedures of the Immigration Courts; and

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

"(B) MAJORITY VOTE.—The appellate division shall exercise its en banc authority as provided in subparagraph (A) by a majority vote, a quorum being present.

"(C) QUORUM.—For purposes of this paragraph, not less than three immigration appeals judges in regular active service or ⅔ of all immigration appeals judges in regular active service, whichever is greater, shall constitute a quorum.

"(c) TRIAL DIVISION.—

"(1) IN GENERAL.—The trial division of the Immigration Courts shall be composed of immigration trial courts, the number and geographical location of which shall be determined by the administrative council, in accordance with the procedures described in subsection (d)(3)(B). Each immigration trial court shall be overseen by a chief trial judge.

"(2) APPOINTMENT OF IMMIGRATION TRIAL JUDGES.—

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

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

"(3) CHIEF TRIAL JUDGES.—

"(A) DESIGNATION.—The chief judge shall designate one immigration trial judge to serve as the chief trial judge for each geographical area. If only one immigration trial judge presides over a geographical area, that judge shall be designated the chief trial judge.

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

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

"(i) overseeing the administrative operations of the trial division in the geographical area in which they are located; and

"(ii) fulfilling all other duties and responsibilities articulated in this Act or delegated to the chief trial judges by the chief judge.

"(d) ADMINISTRATIVE DIVISION.—

"(1) IN GENERAL.—The administrative division of the Immigration Courts shall consist of an administrative office and an administrative council.

"(2) ADMINISTRATIVE OFFICE.—The administrative office shall be managed by a chief administrative officer, who shall be responsible for—

"(A) implementing and administering operational rules, policies, and procedures of the Immigration Courts established by the appellate division or the administrative council;

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

"(C) fulfilling all other administrative duties and responsibilities articulated in this Act or delegated by the chief judge.

"(3) ADMINISTRATIVE COUNCIL.—

"(A) IN GENERAL.—The chief judge of the appellate division shall summon annually the chief trial judge of each court of the trial division to a meeting at such time and place in the United States as the chief judge may designate. The chief judge shall preside at such meeting which shall be known as the administrative council of the Immigration Courts. Special sessions of the council may be called by the chief judge at such times and places as the chief judge may designate. If the chief trial judge of any court of the trial division is unable to attend, the chief judge may summon any other judge from such court. Every judge summoned shall attend and, unless excused by the chief judge, shall remain throughout the sessions of the council and advise as to the needs of that judge's court and as to any matters in respect of which the administration of justice in the Immigration Courts may be improved.

"(B) DETERMINATION OF NUMBER OF REQUIRED JUDGES AND GEOGRAPHICAL AREAS OF SERVICE.—

"(i) SURVEY.—Not later than 1 year after the application date described in section 6 of the Real Courts, Rule of Law Act of 2022, and every 4 years thereafter, the administrative council shall conduct a survey, which shall include the solicitation of information and recommendations from the public, to determine the number of immigration trial courts required to provide for the expeditious and effective administration of justice, as well as the geographical areas to be served by such courts. In conducting the survey, the administrative council shall—

"(I) assess the continuing need for existing immigration trial court positions and the need for additional positions in each geographical location;

"(II) evaluate local conditions in each geographical location, including the proximity to populations to be served, the quality and availability of infrastructure to support transportation and communication, and the availability of legal services for indigent and non-English speaking individuals;

"(III) consider proximity and access to judicial and Department of Homeland Security facilities; and

"(IV) consider the allocation of immigration trial courts and judges among existing geographical areas and whether the administration of justice would be better served by the presence of immigration trial courts and judges in new or different areas.

"(ii) PUBLICATION OF SURVEY RESULTS.—The administrative council shall publish the results of the survey described in subparagraph (A).

"(iii) NOTICE OF VACANCIES.—The administrative council shall publish notice of any immigration judge vacancies or new staff positions.

"(C) MERIT SELECTION PANEL.—

"(i) APPOINTMENT OF IMMIGRATION JUDGES.—The administrative council shall establish a merit selection panel to assist in identifying and recommending individuals who are best qualified to serve as immigration judges, consistent with subsections (a), (b), and (c) of section 602.

"(ii) COMPOSITION.—The panel described in paragraph (1) shall consist of qualified individuals with experience in a diverse range of settings, including academia, nongovernmental organizations, private immigration practice, and government service.

"SEC. 602. IMMIGRATION APPEALS JUDGES AND TRIAL JUDGES.

"(a) QUALIFICATIONS OF IMMIGRATION JUDGES.—Each immigration judge shall—

"(1) be a member in good standing of the bar of a Federal court or the highest court of a State, or any combination thereof, for not less than 10 years;

"(2) possess, and have a reputation for, integrity and good character;

"(3) possess and have demonstrated a commitment to equal justice under the law;

"(4) possess and have demonstrated outstanding legal ability and competence, as evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and court processes;

"(5) exhibit demeanor, character, and personality that indicate a judicial temperament; and

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

"(b) ADDITIONAL FACTORS FOR THE APPOINTMENT OF IMMIGRATION JUDGES.—In appointing immigration judges, the President and the appellate division shall ensure that—

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

"(2) to the extent practicable, the corps of immigration judges—

"(A) is comprised primarily of individuals with prior legal experience in immigration law; and

"(B) reflects a balance of individuals with prior legal experience in the public sector and private sector; and

"(3) candidates are selected without regard to political party affiliation or perceived political ideology.

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

"(d) CONTINUING EDUCATION.—In addition to the training required under section 603(c) of the International Religious Freedom Act of 1998 (22 U.S.C. 6473(c)), all immigration judges shall be required to satisfy continuing education requirements, as determined by the administrative council.

"(e) SALARIES.—

"(1) IMMIGRATION APPEALS JUDGES.—Each immigration appeals judge shall serve on a full-time basis and shall receive as compensation for such services, an annual salary that is equal to the salary of a judge of the district court of the United States as determined pursuant to section 135 of title 28, United States Code.

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

"(3) PROHIBITION ON THE PRACTICE OF LAW.—No immigration judge may engage in the practice of law or any other practice, business, occupation, or employment that is inconsistent with the expeditious, proper, and impartial performance of such judge's duties.

"(f) REMOVAL.—

"(1) IN GENERAL.—An immigration judge may be removed from office only on grounds of incapacity, misconduct, neglect of duty, or having engaged in the practice of law, and in accordance with the following:

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

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

"(C) No immigration judge may be removed from office unless such judge is provided with notice of the allegations forming the basis for removal and an opportunity to appear in person at a hearing to rebut such allegations.

"(2) COMPLAINTS.—

"(A) IN GENERAL.—The appellate division shall promulgate rules, consistent with chapter 16 of title 28, United States Code, for receiving, investigating, and resolving complaints regarding the conduct of immigration judges. In investigating and acting upon any such complaint, the appellate division shall have the powers granted to a judicial council under such chapter.

"(B) JUDICIAL CONFERENCE.—The provisions of sections 354(b) through 360 of title 28, United States Code, regarding referral or certification to, and petition for review in the Judicial Conference of the United States, and action thereon, shall apply to the exercise of the powers of a judicial council by the appellate division. The grounds for removal specified in paragraph (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 80.

"(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 office and not later than 6 months preceding such date, he advised the President or the appellate division, as appropriate, in writing that he was willing to accept reappointment as an immigration judge.

"(4) Any immigration judge who becomes permanently disabled from performing his duties shall retire.

"(h) RETIRED PAY.—Any individual who—

"(1) retires under paragraph (1), (2), or (3) of subsection (g) and elects under subsection (i) to receive retired pay under this subsection shall receive retired pay during any period at a rate which bears the same ratio to the rate of the salary payable to an immigration judge during such period as the number of years he has served as immigration judge bears to 10; except that the rate of such retired pay shall not be more than the rate of such salary for such period; or

"(2) retires under paragraph (4) of subsection (b) and elects under subsection (i) to receive retired pay under this subsection shall receive retired pay during any period at a rate—(A) equal to the rate of the salary payable to an immigration judge during such period if before he retired he had served as an immigration judge not less than 10 years; or (B) one-half of the rate of the salary payable to an immigration judge during such period if before he retired he had served as an immigration judge less than 10 years.

Such retired pay shall begin to accrue on the day following the day on which his salary as immigration judge ceases to accrue, and shall continue to accrue during the remainder of his life. Retired pay under this subsection shall be paid in the same manner as the salary of an immigration judge. In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, that portion of the aggregate number of years he has served as an immigration judge which is a fractional part of 1 year shall be eliminated if it is less than 6 months, or shall be counted as a full year if it is 6 months or more. In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, any period during which such individual performs services under subsection (c) on a substantially full-time basis shall be treated as a period during which he has served as an immigration judge.

"(i) ELECTION TO RECEIVE RETIRED PAY.—Any immigration judge may elect to receive retired pay under subsection (h). Such an election—

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

"(2) once made, shall be irrevocable;

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

"(4) in the case of the chief judge, shall be made by filing notice thereof in writing with the Office of Personnel Management.

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

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

"(1) 1-YEAR FORFEITURE FOR FAILURE TO PERFORM JUDICIAL DUTIES.—If such individual during any calendar year fails to perform judicial duties required of him by section 603, such individual shall forfeit all rights to retired pay under subsection (d) for the 1-year period which begins on the first day on which he so fails to perform such duties.

"(2) SUSPENSION OF RETIRED PAY DURING PERIOD OF COMPENSATED GOVERNMENT SERVICE.—If such individual accepts compensation for civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to section 603), such individual shall forfeit all rights to retired pay under subsection (h) for the period for which such compensation is received.

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

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

"(i) paragraph (1) and section 603 shall not apply to such individual beginning on the date such election takes effect, and

"(ii) the retired pay under subsection (h) payable to such individual for periods beginning on or after the date such election takes effect shall be equal to the retired pay to which such individual would be entitled without regard to this clause at the time of such election.

"(B) ELECTION.—An election under this paragraph—

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

"(ii) may be made only during the period during which the individual may make an election to receive retired pay or while the individual is receiving retired pay, and

"(iii) shall be made in the same manner as the election to receive retired pay.

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

"(C) WHEN ELECTION TAKES EFFECT.—Any election under this paragraph shall take effect on the first day of the first month following the month in which the election is made.

"(k) COORDINATION WITH CIVIL SERVICE RETIREMENT.—

"(1) GENERAL RULE.—Except as otherwise provided in this subsection, the provisions of the civil service retirement laws (including the provisions relating to the deduction and withholding of amounts from basic pay, salary, and compensation) shall apply in respect of service as an immigration judge (together with other service as an officer or employee to whom such civil service retirement laws apply) as if this section had not been enacted.

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

"(A) no annuity or other payment shall be payable to any person under the civil service retirement laws with respect to any service performed by such individual (whether performed before or after such election is filed and whether performed as immigration judge or otherwise);

"(B) no deduction for purposes of the Civil Service Retirement and Disability Fund shall be made from retired pay payable to him under subsection (h) or from any other salary, pay, or compensation payable to him, for any period beginning after the day on which such election is filed; and

"(C) such individual shall be paid the lump-sum credit computed under section 8331(8) of title 5, United States Code, upon making application therefor with the Office of Personnel Management.

"(l) RETIREMENT FOR DISABILITY.—

"(1) Any immigration judge who becomes permanently disabled from performing his duties shall certify to the President, or the appellate division, as applicable, his disability in writing. If the chief judge retires for disability, his retirement shall not take effect until concurred in by the President.

"(2) Whenever any immigration judge who becomes permanently disabled from performing his duties does not retire or the appellate division, as applicable, and the President finds that such immigration judge is unable to discharge efficiently all the duties of his office by reason of permanent mental or physical

disability and that the appointment of an additional immigration judge is necessary for the efficient dispatch of business, the President or the appellate division, as applicable, shall declare such immigration judge to be retired.

"(m) REVOCATION OF ELECTION TO RECEIVE RETIRED PAY.—

"(1) IN GENERAL.—Notwithstanding subsection (e)(2), an individual who has filed an election to receive retired pay under subsection (h) may revoke such election at any time before the first day on which retired pay (or compensation under section 603 in lieu of retired pay) would (but for such revocation) begin to accrue with respect to such individual.

"(2) MANNER OF REVOKING.—Any revocation under this subsection shall be made by filing a notice thereof in writing with the Civil Service Commission. The Civil Service Commission shall transmit to the chief judge a copy of each notice filed under this subsection.

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

"(A) for purposes of this section, the individual shall be treated as not having filed an election to receive retired pay under subsection (h),

"(B) no credit shall be allowed for any service as an immigration judge unless with respect to such service either there has been deducted and withheld the amount required by the civil service retirement laws or there has been deposited in the Civil Service Retirement and Disability Fund an amount equal to the amount so required, with interest,

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

"(D) if subparagraph (C) is complied with, service on the Immigration Courts shall be treated as service with respect to which deductions and contributions had been made during the period of service.

"(n) THRIFT SAVINGS PLAN.—

"(1) ELECTION TO CONTRIBUTE.—

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

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

"(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to an immigration judge who makes an election under paragraph (1).

"(3) SPECIAL RULES.—

"(A) AMOUNT CONTRIBUTED.—The amount contributed by an immigration judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such immigration judge's basic pay for such period as allowable under section 8440f of title 5, United States Code. Basic pay does not include any retired pay paid pursuant to this section.

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

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

"(i) retires under subsection (g), or

"(ii) ceases to serve as an immigration judge but does not retire under subsection (g).

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

"(D) APPLICABILITY OF SECTION 8351(b)(5) OF TITLE 5.—The provisions of section 8351(b)(5) of title 5, United States Code, shall apply with respect to an immigration judge who makes an election under paragraph (1).

"(E) EXCEPTION.—Notwithstanding subparagraph (C), if any immigration judge retires under this section, or resigns without having met the age and service requirements set forth under subsection (g)(2), and such immigration judge's nonforfeitable account balance is less than an amount that the Executive Director of the Federal Retirement Thrift Investment Board prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.

"SEC. 603. TEMPORARY IMMIGRATION JUDGES AND COURT FACILITIES.

"(a) IN GENERAL.—Subject to subsection (c), if the administrative council determines, based on specific and credible facts, that the current resources of the Immigration Courts are insufficient for the expeditious and effective administration of justice, the appellate division may exercise its authority en banc to—

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

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

"(3) establish temporary court facilities in designated geographic areas.

"(b) RECALL OF RETIRED JUDGES.—

"(1) ELIGIBILITY.—A retired immigration judge may be recalled for service if the judge provides to the clerk of the Immigration Courts written notice that the judge is willing to be recalled for service in accordance with the terms of this subsection.

"(2) AUTHORITY OF RECALLED JUDGES.—An immigration judge who is recalled to serve as an immigration appeals judge or immigration trial judge may exercise all of the judicial powers and duties of such judges in regular active service, except as specifically provided in this subtitle. Such judge shall not be counted for purposes of section 601(b)(1) or (c)(2).

"(3) COMPENSATION.—An immigration judge who is recalled for service shall be paid at the rate of pay in effect under section 602(e) for the position at the time of such recall, less the amount of the judge's retirement annuity, if any.

"(4) EFFECT ON CIVIL SERVICE RETIREMENT.—Except as provided in subsection (d), an immigration judge who is recalled for service who retired under chapter 83 or 84 of title 5, United States Code, shall be considered to be a reemployed annuitant under that chapter. Nothing in this subsection affects the right of an immigration judge who retired under chapter 83 or 84 of title 5, United States Code, to serve as a reemployed annuitant in accordance with the provisions of title 5, United States Code.

"(c) REPORTING REQUIREMENTS.—

"(1) INITIAL REPORT.—Prior to exercising the authority described in subsection (a), the appellate division shall transmit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate detailing—

"(A) the specific and credible facts that led to the determination that additional court resources are required;

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

"(C) an estimate as to how long the appellate division expects the immigration judges or court facilities described in subsection (a) to remain in place.

"(2) ADDITIONAL REPORTING.—Not later than 30 days after exercising the authority under subsection (a) and every 30 days thereafter, the appellate division shall report to the Committees named in paragraph (1) on the current status of the Immigration Courts and the continuing need for the temporary immigration judges or court facilities.

"(3) REDUCTION IN RESOURCES AND TERMINATION.—

"(A) GRADUAL REDUCTION IN RESOURCES.—The appellate division shall, exercising its authority en banc in accordance with section 601(b)(4), terminate the appointment of individual temporary immigration judges and close individual temporary court facilities as the appellate division, in consultation with the administrative council, determines they are no longer required. For purposes of this subparagraph, section 602(g) does not apply.

"(B) TERMINATION.—All temporary immigration judge appointments shall be rescinded and all temporary court facilities closed upon the earliest of—

"(i) the date that the appellate division determines, in consultation with the administrative council, that regular court resources are sufficient to resume normal court operations;

"(ii) the date that Congress directs that such actions be taken by concurrent resolution; or

"(iii) 210 days after the appellate division submits its initial report under paragraph (1)(A), unless Congress extends such 210-day period by law.

"SEC. 604. JURISDICTION.

"(a) APPELLATE DIVISION JURISDICTION.—

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

"(A) appeals of immigration trial judge decisions, as described in section 625(c);

"(B) appeals of decisions by the Secretary of Homeland Security on petitions filed under section 204 to classify an alien described in section 201(b)(2)(A)(i) or 203(a); and

"(C) original proceedings and appeals in disciplinary matters concerning attorneys and practitioners before the Immigration Courts.

"(2) SAVINGS CLAUSE.—In addition to the matters described in paragraph (1), the appellate division shall have jurisdiction to hear and decide all other matters over which the Board of Immigration Appeals had authority on the day before the application date described in section 6(a) of the Real Courts, Rule of Law Act of 2022.

"(b) TRIAL DIVISION JURISDICTION.—

"(1) IN GENERAL.—The trial division of the Immigration Courts shall have original jurisdiction over—

"(A) removal proceedings as described in sections 238 and 240;

"(B) review of rescissions of lawful permanent residence under section 246;

"(C) review of credible fear determinations under section 235 and reasonable fear determinations for aliens subject to reinstated orders of removal under section 241;

"(D) review of applications for asylum referred by the Secretary of Homeland Security where the applicant is barred from being placed in removal proceedings under section 240, and referrals for protection under section 241(b)(3) or the United Nations Convention Against Torture where the individual is not in removal proceedings and is barred from asylum under this Act;

"(E) determinations relating to bond, custody, or the detention of any alien in the custody of the Department of Homeland Security;

"(F) determinations as to whether administrative actions arising from applications or petitions filed by or on behalf of the alien and that are pending during the course of the alien's removal proceedings under section 240 have been unlawfully withheld or unreasonably delayed; and

"(G) disciplinary matters concerning attorneys and practitioners before the Immigration Courts.

"(2) SAVINGS CLAUSE.—In addition to the matters described in paragraph (1), the trial division shall have jurisdiction to hear and decide all other matters over which immigration judges had authority on the day before the application date described in section 6(a) of the Real Courts, Rule of Law Act of 2022.

"Subtitle B—Procedure and Appellate Review

"SEC. 621. PROCEEDINGS.

"(a) TRIAL DIVISION PROCEEDINGS.—

"(1) IN GENERAL.—Except as provided in section 604(a), all proceedings before the Immigration Courts shall originate in the trial division. Proceedings before the trial division shall be heard and decided by a single immigration trial judge, with matters assigned to such judges in a manner determined by the appellate division.

"(2) AUTHORITY OF TRIAL DIVISION.—In presiding over matters before the trial division, immigration trial judges may—

"(A) record and receive evidence, administer oaths, examine and cross-examine witnesses, set deadlines, and render findings of fact and conclusions of law;

"(B) render decisions on respondents' prima facie and discretionary eligibility for relief from removal; and

"(C) order and take depositions, issue subpoenas requiring the attendance and testimony of witnesses and the production of documents or other evidence, and order responses to written interrogatories.

"(b) APPELLATE DIVISION PROCEEDINGS.—

"(1) IN GENERAL.—Except as provided by rules established by the appellate division, proceedings before the appellate division shall be heard and decided by immigration appeals judges sitting in panels of three such judges or en banc, and decisions shall be made by majority vote. Any decision of a panel may be reconsidered by the court sitting en banc.

"(2) PRECEDENCE IN APPELLATE DIVISION.—The chief judge of the Immigration Courts shall have precedence and preside at any session of the appellate division that such judge attends. Other immigration appeals judges shall have precedence and preside in the appellate division according to the seniority of their original commissions and, for judges whose commissions bear the same date, according to seniority in age.

"(c) CONTEMPT AUTHORITY.—

"(1) IN GENERAL.—Immigration judges shall have the authority, to sanction by civil money penalty, any individual whose action or inaction obstructs the administration of justice or is otherwise in contempt of the lawful authority of such judge or the Immigration Courts.

"(2) NOTICE.—No individual may be sanctioned for contempt under paragraph (1) without first receiving notice of the charges and an opportunity to rebut such charges.

"(d) ASSISTANCE TO THE COURT.—The Immigration Courts shall have such assistance in carrying out its lawful writ, process, order, rule, decree, or command, including nationwide service of a subpoena, as is available to a court of the United States, as that term is defined in section 451 of title 28, United States Code. The United States marshal for a district in which the immigration trial judge is sitting shall, if requested by the presiding judge, attend any court proceeding in that district, and may otherwise provide, when requested by the chief trial judge of that immigration trial court, for the security of the immigration trial court, including the personal protection of judges, court officers, witnesses, and other threatened persons in the interests of justice, where criminal intimidation impedes on the functioning of the judicial process or any other official proceeding. The United States Marshals Service retains final authority regarding security requirements for the Immigration Courts.

"(e) OPINIONS AND ORDERS.—

"(1) IN GENERAL.—Opinions and orders shall be issued in accordance with rules promulgated by the appellate division, except that decisions on the merits of an application or request for relief from removal rendered by the trial division or the appellate division shall, to the greatest extent practicable, be issued in the form of a written opinion and shall include an analysis of the facts of the case and the legal reasoning for the decision.

"(2) PRECEDENTS.—Unless subsequently modified or reversed by the appellate division, the court of appeals for the respective judicial circuit, or the Supreme Court, precedent decisions of the appellate division shall be binding on all immigration judges and all officers and employees of executive agencies (as defined in section 105 of title 5, United States Code) with powers, functions, and duties under this Act and other laws relating to the immigration and naturalization of aliens.

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

"SEC. 622. IMMIGRATION COURTS RULES OF PRACTICE AND PROCEDURE.

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

"(1) rules governing the representation of parties, which shall—

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

"(B) prescribe standards of practice and professional conduct, which shall apply to all attorneys and practitioners that appear before the Immigration Courts; and

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

"(2) rules governing the exercise of the appellate division's en banc authority over adjudicative matters, including decisions of an appellate division panel;

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

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

"(5) rules governing the use of video teleconferencing technology or other similar technologies, with a presumption against the use of video teleconferencing in proceedings where the alien's eligibility for relief from removal is being evaluated, unless requested by the alien;

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

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

"(b) LOCAL RULES.—Each chief trial judge may establish local rules of practice and procedure, provided that—

"(1) such rules are consistent with the provisions of this title;

"(2) a majority of immigration trial judges on the immigration trial court of that chief judge concur to the local rules; and

"(3) the chief judge approves the local rules.

"(c) IMMIGRATION COURT FEES.—

"(1) IN GENERAL.—The appellate division shall prescribe rules which provide for the collection of reasonable filing fees and other fees, as appropriate. Each such fee may not exceed the fee charged and collected for the same or a substantially similar purpose by the Federal district courts or the Department of Homeland Security.

"(2) WAIVER.—Rules promulgated by the appellate division shall include procedures under which any such fee may be waived in the case of financial hardship.

"(d) PUBLICATION OF RULES AND FEES.—The administrative division shall maintain a public website that contains or consolidates current information on all rules and fees of the Immigration Courts, including all local rules established under this subsection.

"SEC. 623. REPRESENTATION OF PARTIES AND OTHER ASSISTANCE.

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

"(b) INTERPRETERS.—The Immigration Courts shall establish a program to ensure the use of qualified interpreters in proceedings before the Immigration Courts.

"(c) LEGAL ORIENTATION PROGRAM.—The Immigration Courts shall maintain, through agreements with legal services and other nonprofit organizations, a legal orientation program that explains the Court's procedures and provides basic legal information to individuals who are or may become parties to proceedings before the Immigration Courts.

"SEC. 624. AVAILABILITY OF INFORMATION.

"(a) PUBLICATION OF PRECEDENT DECISIONS.—Precedent decisions of the appellate division shall be published in such form and manner as may be best adapted for public information and use.

"(b) PUBLICATION OF NON-PRECEDENT DECISIONS AND RECORDS.—

"(1) IN GENERAL.—Subject to paragraph (2), all non-precedent decisions of the Immigration Courts and all briefs, motions, documents, and exhibits received by such court (including hearing transcripts) shall be made available to the public.

"(2) CONFIDENTIAL INFORMATION.—The Immigration Courts shall preserve the confidentiality of information relating to matters involving national security, asylum and other forms of protection, and claims under the Violence Against Women Act (Public Law 103–322, title IV, 108 Stat. 1902), as amended, or any other applicable law. The Immigration Courts may make any provision necessary to prevent the disclosure of confidential information in its proceedings and records, including requiring that such information be placed under seal to be opened only as directed by the Immigration Courts.

"SEC. 625. SCOPE OF REVIEW AND APPEALS.

"(a) IN GENERAL.—In any proceeding before the Immigration Courts, the immigration judge shall—

"(1) consider de novo all constitutional claims and questions of law; and

"(2) compel administrative action on an application or petition filed by or on behalf of the alien that is unlawfully withheld or unreasonably delayed.

"(b) TRIAL DIVISION PROCEEDINGS.—The decision of an immigration trial judge shall be based only on the evidence produced at the hearing and shall set forth the judge's findings of fact, reasoning to support discretionary determinations, and conclusions of law. Immigration trial judges may take judicial notice of commonly known facts.

"(c) REVIEW BY APPELLATE DIVISION.—

"(1) IN GENERAL.—In considering an appeal from an immigration trial judge decision, the appellate division shall limit its review to the scope of issues raised on appeal and shall conduct its review of the decision based on the record of proceedings of the trial division.

"(2) FACT FINDING.—Aside from taking judicial notice of commonly known facts, the appellate division shall not engage in fact finding in considering an

appeal of an immigration trial judge decision, and shall defer to the factual findings of the immigration trial judge unless such findings are challenged and determined to be clearly erroneous.

"(d) REVIEW BY THE UNITED STATES COURTS OF APPEALS.—A decision of the appellate division may be appealed by a party to such proceeding and reviewed by the United States court of appeals for the judicial circuit wherein venue lies, in accordance with section 242, as applicable. If the Government appeals a decision pursuant to this subsection, and the court finds that the alien party to such appeal is financially unable to obtain adequate representation, representation for such alien shall be provided through the plan for representation on appeal that is in effect under section 3006A of title 18, United States Code.".

(b) CLERICAL AMENDMENT.—The table of contents at the beginning of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by adding at the end the following new items:

"TITLE VI—UNITED STATES IMMIGRATION COURTS

"Subtitle A—Organization and Jurisdiction

"Sec. 601. Establishment and structure.
"Sec. 602. Immigration appeals judges and trial judges.
"Sec. 603. Temporary immigration judges and court facilities.
"Sec. 604. Jurisdiction.

"Subtitle B—Procedure and Appellate Review

"Sec. 621. Proceedings.
"Sec. 622. Immigration courts rules of practice and procedure.
"Sec. 623. Representation of parties and other assistance.
"Sec. 624. Availability of information.
"Sec. 625. Scope of review and appeals.".

SEC. 3. EMPLOYEES.

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

(b) CHAMBERS STAFF.—Immigration judges may appoint law clerks and secretaries, in such numbers as the appellate division approves, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service.

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

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

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

(f) EXPERTS AND CONSULTANTS.—The Immigration Courts may procure the services of experts and consultants as provided under section 3109 of title 5, United States Code.

SEC. 4. BUDGET AND EXPENDITURES.

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

(b) PERMISSIBLE COURT EXPENDITURES.—

(1) The Immigration Courts may make such expenditures (including expenditures for personal services and rent at the seat of Government and elsewhere, and for law books, books of reference, and periodicals) as may be necessary to execute efficiently the judicial and administrative functions vested in the Courts.

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

(A) directly, or

(B) by transfer to—

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

(ii) another court established under article I of the Constitution, or
(iii) an executive agency as defined in section 105 of title 5, United States Code,

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

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

SEC. 5. ANNUAL REPORT.

(a) IN GENERAL.—Not later than April 1 of each year, the chief judge shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, a report summarizing the workload of the Immigration Courts for the preceding fiscal year.

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

(1) demographic information, including the age, gender, and nationality of respondents appearing before the Immigration Courts, and rates at which such respondents are represented by counsel;

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

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

(4) the number of cases currently pending before the trial and appellate divisions of the Immigration Courts, and the change in such number from the prior fiscal year;

(5) the average number of days for which a respondent waits to have their case heard, disaggregated by geographical area; and

(6) any information requested by the Committees named in subsection (a), provided such request is timely and reasonable.

SEC. 6. APPLICATION DATE; TRANSITIONAL PROVISIONS.

(a) APPLICATION DATE.—The Immigration Courts may not begin to exercise the functions of the courts under this Act and the amendments made by this Act until the date (for purposes of this Act, referred to as the "application date") that is—

(1)(A) the first day of the first full fiscal year after the date of the enactment of this Act, if such date is 180 days or more after the date of enactment of this Act; or

(B) the first day of the second full fiscal year after the date of the enactment of this Act, if the first day of the first full fiscal year after the date of enactment of this Act is less than 180 days after the date of enactment of this Act; and

(2) the date on which 3 or more immigration appeals judges have been duly appointed by the President, in accordance with procedures set forth in section 6(c) of this Act and 601(b)(2) of the Immigration and Nationality Act, as added by this Act.

(b) TRANSITION PERIOD AND APPOINTMENT OF INTERIM IMMIGRATION TRIAL JUDGES.—

(1) TRANSITION PERIOD.—The transition period described in this section shall be the 4-year period beginning on the application date of this Act.

(2) INTERIM IMMIGRATION TRIAL JUDGES.—

(A) IN GENERAL.—Each individual serving as an immigration judge in the Executive Office for Immigration Review on the date that is the day before the application date of this Act shall become an interim immigration trial judge.

(B) AUTHORITY OF INTERIM IMMIGRATION TRIAL JUDGES.—Interim immigration judges shall have the authority to exercise all powers of an immigration trial judge as provided in title VI of the Immigration and Nationality Act (8 U.S.C. 601 et seq.).

(C) TERM OF SERVICE.—An interim immigration trial judge may serve until the transition period has ended and a successor is appointed, or for a period not to exceed 5 years, whichever is shorter. An otherwise qualified interim judge may be appointed as an immigration trial judge.

(D) CREDIT AND ELIGIBILITY FOR BENEFITS.—Service as an interim immigration trial judge shall be included in the same manner as service as an immigration trial judge for purposes of calculating service credit, retirement eligibility, and disability.

(E) SEPARATION.—Nothing in this Act or the amendments made by this Act may be construed to—

(i) preclude an interim immigration trial judge who is not appointed for a term appointment by the appellate division under section 601(c)(2) of the Immigration and Nationality Act, as added by this Act, from eligibility for appointment as an administrative judge, administrative law judge, and for attorney positions in agencies throughout the Federal Government; or

(ii) make an interim immigration judge described in clause (i) ineligible for early retirement pursuant to section 8336(d)(2)(D) or 8414(b)(1)(B) of title 5, United States Code.

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

(1) APPELLATE DIVISION.—

(A) IN GENERAL.—Notwithstanding section 601(b)(2)(B) of the Immigration and Nationality Act as added by this Act, the first 21 immigration appeals judges appointed shall serve for the following terms:

(i) The terms of the first 7 immigration appeals judges appointed shall terminate on the date that is 5 years after the date described in subsection (a).

(ii) The terms of the next 7 immigration appeals judges appointed after the judges referred to in clause (i) shall terminate on the date that is 10 years after the date described in subsection (a).

(iii) The terms of the next 7 immigration appeals judges appointed after the judges referred to in clause (ii) shall terminate on the date that is 15 years after the date described in subsection (a).

(B) SUCCESSION.—Each immigration appeals judge described in subparagraph (A) may continue to serve after the expiration of the designated term if such judge is reappointed in accordance with section 601(b)(2)(B) of the Immigration and Nationality Act as added by this Act.

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

(3) CLARIFICATION.—Notwithstanding paragraphs (1) and (2) and section 601 of the Immigration and Nationality Act, as added by this Act, any individual appointed to fill an immigration trial judge vacancy during the transition period described in subsection (b)(1) shall serve only until the transition period has ended and until a successor is appointed in accordance with section 602 of the Immigration and Nationality Act, but not more than 1 year after the end of the transition period.

(d) PRIOR SERVICE CREDIT.—

(1) IN GENERAL.—The period that a covered immigration judge who elects to receive retired pay under section 602 of the Immigration and Nationality Act, as added by this Act, serves as a member of the Board of Immigration Appeals, an immigration judge, or an administrative law judge in the Executive Office for Immigration Review of the Department of Justice, shall be included, up to a maximum of 5 years, in the service of such individual on the Immigration Courts for purposes of computing the years of service as an immigration judge.

(2) COVERED IMMIGRATION JUDGE DEFINED.—In this subsection, the term "covered immigration judge" means—

(A) an immigration appeals judge appointed under section 601(b) of the Immigration and Nationality Act, as added by this Act;

(B) an immigration trial judge appointed under section 601(c) of the Immigration and Nationality Act, as added by this Act; or

(C) an interim immigration trial judge under subsection (b)(2) of this section.

SEC. 7. INSTITUTIONAL TRANSFER; CONTINUITY OF PROCEEDINGS.

(a) EXISTING PRECEDENT.—

(1) IN GENERAL.—Precedential decisions by the Attorney General or the Board of Immigration Appeals under title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) that were issued before the application date of this Act shall continue to serve as precedent in proceedings before the Immigration Courts unless explicitly overruled by such court.

(2) RULES.—To the extent that such rules are consistent with this Act, the rules of the Attorney General that were in effect before the application date of this Act, shall remain in effect until amended or revoked by the appellate division.

(b) INSTITUTIONAL TRANSFER.—

(1) EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.—

(A) IN GENERAL.—Except as provided in subparagraph (B), all functions under the Executive Office for Immigration Review on the date that is the

day before the application date of this Act are transferred to the Immigration Courts on the application date of this Act.

(B) EXCEPTIONS.—

(i) OCAHO.—The Office of the Chief Administrative Hearing Officer and the functions of the Executive Office for Immigration Review that support such office shall remain under the Department of Justice.

(ii) OTHER FUNCTIONS.—The functions of the Executive Office for Immigration Review that are not necessary or appropriate for transfer to the Immigration Courts shall be reassigned to other agencies within the Department of Justice or dissolved at the discretion of the Attorney General.

(2) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—Except as provided in this section, the personnel of the Executive Office for Immigration Review employed in connection with the functions transferred by this section, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Executive Office for Immigration Review, in connection with the functions transferred by this section, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Immigration Courts on the application date of this Act. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

(3) PENDING CASES.—

(A) IN GENERAL.—The enactment of this Act shall not result in any loss of rights or powers, interruption of jurisdiction, or prejudice to matters under title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) which are pending before the Board of Immigration Appeals or an immigration judge on the application date of this Act.

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

SEC. 8. REVIEW BY THE JUDICIAL CONFERENCE; CONSULTATION REQUIREMENTS.

The Judicial Conference of the United States shall conduct a review of adjudications in the United States Immigration Courts at least once every 4 years, as part of its comprehensive survey of business in the courts of the United States conducted pursuant to title 28, section 331. At the conclusion of its review, the Judicial Conference shall submit a report of its findings to the appellate division and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate. The Committees shall cause to have such report printed in the Congressional Record.

SEC. 9. TECHNICAL AND CONFORMING PROVISIONS.

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

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

"(4) The term 'immigration judge' means an immigration appeals judge or immigration trial judge appointed to serve in the United States Immigration Courts established under title VI.";

(2) in section 238(a)(1)—

(A) by striking "Attorney General" and inserting "Immigration Courts"; and

(B) by striking "Service" and inserting "Department of Homeland Security";

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

(4) in section 238(a)(3)—

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

"(A) Notwithstanding any other provision of law, in the case of any alien convicted of an aggravated felony, removal proceedings, and any administrative appeals thereof, shall be completed, to the extent possible, before the alien's release from incarceration for the underlying aggravated felony."; and

(B) in subparagraph (B), by striking "Attorney General" and inserting "Secretary of Homeland Security";

(5) in section 238(a)(4)(A) by striking "Attorney General" each place it appears and inserting "administrative council of the Immigration Courts";

(6) in section 238(b)(1) by striking "Attorney General" and inserting "immigration judge";
(7) in section 238(b)(3)—
(A) by striking "Attorney General" and inserting "Secretary of Homeland Security"; and
(B) by striking "apply for" and inserting "seek";
(8) in section 238(b) by amending paragraph (4) to read as follows—
"(4) In any proceeding under this subsection—
"(A) the alien shall—
"(i) be given reasonable notice of the charges and of the opportunity described in subparagraph (C);
"(ii) have the privilege of being represented (at no expense to the government) by such counsel, authorized to practice in such proceedings, as the alien shall choose; and
"(iii) have a reasonable opportunity to inspect the evidence and rebut the charges; and
"(B) the immigration judge shall ensure that—
"(i) a determination is made for the record that the individual upon whom the notice for the proceeding under this section is served (either in person or by mail) is, in fact, the alien named in such notice; and
"(ii) a record is maintained for judicial review.";
(9) in section 238(b)(5)—
(A) by striking "Attorney General" and inserting "immigration judge"; and
(B) by striking "Attorney General's" and inserting "immigration judge's";
(10) by redesignating the second subsection (c) of section 238 as subsection (d) and in the newly designated subsection (d)—
(A) by striking "Commissioner" in each place such term appears and inserting "Secretary of Homeland Security";
(B) by striking "Attorney General" in each place such term appears and inserting "Secretary of Homeland Security"; and
(C) by striking "Service" in paragraph (2)(A) and inserting "Secretary of Homeland Security";
(11) in section 239(a) by striking "Attorney General" in each place such term appears and inserting "Immigration Courts";
(12) in section 239(b)(2) by striking "Attorney General" and inserting "Immigration Courts";
(13) in section 239(b)(3) by striking "Attorney General" and inserting "immigration judge";
(14) in section 239(d)(1) by striking "Attorney General" and inserting "immigration judge";
(15) in section 240(b)—
(A) by striking paragraphs (1) and (6);
(B) by redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively;
(C) by redesignating paragraph (7) as paragraph (5);
(D) by amending paragraph (1) as redesignated by this paragraph to read as follows:
"(1) FORM OF PROCEEDING.—The proceeding may take place—
"(A) in person; or
"(B) through video conference, subject to rules promulgated under section 622(a)(5).";
(E) in paragraph (2) as redesignated by this paragraph, by striking "Attorney General" and inserting "immigration judge";
(F) in paragraph (3) as redesignated by this paragraph—
(i) in the matter preceding subparagraph (A), by striking ", under regulations of the Attorney General"; and
(ii) in subparagraph (A) by striking ", at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in such proceedings" and inserting "in accordance with section 623(a)"; and
(G) in paragraph (4)(A) as redesignated by this paragraph—
(i) by striking "Service" and inserting "Government"; and
(ii) by amending the last sentence to read as follows: "Written notice shall be considered sufficient for purposes of this subparagraph if provided at the most recent address provided under section 239(a)(1)(F).";
(16) in section 240(c)(2), in the matter following subparagraph (B), by striking "Attorney General" and inserting "Secretary of Homeland Security";
(17) in section 240(c)(3)—

(A) by striking "SERVICE" in the heading and inserting "GOVERNMENT"; and

(B) by striking "Service" in each place such term appears and inserting "Government";

(18) in section 240(c)(7)(C)(iv)(II)—

(A) by striking "Attorney General" and inserting "immigration judge"; and

(B) by striking "Immigration and Naturalization Service" and inserting "Secretary of Homeland Security";

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

(A) by striking "Attorney General" and inserting "immigration judge"; and

(B) by striking "Attorney General's" and inserting "immigration judge's";

(20) in section 240(d) by amending the first sentence to read as follows: "An immigration judge may enter an order of removal stipulated to by the alien (or the alien's representative) and the Government.";

(21) in section 242(a)(2)(A) by striking "Attorney General" in each place such term appears and inserting "Secretary of Homeland Security";

(22) in section 242(a)(2)(B)(ii), by striking "Attorney General" each place it appears and inserting "the appellate division of the Immigration Courts";

(23) in section 242(a), by adding at the end the following:

"(6) VENUE.—For purposes of judicial review under this section and section 625(d), the venue of a proceeding before the court of appeals is in the judicial circuit in which—

"(A) an immigration trial judge of the Immigration Court issued the original underlying decision in the matter; or

"(B) the underlying administrative action reviewed by the appellate division of the Court occurred.";

(24) in section 242(b)(2) by inserting "trial" after "immigration";

(25) in section 242(b)(3)(A)—

(A) by striking "Attorney General" in the first sentence and inserting "United States"; and

(B) by amending the second sentence to read as follows: "The petition shall be served on the Attorney General and on the officer or employee of the Department of Homeland Security in charge of the district in which the final order of removal under section 240 was entered.";

(26) in section 242(b)(4)(D) by striking "Attorney General's" and inserting "immigration judge's";

(27) in section 242(b)(8) by striking "Attorney General" in each place such term appears and inserting "Secretary of Homeland Security";

(28) in section 242(e)(2)(C) by striking "as prescribed by the Attorney General";

(29) in section 242(e)(3)(A)(ii) by striking "Attorney General" and inserting "Secretary of Homeland Security";

(30) in section 242(g) by striking "Attorney General" and inserting "Secretary of Homeland Security"; and

(31) in section 246(a)—

(A) by striking "Attorney General" each place it appears and inserting "Secretary of Homeland Security"; and

(B) by striking the second sentence and inserting the following: "Upon request of the individual whose status has been rescinded, the Secretary of Homeland Security shall refer such rescission to the United States Immigration Courts for review in accordance with section 604(b)(1)(B).".

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

(1) to the Board of Immigration Appeals or an immigration judge, or any administrative appeal, hearing, review, or other proceeding before such Board or judge, shall be deemed to refer, as appropriate, to the United States Immigration Courts established under title VI of the Immigration and Nationality Act, as added by this Act, to the appropriate division of the Court, or to the corresponding proceedings under this Act before such Court; and

(2) to the authority of the Attorney General to prescribe rules with respect to the Executive Office for Immigration Review, the Board of Immigration Appeals, immigration judges, or administrative appeals, hearings, reviews, or other proceedings conducted under the Immigration and Nationality Act, by such Office, Board, or judges, shall be deemed to confer rulemaking authority on the appellate division of the United States Immigration Courts established in title VI of the Immigration and Nationality Act, as added by this Act.

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

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

(2) in paragraph (10), by inserting "United States Immigration Courts," after "Court of Appeals for Veterans Claims,".

Purpose and Summary

H.R. 6577, the "Real Courts, Rule of Law Act of 2022" amends the Immigration and Nationality Act (INA) and moves the immigration court system out from under the Department of Justice (DOJ) and establishes an independent immigration court consistent with Article I of the U.S. Constitution. An Article I immigration court would be similar to other Article I courts established by Congress to adjudicate matters involving specialized areas of federal law, such as the U.S. Tax Court and the U.S. Court of Veterans Appeals.[1]

Background and Need for the Legislation

The U.S. immigration court system is administered by the Executive Office for Immigration Review (EOIR), an agency housed under the DOJ. EOIR is tasked with conducting immigration court hearings (also known as "removal hearings"), appellate review of decisions by immigration judges (IJs), as well as certain immigration-related administrative hearings.[2] Approximately 578 IJs[3] are assigned to 68 immigration courts across the nation.[4] The Chief Immigration Judge is responsible for establishing operational policies and priorities for the immigration courts.[5] Appellate proceedings are conducted by the Board of Immigration Appeals (BIA), which is comprised of 23 Board Members and is led by a Chair and Vice Chair.[6] EOIR is led by a Director—appointed by the Attorney General—who reports directly to the Deputy Attorney General.[7] The Director is responsible for the overall supervision of agency personnel, and represents the positions and policies of EOIR to the Attorney General, Members of Congress, other government agencies, and the public.[8]

Prior to EOIR's creation in 1983, the immigration court function was housed under the legacy Immigration and Naturalization Service (INS), which was collectively responsible for the adjudication of requests for immigration benefits, as well as immigration enforcement. In creating EOIR, DOJ consolidated the IJ function with the BIA to separate it from the INS and "improve the management, di-

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[1] Fed. Bar Ass'n, *On FBA Proposal Legislative Proposal for a U.S. Immigration Court,* (accessed Jan. 12, 2022), https://www.fedbar.org/wp-content/uploads/2019/10/FBA-Backgrounder-on-Article-I-Immigration-Court-07162019-pdf-1.pdf.

[2] Dep't of Justice Exec. Office for Immigration Review (hereinafter "EOIR"), *About the Office* (Feb. 3, 2021), https://www.justice.gov/eoir/about-office.

[3] EOIR, *Office of the Chief Immigration Judge* (Jan. 2022), https://www.justice.gov/eoir/page/file/1242156/download.

[4] EOIR, *Immigration Court Listing* (Jan. 7, 2022), https://www.justice.gov/eoir/eoir-immigration-court-listing.

[5] EOIR, *Office of the Chief Immigration Judge* (Aug. 2, 2021), https://www.justice.gov/eoir/office-of-the-chief-immigration-judge.

[6] EOIR, *Board of Immigration Appeals* (Sept. 14, 2021), https://www.justice.gov/eoir/board-of-immigration-appeals.

[7] EOIR, *About the Office, supra* note 1.

[8] EOIR, *Office of the Director* (Sept. 27, 2021), https://www.justice.gov/eoir/office-of-the-director.

rection, and control" of the immigration judicial review programs.[9] Under the Homeland Security Act of 2002, the responsibilities of the INS were transferred to the Department of Homeland Security (DHS),[10] while EOIR remained in DOJ.

POLITICIZATION OF THE CURRENT IMMIGRATION COURT SYSTEM

As employees of DOJ, IJs and BIA judges have long been subject to political influence and mismanagement. Allegations of politicized hiring of IJs and BIA members, restrictions on immigration judges' discretion to render independent decisions, attempts to decertify the immigration judges' union, and failure to hire adequate support staff have become the norm. Most recently, the Trump administration exacerbated these issues by restricting IJs' autonomy to manage their dockets and limiting IJ discretion to grant immigrants relief from removal or release from detention.

For years, EOIR has been accused of politicizing the hiring of IJs. For example, in 2008, a DOJ Office of Inspector General investigation found that DOJ officials "violated Department policy and federal law by considering political or ideological affiliations in selecting candidates for the BIA."[11] More recently, following troubling reports from whistleblowers regarding delayed or withdrawn offers to individuals seeking positions as IJs or BIA members, a bicameral group of Members of Congress asked the DOJ Inspector General to investigate the agency's hiring practices.[12] In addition, documents disclosed under the Freedom of Information Act revealed that the DOJ recently changed its hiring practices to promote six IJs "repeatedly accused of bias" to serve on the BIA without the standard two-year probationary period.[13]

Currently, the Attorney General has broad authority to reshape immigration policy through a procedural mechanism known as "self-certification."[14] This authority gives the Attorney General the power to unilaterally reconsider and reverse or modify BIA precedent decisions. Although the self-certification process has been used by administrations on both sides of the aisle, the Trump administration invoked it more than any prior administration, using it 17 times to restrict IJs' authority to manage their dockets and make it more difficult for immigrants to qualify for relief from removal.[15] In contrast, under the Obama and Bush administrations, both of which lasted 8 years each, the self-certification mechanism was only used four and ten times, respectively.[16]

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[9] 48 Fed. Reg. 8038 (Feb. 25, 1983).

[10] Homeland Security Act of 2002, Pub. L. No. 107–296 (Nov. 25, 2002).

[11] Dep't of Justice Office of Inspector General & Office of Professional Responsibility, *An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General* (Jul. 28, 2008), https://oig.justice.gov/sites/default/files/legacy/special/s0807/final.pdf.

[12] Letter from Representative Elijah Cummings et al. to the Honorable Michael E. Horowitz, Inspector General, Dep't of Justice (May 8, 2018), https://oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Dems%20to%20Horowitz.pdf.

[13] Tanvi Misra, *DOJ Changed Hiring to Promote Restrictive Immigration Judges*, ROLL CALL (Oct. 29, 2019), https://www.rollcall.com/news/congress/doj-changed-hiring-promote-restrictive-immigration-judges/.

[14] 8 C.F.R. § 1003.1(h).

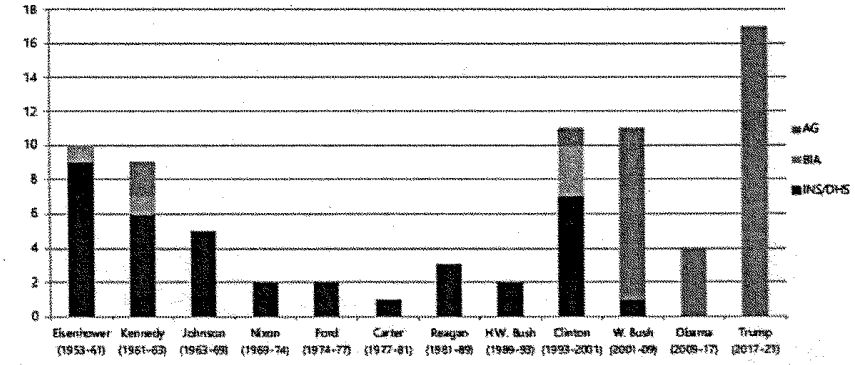
[15] Sarah Pierce, *Obscure but Powerful—Shaping U.S. Immigration Policy through Attorney General Referral and Review*, MIGRATION POLICY INSTITUTE, at 12 (Jan. 2021), https://www.migrationpolicy.org/sites/default/files/publications/rethinking-attorney-general-referral-review_final.pdf.

[16] *Id.*

Figure 2

FIGURE 1

Cases Referred to the Attorney General by Administration and Referring Entity, 1953–2021



AG = Attorney General; BIA = Board of Immigration Appeals; INS = Immigration and Naturalization Service; DHS = Department of Homeland Security.

Notes: Cases are grouped by date of referral, not the date of decision, which in a small number of cases occurred in a separate administration. For a chart that divides the referrals by attorney general, see Jennifer S. Breen, "Labor, Law Enforcement, and 'Normal Times': The Origins of Immigration's Home within the Department of Justice and the Evolution of Attorney General Control over Immigration Adjudications," *University of Hawai'i Law Review* 42, no. 1 (2019): 1–62, 36.

Source: Migration Policy Institute (MPI) analysis of data from Executive Office for Immigration Review, "Agency Decisions," accessed January 14, 2020.

Thus far, Attorney General Garland has used the self-certification process to vacate a number of the Trump-era decisions.[17] Regardless of one's position on the substance of these decisions, the use of self-certification to reverse policies from previous administrations has been criticized as politicizing the immigration court system and "whipsaw[ing IJs] between . . . radical departures in past precedent that aren't necessarily sustained long term."[18]

The prior administration took this authority one step further by restricting the judicial discretion of IJs through the regulatory process. In December 2020, the Trump administration finalized a rule restricting IJs' authority to administratively close or reopen proceedings and giving the Director of EOIR the power to intervene and render decisions in individual cases.[19] In March 2021, the rule was enjoined by federal court order.[20]

EFFORTS TO DECERTIFY THE IMMIGRATION JUDGES UNION

On August 8, 2019, DOJ, under former President Trump, petitioned the Federal Labor Relations Authority (FLRA) to decertify the National Association of Immigration Judges (NAIJ) and strip IJs of their right to unionize, arguing that IJs are "management of-

[17] Denise Noonan Slavin & Rebecca Scholtz, *Attorney General Vacates Matter of Castro-Tum and Matter of A-C-A-A-*, CLINIC (Aug. 31, 2021), https://cliniclegal.org/resources/appeals/board-immigration-appeals/attorney-general-garland-vacates-matter-castro-tum-and.

[18] Kim Bellware, *On Immigration, Attorney General Barr is His Own Supreme Court. Judges and Lawyers Say That's a Problem*, THE WASHINGTON POST (Mar. 5, 2020), https://www.washingtonpost.com/immigration/2020/03/05/william-barr-certification-power/ (quoting Dana Leigh Marks, president emeritus at the Nat'l Ass'n of Immigration Judges).

[19] *See* App. Pro. and Decisional Finality in Immigration Proc.; Admin. Closure, 85 Fed. Reg. 81,588 (Dec. 16, 2020).

[20] *See Centro Legal de la Raza, et al., v. EOIR, et al.*, No. 3:21–cv–00463–SI (N.D. Cal. 2021).

ficials" excluded from union representation.[21] The FLRA agreed and a decision to dissolve the union was pending reconsideration when President Biden took office. In June 2021, DOJ withdrew its opposition to the NAIJ's motion to reconsider the FLRA decision and in December, DOJ formally recognized the NAIJ once again.[22] Although this is not the first time that DOJ has attempted to break up the NAIJ, when it was previously challenged in 2000, the FLRA ruled in favor of the union.

FAILURE TO HIRE CLERICAL AND SUPPORT STAFF

While EOIR has sought hundreds of millions of dollars to hire new IJs, it has failed, in recent history, to hire sufficient levels of clerical and other staff to support the work of the new corps of judges.[23] As a result, judges already struggling to manage overloaded dockets are forced to continue hearing cases without the help of law clerks and legal assistants.[24] According to the NAIJ, under the Trump administration, the ratio of support staff to judges had fallen to between one-half to one-third of levels under the previous administration.[25] As a result, the largest immigration courts in the country were "functioning at 40 to 50 percent capacity on staffing needs" and EOIR had to implement costly stopgap measures in high-demand immigration courts. These measures included detailing staff from less busy immigration courts and reassigning staff from other DOJ components.[26]

IMPACT OF POLITICIZATION ON JUDGES AND IMMIGRANTS

Political influence and mismanagement have led to considerable upheaval within the IJ corps and exacerbated backlogs.[27] In 2019, 45 IJs "left, moved into new roles in the immigration court system," or passed away—nearly double the number in the previous two fiscal years.[28] Interviews with outgoing judges indicated that many of these departures and transfers were due to "frustration over a mounting number of policy changes that, [judges] argue, chipped away at their authority."[29] As experienced adjudicators left EOIR, DOJ prioritized the hiring of individuals with prosecutorial and immigration enforcement backgrounds—and allegedly even reneged on offers to individuals perceived as pro-immigrant—

[21] *See generally*, Am. Immigration Lawyers Ass'n, *Featured Issue: DOJ Moves to Decertify the Immigration Judges Union*, (Dec. 7, 2021), https://www.aila.org/advo-media/issues/all/doj-move-decertify-immigration-judge-union.

[22] Withdrawal of Opp'n to Resp't Mot. for Recons., Dep't of Justice & Nat'l Ass'n of Immigration Judges Int'l Fed'n of Pro. and Tech. Engineers Judicial Council 2. No. WA–RP–19–0067–REC (F.L.R.A., Jun. 25, 2021) https://www.aila.org/File/Related/19081303k.pdf.

[23] *See* Exec. Office for Immigration Review, *FY 2020 Budget Request at a Glance*, DEP'T OF JUSTICE, (Aug. 20, 2021), https://www.justice.gov/doj/fy-2020-budget-and-performance-summary (requesting budget increase of $168.5 million to hire 100 new immigration judges and new support staff).

[24] Nat'l Ass'n of Immigration Judges, *The Immigration Court—In Crisis and In Need of Reform*, at 2 (Aug. 2019), https://www.naij-usa.org/images/uploads/publications/Immigration_Court_in_Crisis_and_in_Need_of_Reform.pdf.

[25] *Id.*

[26] *Id.*

[27] Beth Fertig, *American Bar Association Says Immigration Courts Are 'On The Brink of Collapse'*, NPR, (Jun. 4, 2019), https://www.npr.org/2019/06/04/729737514/american-bar-association-says-immigration-courts-are-on-the-brink-of-collapse.

[28] Priscilla Alvarez, *Immigration Judges Quit in Response to Administration Policies*, CNN (Dec. 27, 2019), https://www.cnn.com/2019/12/27/politics/immigration-judges-resign/index.html.

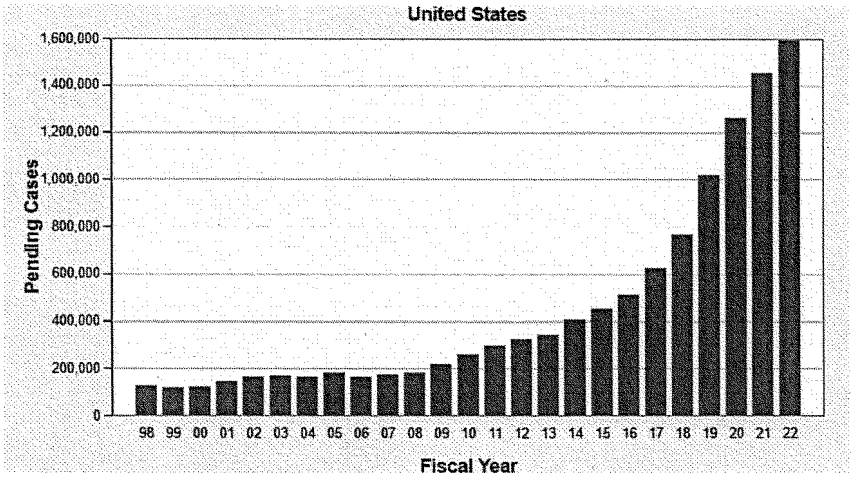
[29] *Id.*

threatening the immigration court system's image as an arena for impartial adjudication.[30]

The Trump administration hired over 280 immigration judges over its four years, who now comprise over 50 percent of the current IJ corps.[31] This surge in hiring came on the heels of Attorney General Sessions' "streamlined hiring plan" that resulted in a "reduction of 74 percent" of the time it takes to onboard IJs.[32] As of September 2021, EOIR reported having 559 IJs on staff.[33] Since President Biden took office, approximately 90 new IJs have been hired.[34]

Mismanagement of the IJ corps has also undeniably exacerbated longstanding backlogs—under the prior administration, the immigration court backlog doubled and now sits at a record 1.6 million cases.[35]

Figure 1



The Biden administration has taken steps to reduce backlogs and restore our immigration court system. The Departments of Homeland Security and Justice published an interim final rule on March 29, 2022 to mitigate the immigration court backlog by restructuring processing for individuals with a credible fear of persecution

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[30] Priscilla Alvarez, *Jeff Sessions is Quietly Transforming the Nation's Immigration Courts*, THE ATLANTIC (Oct. 17, 2018), https://www.theatlantic.com/politics/archive/2018/10/jeff-sessions-carrying-out-trumps-immigration-agenda/573151/; *see also* Tal Kopan, *Immigration Judge Applicant Says Trump Administration Blocked Her Over Politics*, CNN (June 21, 2018), https://www.cnn.com/2018/06/21/politics/immigration-judge-applicant-says-trump-administration-blocked-her-over-politics/index.html.

[31] Greg Chen, *The Urgent Need to Restore Independence to America's Politicized Immigration Courts*, JUST SECURITY, (Nov. 12, 2020), https://www.justsecurity.org/73337/the-urgent-need-to-restore-independence-to-americas-politicized-immigration-courts/.

[32] Dep't of Justice, Memorandum for the Attorney General from Dana J. Boente, Acting Deputy Attorney General, *Immigration Judge Hiring Process*, (Apr. 4, 2017), https://www.humanrightsfirst.org/sites/default/files/DOJ-FOIA-Results-%20Memoranda.pdf.

[33] EOIR, *Executive Office for Immigration Review Adjudication Statistics: Immigration Judge Hiring* (Oct. 2021), https://www.justice.gov/eoir/page/file/1242156/download.

[34] EOIR, *Office of the Chief Immigration Judge* (Jan. 2022), https://www.justice.gov/eoir/page/file/1242156/download; *EOIR announces 25 New Immigration Judges* (Mar. 25, 2022), https://www.justice.gov/eoir/page/file/1487036/download.

[35] Transactional Records Access Clearinghouse (TRAC), *Immigration Court Backlog Tool*, SYRACUSE UNIVERSITY, https://trac.syr.edu/phptools/immigration/court_backlog/.

at the border.[36] Under the new rule, rather than being placed in the immigration court backlog, these individuals would have their claims for humanitarian protection adjudicated by an asylum officer.[37] If the claim is denied, the case would then be transferred to immigration court for a streamlined and expedited hearing.[38] When the rule is implemented, it is estimated that asylum cases would be processed more quickly than they are under the current system and that EOIR would experience "at least a 15 percent reduction in their overall credible fear workload." This would substantially mitigate the immigration court backlog.[39] Although such policy changes bring improvements, they can be quickly reversed by a future administration.

Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, the following hearing was used to develop H.R. 6577: "For the Rule of Law, An Independent Immigration Court," a hearing held on January 20, 2022 before the House Committee on the Judiciary, Subcommittee on Immigration and Citizenship. The Subcommittee heard testimony from:

- The Honorable Mimi E. Tsankov, President, National Association of Immigration Judges;
- Elizabeth J. Stevens, Of Counsel, Poarch Thompson Law, on behalf of the Federal Bar Association;
- Karen T. Grisez, Pro Bono Counsel, Fried, Frank, Harris, Shriver & Jacobson LLP, on behalf of the American Bar Association;
- The Honorable Andrew R. Arthur, Resident Fellow in Law and Policy, Center for Immigration Studies.

The hearing focused on the need to restructure the U.S. immigration court system into an entity independent from the DOJ by exploring the history of political influence in the EOIR and the impact that such influence can have on the judicial independence of immigration judges and due process for respondents.

Committee Consideration

On May 11, 2022, the Committee met in open session and ordered the bill, H.R. 6577, favorably reported with an amendment in the nature of a substitute, by a rollcall vote of 24 to 12, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House rule XIII, the following rollcall votes occurred during the Committee's consideration of H.R. 6577:

1. An amendment by Mr. Biggs to change the effective date of the bill until after each order of removal entered by an immigration judge prior to the date of enactment has been fully executed was defeated by a rollcall vote of 11 to 23. The vote was as follows:

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[36] 87 Fed. Reg. 18078 (Mar. 29, 2022).
[37] *Id.*
[38] *Id.*
[39] *Id.*

Roll Call No. 7 **Date:** 5/11/22

COMMITTEE ON THE JUDICIARY

House of Representatives

117th Congress

Amendment # 1 (ANJ) to HR 6577 offered by Rep. Biggs

☐ PASSED

☑ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)		✓	
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)		✓	
Karen Bass (CA-37)		✓	
Hakeem Jeffries (NY-08)		✓	
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)			
Ted Lieu (CA-33)			
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)		✓	
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)		✓	
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Veronica Escobar (TX-16)		✓	
Mondaire Jones (NY-17)		✓	
Deborah Ross (NC-02)		✓	
Cori Bush (MO-01)		✓	
	AYES	NOS	PRES
Jim Jordan (OH-04)			
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Darrell Issa (CA-50)	✓		
Ken Buck (CO-04)			
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)	✓		
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)	✓		
Greg Steube (FL-17)			
Tom Tiffany (WI-07)	✓		
Thomas Massie (KY-04)			
Chip Roy (TX-21)			
Dan Bishop (NC-09)	✓		
Michelle Fischbach (MN-07)	✓		
Victoria Spartz (IN-05)			
Scott Fitzgerald (WI-05)			
Cliff Bentz (OR-02)	✓		
Burgess Owens (UT-04)	✓		
	AYES	NOS	PRES.
TOTAL	11	23	

2. An amendment by Mr. Biggs to give the trial division of the Immigration Courts original jurisdiction over credible fear determinations under INA section 235(b) was defeated by a rollcall vote of 12 to 23. The vote was as follows:

Roll Call No. 8 **Date:** 5/11/22

COMMITTEE ON THE JUDICIARY

House of Representatives

117th Congress

Amendment # 2 (ANJ) to HR 6577 offered by Rep. Biggs

☐ PASSED

☑ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)		✓	
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)		✓	
Karen Bass (CA-37)		✓	
Hakeem Jeffries (NY-08)		✓	
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)		✓	
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)			
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)		✓	
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)		✓	
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Veronica Escobar (TX-16)		✓	
Mondaire Jones (NY-17)			
Deborah Ross (NC-02)		✓	
Cori Bush (MO-01)		✓	
	AYES	NOS	PRES
Jim Jordan (OH-04)	✓		
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Darrell Issa (CA-50)	✓		
Ken Buck (CO-04)			
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)	✓		
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)	✓		
Greg Steube (FL-17)			
Tom Tiffany (WI-07)	✓		
Thomas Massie (KY-04)			
Chip Roy (TX-21)			
Dan Bishop (NC-09)	✓		
Michelle Fischbach (MN-07)	✓		
Victoria Spartz (IN-05)			
Scott Fitzgerald (WI-05)			
Cliff Bentz (OR-02)	✓		
Burgess Owens (UT-04)	✓		
	AYES	NOS	PRES.
TOTAL	12	23	

3. A motion to report H.R. 6577, as amended, was agreed to by a rollcall vote of 24 to 12. The vote was as follows:

Roll Call No. 9 **Date:** 5/11/22

COMMITTEE ON THE JUDICIARY

House of Representatives
117th Congress

Final Passage on: H.R. 6577

☒ PASSED
☐ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)	✓		
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)	✓		
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-22)	✓		
Karen Bass (CA-37)	✓		
Hakeem Jeffries (NY-08)	✓		
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)	✓		
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Veronica Escobar (TX-16)	✓		
Mondaire Jones (NY-17)			
Deborah Ross (NC-02)	✓		
Cori Bush (MO-01)	✓		
	AYES	NOS	PRES
Jim Jordan (OH-04)		✓	
Steve Chabot (OH-01)		✓	
Louie Gohmert (TX-01)		✓	
Darrell Issa (CA-50)		✓	
Ken Buck (CO-04)			
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)		✓	
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)		✓	
Greg Steube (FL-17)			
Tom Tiffany (WI-07)		✓	
Thomas Massie (KY-04)			
Chip Roy (TX-21)			
Dan Bishop (NC-09)		✓	
Michelle Fischbach (MN-07)		✓	
Victoria Spartz (IN-05)			
Scott Fitzgerald (WI-05)			
Cliff Bentz (OR-02)		✓	
Burgess Owens (UT-04)		✓	
	AYES	NOS	PRES.
TOTAL	24	12	

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of House rule X, are incorporated in the descriptive portions of this report.

Committee Estimate of Budgetary Effects

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

New Budget Authority and Congressional Budget Office Cost Estimate

Pursuant to clause 3(c)(2) of House rule XIII and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause (3)(c)(3) of House rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received from the Director of the Congressional Budget Office a budgetary analysis and a cost estimate of this bill.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 6577 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H.R. 6577 would establish an independent immigration court consistent with Article I of the United States Constitution. The bill would reform the process by which individuals are appointed to serve as immigration judges, give the Immigration Court the authority to appoint temporary immigration judges and establish temporary court facilities to address emergencies, and would require the publication of all court rules, procedures, precedent decisions, and pleadings. Additionally, the bill would give immigration judges the authority to impose civil money penalties for contempt of court and preserve the privilege of counsel, ensure interpreter services, and mandate legal orientation programs for individuals appear before the Court.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H.R. 6577 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of House rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short Title; Table of Contents

Sec. 1(a).—Short Title. Establishes the short title of the Act as the "Real Courts, Rule of Law Act of 2021".

Sec. 2. Establishment and Structure of the United States Immigration Court

Amends the Immigration and Nationality Act (INA) by inserting a new title at the end, as follows:

Sec. 601. Establishment and Structure.

Sec. 601(a).—Establishment. Sets forth Article I of the United States Constitution as the basis for an independent immigration court system, to be known as the United States Immigration Courts ("Immigration Courts"). Provides that the Immigration Courts shall have a trial division, an appellate division, and an administrative division and that the principal office of the Courts shall be in the Washington, DC metropolitan area.

Sec. 601(b).—Appellate Division. Provides that the appellate division shall consist of 21 appeals judges, one of whom shall serve as chief judge.

- *Appointment of Immigration Appeals Judges.* Requires the President to appoint appeals judges with the advice and consent of the Senate. Appeals judges shall serve for a 15-year term and may be reappointed for additional 15-year terms.
- *Chief Judge.* Requires the chief judge to be the most senior among appeals judges who (1) have served for 1 or more years; (2) have at least 5 years remaining in their term of office; and (3) have not previously served as chief judge. The chief judge shall serve for a term of 5 years but may serve longer if no other appeals judge is eligible to assume the role.
- *En Banc Exercise of Appellate Division Authority in Non-Adjudicative Matters.* Sets forth the situations in which the appellate division exercises its en banc authority in non-adjudicative matters as follows:
  - Appointing and removing immigration trial judges;
  - Appointing a chief administrative officer to the administrative council;
  - Promulgating rules and court policies and procedures; and
  - Addressing other non-adjudicative matters as determined by the chief judge.

Requires the Appellate Division to exercise its en banc authority by a majority vote, with a quorum of three appeals judges or two thirds of the appeals judges in active service, whichever is greater.

Sec. 601(c).—Trial Division. Sets forth the composition of the trial division.

- *Appointment of Immigration Trial Judges.* Requires the appellate division to appoint trial judges. Trial judges shall serve for a 15-year term but may be reappointed for additional 15-year terms.
- *Chief Trial Judges.* Requires the chief judge to appoint a chief trial judge to each geographical location in which the trial division operates, responsible for overseeing the administrative operations of the trial division in such location. Chief trial judges shall serve for a 5-year term but may be reappointed for

terms of 5 years (or less), as determined by the appellate division.

Sec. 601(d).—Administrative Division. Establishes an administrative division of the Immigration Courts, consisting of an administrative council and an administrative office. The administrative council is comprised of the chief judge of the appellate division and the chief trial judge of each court of the trial division. The administrative council shall meet at least annually to discuss the needs of the Courts as well as any matters in which the administration of justice can be improved. The administrative office is managed by a chief administrative officer, who is responsible for:

- Implementing and administering the operational rules, policies, and procedures of the Immigration Courts established by the appellate division or the administrative council;
- Assisting the administrative council in executing its responsibilities; and
- Fulfilling other administrative duties and responsibilities under the Act or delegated by the chief judge.

Determination of Number of Required Judges and Geographical Areas of Service. Requires the administrative council to conduct a survey to determine the number of trial judges and courts required to provide for the effective administration of justice. The survey must be conducted not later than 1 year after the application date of the Real Courts, Rule of Law Act of 2022 and every 4 years thereafter, and must solicit information and recommendations from the public. Survey results, as well as any immigration judge vacancies or new staff positions, must be published.

Merit Selection Panel Requires the administrative council to establish a merit selection panel, consisting of qualified individuals with experience in a diverse range of settings, to assist in identifying and recommending qualified immigration judges.

Sec. 602. Immigration Appeals Judges and Trial Judges.

Sec. 602(a).—Qualifications of Immigration Judges. Requires immigration judges to—

- be a member in good standing of the bar of a Federal court or the highest court of a State for at least 10 years;
- possess and have a reputation for integrity and good character; a commitment to equal justice under the law; and outstanding legal ability and competence;
- exhibit demeanor, character, and personality that indicate a judicial temperament; and
- be qualified to conduct fair and impartial hearings consistent with due process.

Sec. 602(b).—Additional Factors for the Appointment of Immigration Judges. When appointing judges, requires the President and appellate division to ensure that—

- qualified candidates are identified without regard to a protected factor under Federal law;
- the corps of judges selected is comprised primarily of those with prior immigration law experience and reflects a balance of prior experience in the public and private sectors; and
- candidates are selected without regard to political affiliation or perceived political ideology.

Sec. 602(c).—Prohibited Relationships. Prohibits the appointment of a trial judge who is related by blood (first-, second-, or third-degree) or marriage to a current appeals judge.

Sec. 602(d).—Continuing Education. Requires all immigration judges to satisfy continuing education requirements as set by the administrative council.

Sec. 602(e).—Salaries. Sets forth the compensation for immigration judges; requires judges to serve on a full-time basis; and prohibits judges from practicing law or engaging in other employment that would impede their impartiality.

Sec. 602(f).—Removal. Provides that appeals judges may be removed from office by the President and trial judges may be removed from office by the appellate division only for cause. Requires notice to be given prior to removal. Requires the appellate division to establish procedures for receiving and responding to complaints against judges.

Sec. 602(g).–(n).—Retirement. Sets forth the retirement benefits for immigration judges. Sets the mandatory retirement age for immigration judges at 80 and sets forth when immigration judges are eligible for retirement benefits and when they can be revoked or forfeited.

Sec. 603. Temporary Judges and Court Facilities.

Sec. 603(a).—In General. Extends appellate division en banc authority to appoint temporary trial judges, recall retired trial or appeals judges, and establish temporary court facilities upon a determination by the administrative council that Court resources are insufficient to address current needs.

Sec. 603(b).—Recall of Retired Judges. Sets forth the authority and compensation of retired judges who are recalled for service. Only judges who provide written notice of their willingness to be recalled for service may be recalled.

Sec. 603(c).—Reporting Requirements. Requires the appellate division, prior to exercising its en banc authority under this section, to report to the Committees on the Judiciary of the House and Senate, details of the need, an assessment of required resources, and the estimated duration of the need, with updated reporting every 30 days. All temporary judge appointments shall be terminated and temporary court facilities closed upon the earliest of the date that the appellate division determines that normal court operations may resume; the date that Congress directs such actions be taken by concurrent resolution; or 210 days after the submission of the appellate division's initial report unless such period is extended by Congress.

Sec. 604. Jurisdiction.

Sec. 604(a).—Appellate Division Jurisdiction. Sets forth the appellate division's jurisdiction over appeals of trial judge decisions; appeals of decisions by the Secretary of Homeland Security on certain immigrant visa petitions; original proceedings and appeals in disciplinary matters concerning attorneys and practitioners appearing before the Immigration Courts; and all other matters over which the Board of Immigration Appeals (BIA) had authority on the day before the application date of the Act.

Sec. 604(b).—Trial Division Jurisdiction. Sets forth the trial division's jurisdiction over removal proceedings; review of rescissions of lawful permanent residence; review of credible fear and reasonable

fear determinations; review of certain applications for asylum or relief under the U.N. Convention Against Torture; custody and bond determinations; determinations as to whether administrative actions filed on behalf of individuals in removal proceedings were unlawfully withheld or unreasonably delayed; disciplinary matters concerning attorneys and practitioners; and all matters over which immigration judges had authority on the day before the effective date of the Act.

Sec. 621. Proceedings.

Sec. 621(a).—Trial Division Proceedings. Provides that proceedings originating in the trial division shall be heard and decided by a single trial judge. Trial judges have the authority to record and receive evidence, administer oaths, examine and cross-examine witnesses, set deadlines, render findings of fact and conclusions of law, render decisions on eligibility for relief from removal, order and take depositions, issue subpoenas, and order responses to written interrogatories.

Sec. 621(b).—Appellate Division Proceedings. Provides that appellate proceedings shall be heard by three-judge panels or en banc, with decisions made by majority vote, unless otherwise determined by the appellate division. Panel decisions may be reconsidered en banc.

Sec. 621(c).—Contempt Authority. Authorizes immigration judges to issue civil money penalties to individuals who obstruct justice or are in contempt of the judge or the Court.

Sec. 621(d).—Assistance to the Court. Allows the Immigration Courts to receive the same assistance in carrying out its duties, including nationwide service of subpoena, as is available to other United States courts. Allows the presiding judge to request the presence of a U.S. Marshal in any court proceeding and allows chief trial judges to request the assistance of U.S. Marshals for personal protection or other purposes.

Sec. 621(e).—Opinions and Orders. Requires opinions and orders to be issued according to the rules provided by the appellate division. Decisions on the merits of an application or request for relief from removal shall, to the greatest extent practicable, be in writing and include an analysis of the facts and legal reasoning for the decision. Precedent decisions of the appellate division are binding, unless subsequently modified or reversed by the appellate division, a court of appeals, or the Supreme Court.

Sec. 621(f).—Recusal of Judges. Extends the disqualification process of federal judges articulated in 28 U.S.C. § 455 to immigration judges.

Sec. 622. Immigration Court Rules of Practice and Procedure; Policies.

Sec. 622(a).—Immigration Court Rules of Practice and Procedure. Establishes the en banc authority of the appellate division to promulgate certain rules of practice and procedure, including those governing use of video teleconferencing technology. Creates a presumption against the use of such technology where relief from removal is being evaluated.

Sec. 622(b).—Local Rules. Allows chief trial judges to establish local rules if a majority of trial judges in the geographical area concur with the rules, and the chief judge approves the rules.

Sec. 622(c).—Immigration Court Fees. Fees collected by the Immigration Courts must be consistent with fees collected for the same or a similar purpose by federal district courts or DHS. Requires the Courts to develop procedures to allow fee waivers due to financial hardship.

Sec. 622(d).—Publication of Rules and Fees. Requires the Courts to maintain a public website that contains all the rules, including local rules, and fees.

Sec. 623. Representation of Parties and Other Assistance.

Sec. 623(a).—Right to Counsel. Provides that individuals appearing before the Immigration Courts shall have the privilege of representation by counsel of their own choosing (at no expense to the government).

Sec. 623(b).—Interpreters. Requires the appellate division to establish a program to ensure the use of qualified interpreters in court proceedings.

Sec. 623(c).—Legal Orientation Program. Requires the Immigration Courts to contract with legal services and non-profit organizations to explain court procedures and provide basic legal information to individuals who are or may become parties to court proceedings.

Sec. 624. Availability of Information. Requires that precedent decisions be published in the form best adapted for public information and use. Requires all non-precedent decisions, pleadings, and transcripts be made available to the public, while ensuring that confidential and sensitive information is not disclosed.

Sec. 625. Scope of Review and Appeals.

Sec. 625(a).—In General. Establishes the authority of immigration judges—with respect to the individuals appearing before them—to consider all constitutional claims and questions of law de novo; compel administrative action on an application or petition that has been unlawfully withheld or unreasonably delayed; and set aside unlawful administrative actions.

Sec. 625(b).—Trial Division Proceedings. Provides that the decisions of trial judges shall be based only on the evidence produced at the hearing and include the judge's findings of fact, reasoning to support discretionary determinations, and conclusions of law. Allows trial judges to take judicial notice of commonly known facts.

Sec. 625(c).—Review by Appellate Division. Provides that review of an appeal of a trial judge decision shall be limited to the issues raised and based on the record of proceedings. Prohibits the appellate division from engaging in fact-finding unless findings of fact are challenged and determined to be clearly erroneous.

Sec. 625(d).—Review by the United States Court of Appeals. Provides for judicial review of an appellate division decision by both parties. If the government appeals a decision individuals shall be provided counsel, if the appellate court, under existing procedures, determines that such individual is financially unable to obtain adequate representation.

Sec. 3. Employees

Sec. 3(a).—Clerk of the Court. Authorizes the chief judge to appoint a clerk of the court.

Sec. 3(b).—Chambers Staff. Authorizes immigration judges to appoint law clerks and secretaries.

Sec. 3(c).—Other Court Staff. Authorizes the clerk of the court and the chief administrative officer to appoint deputies and employees.

Sec. 3(d).—Staff Salaries. Authorizes the appellate division to set and adjust pay rates of the clerk, the chief administrative officer, and other employees.

Sec. 3(e).—Preference Eligibles. Requires that preference be given to applicants who are preference eligible as defined in 5 U.S.C. § 2108(3).

Sec. 3(f).—Experts and Consultants. Allows the Courts to use expert and consultant services.

Sec. 4. Budget and Expenditures

Sec. 4(a).—Court Budget. Authorizes the Immigration Courts to establish an annual budget without review or modification by the executive branch.

Sec. 4(b).—Permissible Court Expenditures. Allows the court to make expenditures as necessary to efficiently perform its judicial and administration functions. The court may receive and expend funds either directly or by transfer to the Director of the Administrative Office of the United States Courts, another Article I court, or an executive agency to cover certain expenses.

Sec. 4(c).—Method and Source of Expenditures. Requires all court expenditures to be paid upon presentation of itemized vouchers signed by the certifying officer designated by the chief judge.

Sec. 5. Annual Report

Requires the chief judge to submit a report to the Committee on the Judiciary in the House and Senate by April 1 of each year, summarizing the workload of the Immigration Courts in the previous fiscal year. Such report shall contain: demographic information of respondents and rates of representation; results of removal proceedings and bond hearings; the number of cases currently pending before the trial and appellate divisions and the change in this number from the prior fiscal year; the average number of days a respondent must wait to have their case heard; and any other information requested by the Committees that is timely and reasonable.

Sec. 6. Application Date; Transition Provisions

Sec. 6(a).—Application Date. Establishes the application date of the Act as follows:

- If there are 180 days or more between the date of enactment and the first day of the first full fiscal year after enactment, the application date is the first day of the full fiscal year after enactment.
- If there are less than 180 days between the date of enactment and the first day of the first full fiscal year after enactment, the application date is the first day of the second full fiscal year after enactment.
- Further, the law may only go into effect after at least three immigration appeals judges have been duly appointed by the President with advice and consent of the Senate.

Sec. 6(b).—Transition Period and Appointment of Interim Immigration Judges. Establishes a four-year transition period starting

on the application date of the Act. Provides that each individual serving as an immigration judge in the EOIR on the date that is the day before the application date of this Act shall become an interim immigration trial judge.

Sec. 6(c).—First Appointments to the United States Immigration Courts.

Appellate Division. Establishes term limits for the first 21 appeals judges. Each judge can continue to serve after this term if they are reappointed:

- The initial terms of the first 7 appeals judges appointed will each serve for shall terminate on the date that is 5 years after the application date;
- The initial terms of the next 7 appeals judges appointed will each serve for shall terminate on the date that is 10 years after the application date; and
- The initial terms of the next 7 appeals judges appointed will each serve for shall terminate on the date that is 15 years after the application date.

Trial Division. Requires the appellate division to establish procedures and requirements for the appointment of trial judges not later than 180 days before the end of the transition period. Trial judges appointed to fill vacancies during the transition period will serve until the earlier of the date that a successor is appointed or one year after the end of the transition period.

Sec. 6(d).—Prior Service Credit. Allows an immigration judge who elects to take retirement pay under new section 602 of the INA to count up to five years of their time as a Board of Immigration Appeals, an immigration judge, or an administrative law judge in the Executive Office for Immigration Review of the Department of Justice when computing their service.

Sec. 7. Institutional Transfer; Continuity of Proceedings

Sec. 7(a).—Existing Precedent. Provides that the decisions and rules of the Attorney General and the BIA that were in effect on the day before the application date of the Act will remain in effect unless overruled, amended, or revoked.

Sec. 7(b).—Institutional Transfer. All functions, court personnel, and unexpended funds of the Executive Office for Immigration Review will transfer to the Immigration Courts on the application date of the Act. Cases before an immigration judge or the BIA will transfer to the appropriate division.

Sec. 8. Review by the Judicial Conference; Consultation Requirements

Requires the Judicial Conference to review court adjudications at least once every four years and submit a report of its findings to the appellate division and the House and Senate Committees on the Judiciary.

Sec. 9. Technical and Conforming Provisions

Amends the INA to conform with the provisions of the Act. Amends Section 109 of the Ethics in Government Act of 1978 to add "United States Immigration Courts."

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

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TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—

(1) The term "administrator" means the official designated by the Secretary of State pursuant to section 104(b) of this Act.

(2) The term "advocates" includes, but is not limited to, advises, recommends, furthers by overt act, and admits belief in.

(3) The term "alien" means any person not a citizen or national of the United States.

(4) The term "application for admission" has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa.

(5) The term "Attorney General" means the Attorney General of the United States.

(6) The term "border crossing identification card" means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations. Such regulations shall provide that (A) each such document include a biometric identifier (such as the fingerprint or handprint of the alien) that is machine readable and

(B) an alien presenting a border crossing identification card is not permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien.

(7) The term "clerk of court" means a clerk of a naturalization court.

(8) The terms "Commissioner" and "Deputy Commissioner" mean the Commissioner of Immigration and Naturalization and a Deputy Commissioner of Immigration and Naturalization, respectively.

(9) The term "consular officer" means any consular, diplomatic, or other officer or employee of the United States designated under regulations prescribed under authority contained in this Act, for the purpose of issuing immigrant or nonimmigrant visas or, when used in title III, for the purpose of adjudicating nationality.

(10) The term "crewman" means a person serving in any capacity on board a vessel or aircraft.

(11) The term "diplomatic visa" means a nonimmigrant visa bearing that title and issued to a nonimmigrant in accordance with such regulations as the Secretary of State may prescribe.

(12) The term "doctrine" includes, but is not limited to, policies, practices, purposes, aims, or procedures.

(13)(A) The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.

(B) An alien who is paroled under section 212(d)(5) or permitted to land temporarily as an alien crewman shall not be considered to have been admitted.

(C) An alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States for purposes of the immigration laws unless the alien—

(i) has abandoned or relinquished that status,

(ii) has been absent from the United States for a continuous period in excess of 180 days,

(iii) has engaged in illegal activity after having departed the United States,

(iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this Act and extradition proceedings,

(v) has committed an offense identified in section 212(a)(2), unless since such offense the alien has been granted relief under section 212(h) or 240A(a), or

(vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

(14) The term "foreign state" includes outlying possessions of a foreign state, but self-governing dominions and territories under mandate or trusteeship shall be regarded as separate foreign states.

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A)(i) an ambassador, public minister, or career diplomatic or consular officer who has been accredited by a foreign govern-

ment recognized de jure by the United States and who is accepted by the President or by the Secretary of State, and the members of the alien's immediate family;

(ii) upon a basis of reciprocity, other officials and employees who have been accredited by a foreign government recognized de jure by the United States, who are accepted by the Secretary of State, and the members of their immediate families; and

(iii) upon a basis of reciprocity, attendants, servants, personal employees, and members of their immediate families, of the officials and employees who have a nonimmigrant status under (i) and (ii) above;

(B) an alien (other than one coming for the purpose of study or of performing skilled or unskilled labor or as a representative of foreign press, radio, film, or other foreign information media coming to engage in such vocation) having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure;

(C) an alien in immediate and continuous transit through the United States, or an alien who qualifies as a person entitled to pass in transit to and from the United Nations Headquarters District and foreign countries, under the provisions of paragraphs (3), (4), and (5) of section 11 of the Headquarters Agreement with the United Nations (61 Stat. 758);

(D)(i) an alien crewman serving in good faith as such in a capacity required for normal operation and service on board a vessel, as defined in section 258(a) (other than a fishing vessel having its home port or an operating base in the United States), or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft;

(ii) an alien crewman serving in good faith as such in any capacity required for normal operations and service aboard a fishing vessel having its home port or an operating base in the United States who intends to land temporarily in Guam or the Commonwealth of the Northern Mariana Islands and solely in pursuit of his calling as a crewman and to depart from Guam or the Commonwealth of the Northern Mariana Islands with the vessel on which he arrived;

(E) an alien entitled to enter the United States under and in pursuance of the provisions of a treaty of commerce and navigation between the United States and the foreign state of which he is a national, and the spouse and children of any such alien if accompanying or following to join him: (i) solely to carry on substantial trade, including trade in services or trade in technology, principally between the United States and the foreign state of which he is a national; (ii) solely to develop and direct the operations of an enterprise in which he has invested, or of an enterprise in which he is actively in the process of investing, a substantial amount of capital; or (iii) solely to perform services in a specialty occupation in the United States if the alien is a national of the Commonwealth of Australia and with respect to whom the Secretary of Labor deter-

mines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1);

(F)(i) an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(l) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program in the United States, particularly designated by him and approved by the Attorney General after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

(G)(i) a designated principal resident representative of a foreign government recognized de jure by the United States, which foreign government is a member of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669), accredited resident members of the staff of such representatives, and members of his or their immediate family;

(ii) other accredited representatives of such a foreign government to such international organizations, and the members of their immediate families;

(iii) an alien able to qualify under (i) or (ii) above except for the fact that the government of which such alien is an accredited representative is not recognized de jure by the United States, or that the government of which he is an accredited representative is not a member of such international organization, and the members of his immediate family;

(iv) officers, or employees of such international organizations, and the members of their immediate families;

(v) attendants, servants, and personal employees of any such representative, officer, or employee, and the members of the immediate families of such attendants, servants, and personal employees;

(H) an alien (i) (b) subject to section 212(j)(2), who is coming temporarily to the United States to perform services (other than services described in subclause (a) during the period in which such subclause applies and other than services described in subclause (ii)(a) or in subparagraph (O) or (P)) in a specialty

occupation described in section 214(i)(1) or as a fashion model, who meets the requirements for the occupation specified in section 214(i)(2) or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1), or (b1) who is entitled to enter the United States under and in pursuance of the provisions of an agreement listed in section 214(g)(8)(A), who is engaged in a specialty occupation described in section 214(i)(3), and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1), or (c) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 212(m)(1), and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) for the facility (as defined in section 212(m)(6)) for which the alien will perform the services; or (ii)(a) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), and the pressing of apples for cider on a farm, of a temporary or seasonal nature, or (b) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training, in a training program that is not designed primarily to provide productive employment; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

(I) upon a basis of reciprocity, an alien who is a bona fide representative of foreign press, radio, film, or other foreign information media, who seeks to enter the United States solely to engage in such vocation, and the spouse and children of such a representative if accompanying or following to join him;

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, or leader in a field of specialized knowledge or skill, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated

by the Director of the United States Information Agency, for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 212(j), and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(K) subject to subsections (d) and (p) of section 214, an alien who—

(i) is the fiancée or fiancé of a citizen of the United States (other than a citizen described in section 204(a)(1)(A)(viii)(I)) and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission;

(ii) has concluded a valid marriage with a citizen of the United States (other than a citizen described in section 204(a)(1)(A)(viii)(I)) who is the petitioner, is the beneficiary of a petition to accord a status under section 201(b)(2)(A)(i) that was filed under section 204 by the petitioner, and seeks to enter the United States to await the approval of such petition and the availability to the alien of an immigrant visa; or

(iii) is the minor child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

(L) subject to section 214(c)(2), an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge, and the alien spouse and minor children of any such alien if accompanying him or following to join him;

(M)(i) an alien having a residence in a foreign country which he has no intention of abandoning who seeks to enter the United States temporarily and solely for the purpose of pursuing a full course of study at an established vocational or other recognized nonacademic institution (other than in a language training program) in the United States particularly designated by him and approved by the Attorney General, after consultation with the Secretary of Education, which institution shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant nonacademic student and if any such institution fails to make reports promptly the approval shall be withdrawn, (ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien, and (iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico;

(N)(i) the parent of an alien accorded the status of special immigrant under paragraph (27)(I)(i) (or under analogous authority under paragraph (27)(L)), but only if and while the alien is a child, or (ii) a child of such parent or of an alien accorded the status of a special immigrant under clause (ii), (iii), or (iv) of paragraph (27)(I) (or under analogous authority under paragraph (27)(L));

(O) an alien who—

(i) has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television productions a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability; or

(ii)(I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events,

(II) is an integral part of such actual performance,

(III)(a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals, or (b) in the case of a motion picture or television production, has skills and experience with such alien which are not of a general nature and which are critical either based on a pre-existing long-standing working relationship or, with respect to the specific production, because significant production (including pre- and post-production work) will take place both inside and outside the United States and the continuing participation of the alien is essential to the successful completion of the production, and

(IV) has a foreign residence which the alien has no intention of abandoning; or

(iii) is the alien spouse or child of an alien described in clause (i) or (ii) and is accompanying, or following to join, the alien;

(P) an alien having a foreign residence which the alien has no intention of abandoning who—

(i)(a) is described in section 214(c)(4)(A) (relating to athletes), or (b) is described in section 214(c)(4)(B) (relating to entertainment groups);

(ii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely for the purpose of performing as such an artist or entertainer or with such a group under a reciprocal exchange program which is between an organization or organizations in the United States and an organization or organizations in one or more foreign states and which provides for the temporary exchange of artists and entertainers;

(iii)(I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and

(II) seeks to enter the United States temporarily and solely to perform, teach, or coach as such an artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique; or

(iv) is the spouse or child of an alien described in clause (i), (ii), or (iii) and is accompanying, or following to join, the alien;

(Q)(i) an alien having a residence in a foreign country which he has no intention of abandoning who is coming temporarily (for a period not to exceed 15 months) to the United States as a participant in an international cultural exchange program approved by the Secretary of Homeland Security for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the country of the alien's nationality and who will be employed under the same wages and working conditions as domestic workers; or (ii)(I) an alien citizen of the United Kingdom or the Republic of Ireland, 21 to 35 years of age, unemployed for not less than 12 months, and having a residence for not less than 18 months in Northern Ireland, or the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal within the Republic of Ireland, which the alien has no intention of abandoning who is coming temporarily (for a period not to exceed 24 months) to the United States as a participant in a cultural and training program approved by the Secretary of State and the Secretary of Homeland Security under section 2(a) of the Irish Peace Process Cultural and Training Program Act of 1998 for the purpose of providing practical training, employment, and the experience of coexistence and conflict resolution in a diverse society, and (II) the alien spouse and minor children of any such alien if accompanying the alien or following to join the alien;

(R) an alien, and the spouse and children of the alien if accompanying or following to join the alien, who—

(i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and

(ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii);

(S) subject to section 214(k), an alien—

(i) who the Attorney General determines—

(I) is in possession of critical reliable information concerning a criminal organization or enterprise;

(II) is willing to supply or has supplied such information to Federal or State law enforcement authorities or a Federal or State court; and

(III) whose presence in the United States the Attorney General determines is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise; or

(ii) who the Secretary of State and the Attorney General jointly determine—

(I) is in possession of critical reliable information concerning a terrorist organization, enterprise, or operation;

(II) is willing to supply or has supplied such information to Federal law enforcement authorities or a Federal court;

(III) will be or has been placed in danger as a result of providing such information; and

(IV) is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956,

and, if the Attorney General (or with respect to clause (ii), the Secretary of State and the Attorney General jointly) considers it to be appropriate, the spouse, married and unmarried sons and daughters, and parents of an alien described in clause (i) or (ii) if accompanying, or following to join, the alien;

(T)(i) subject to section 214(o), an alien who the Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security, in consultation with the Attorney General, determines—

(I) is or has been a victim of a severe form of trafficking in persons, as defined in section 103 of the Trafficking Victims Protection Act of 2000;

(II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;

(III)(aa) has complied with any reasonable request for assistance in the Federal, State or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime;

(bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or

(cc) has not attained 18 years of age; and

(IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal; and

(ii) if accompanying, or following to join, the alien described in clause (i)—

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien;

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; or

(III) any parent or unmarried sibling under 18 years of age of an alien described in subclause (I) or (II) who the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe form of trafficking, determines faces a present danger of retaliation as a result of the alien's escape from the severe form of trafficking or cooperation with law enforcement.

(U)(i) subject to section 214(p), an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that—

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

(II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);

(III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

(ii) if accompanying, or following to join, the alien described in clause (i)—

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of title 18, United States Code); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes; or

(V) subject to section 214(q), an alien who is the beneficiary (including a child of the principal alien, if eligible to receive a visa under section 203(d)) of a petition to accord a status under section 203(a)(2)(A) that was filed with the Attorney General under section 204 on or before the date of the enactment of the Legal Immigration Family Equity Act, if—

(i) such petition has been pending for 3 years or more; or

(ii) such petition has been approved, 3 years or more have elapsed since such filing date, and—

(I) an immigrant visa is not immediately available to the alien because of a waiting list of applicants for visas under section 203(a)(2)(A); or

(II) the alien's application for an immigrant visa, or the alien's application for adjustment of status under section 245, pursuant to the approval of such petition, remains pending.

(16) The term "immigrant visa" means an immigrant visa required by this Act and properly issued by a consular officer at his office outside of the United States to an eligible immigrant under the provisions of this Act.

(17) The term "immigration laws" includes this Act and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, expulsion or removal of aliens.

(18) The term "immigration officer" means any employee or class of employees of the Service or of the United States designated by the Attorney General, individually or by regulation, to perform the functions of an immigration officer specified by this Act or any section thereof.

(19) The term "ineligible to citizenship," when used in reference to any individual, means, notwithstanding the provisions of any treaty relating to military service, an individual who is, or was at any time, permanently debarred from becoming a citizen of the United States under section 3(a) of the Selective Training and Service Act of 1940, as amended (54 Stat. 885; 55 Stat. 844), or under section 4(a) of the Selective Service Act of 1948, as amended (62 Stat. 605; 65 Stat. 76), or under any section of this Act, or any other Act, or under any law amendatory of, supplementary to, or in substitution for, any of such sections or Acts.

(20) The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

(21) The term "national" means a person owing permanent allegiance to a state.

(22) The term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

(23) The term "naturalization" means the conferring of nationality of a state upon a person after birth, by any means whatsoever.

(25) The term "noncombatant service" shall not include service in which the individual is not subject to military discipline, court mar-

tial, or does not wear the uniform of any branch of the armed forces.

(26) The term "nonimmigrant visa" means a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in this Act.

(27) The term "special immigrant" means—

(A) an immigrant, lawfully admitted for permanent residence, who is returning from a temporary visit abroad;

(B) an immigrant who was a citizen of the United States and may, under section 324(a) or 327 of title III, apply for reacquisition of citizenship;

(C) an immigrant, and the immigrant's spouse and children if accompanying or following to join the immigrant, who—

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States—

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before September 30, 2015, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before September 30, 2015, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i);

(D) an immigrant who—

(i) is an employee, or an honorably retired former employee, of the United States Government abroad, or of the American Institute in Taiwan, and who has performed faithful service for a total of fifteen years, or more, and his accompanying spouse and children: *Provided,* That the principal officer of a Foreign Service establishment (or, in the case of the American Institute in Taiwan, the Director thereof), in his discretion, shall have recommended the granting of special immigrant status to such alien in exceptional circumstances and the Secretary of State approves such recommendation and finds that it is in the national interest to grant such status; or

(ii) is the surviving spouse or child of an employee of the United States Government abroad: *Provided*, That the employee performed faithful service for a total of not less than 15 years or was killed in the line of duty;

(E) an immigrant, and his accompanying spouse and children, who is or has been an employee of the Panama Canal Company or Canal Zone Government before the date on which the Panama Canal Treaty of 1977 (as described in section 3

(a)(1) of the Panama Canal Act of 1979) enters into force, who was resident in the Canal Zone on the effective date of the exchange of instruments of ratification of such Treaty, and who has performed faithful service as such an employee for one year or more;

(F) an immigrant, and his accompanying spouse and children, who is a Panamanian national and (i) who, before the date on which such Panama Canal Treaty of 1977 enters into force, has been honorably retired from United States Government employment in the Canal Zone with a total of 15 years or more of faithful service, or (ii) who on the date on which such Treaty enters into force, has been employed by the United States Government in the Canal Zone with a total of 15 years or more of faithful service and who subsequently is honorably retired from such employment or continues to be employed by the United States Government in an area of the former Canal Zone or continues to be employed by the United States Government in an area of the former Canal Zone;

(G) an immigrant, and his accompanying spouse and children, who was an employee of the Panama Canal Company or Canal Zone government on the effective date of the exchange of instruments of ratification of such Panama Canal Treaty of 1977, who has performed faithful service for five years or more as such an employee, and whose personal safety, or the personal safety of whose spouse or children, as a direct result of such Treaty, is reasonably placed in danger because of the special nature of any of that employment;

(H) an immigrant, and his accompanying spouse and children, who—

(i) has graduated from a medical school or has qualified to practice medicine in a foreign state,

(ii) was fully and permanently licensed to practice medicine in a State on January 9, 1978, and was practicing medicine in a State on that date,

(iii) entered the United States as a nonimmigrant under subsection (a)(15)(H) or (a)(15)(J) before January 10, 1978, and

(iv) has been continuously present in the United States in the practice or study of medicine since the date of such entry;

(I)(i) an immigrant who is the unmarried son or daughter of an officer or employee, or of a former officer or employee, of an international organization described in paragraph (15)(G)(i), and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least seven years between the ages of five and 21 years, and (II) applies for a visa or adjustment of status under this subparagraph no later than his twenty-fifth birthday or six months after the date of the enactment of the Immigration Technical Corrections Act of 1988, whichever is later;

(ii) an immigrant who is the surviving spouse of a deceased officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv) or paragraph (15)(N), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the death of such officer or employee, and (II) files a petition for status under this subparagraph no later than six months after the date of such death or six months after the date of such death or six months after the date of the enactment of the Immigration Technical Corrections Act of 1988, whichever is later;

(iii) an immigrant who is a retired officer or employee of such an international organization, and who (I) while maintaining the status of a nonimmigrant under paragraph (15)(G)(iv), has resided and been physically present in the United States for periods totaling at least one-half of the seven years before the date of application for a visa or for adjustment of status to a status under this subparagraph and for a period or periods aggregating at least 15 years before the date of the officer or employee's retirement from any such international organization, and (II) files a petition for status under this subparagraph no later than six months after the date of such retirement or six months after the date of enactment of the Immigration and Nationality Technical Corrections Act of 1994, whichever is later; or

(iv) an immigrant who is the spouse of a retired officer or employee accorded the status of special immigrant under clause (iii), accompanying or following to join such retired officer or employee as a member of his immediate family;

(J) an immigrant who is present in the United States—

(i) who has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status, except that—

(I) no juvenile court has jurisdiction to determine the custody status or placement of an alien in the custody of the Secretary of Health and Human Services unless the Secretary of Health and Human Services specifically consents to such jurisdiction; and

(II) no natural parent or prior adoptive parent of any alien provided special immigrant status under this subparagraph shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act;

(K) an immigrant who has served honorably on active duty in the Armed Forces of the United States after October 15, 1978, and after original lawful enlistment outside the United States (under a treaty or agreement in effect on the date of the enactment of this subparagraph) for a period or periods aggregating—

(i) 12 years and who, if separated from such service, was never separated except under honorable conditions, or

(ii) 6 years, in the case of an immigrant who is on active duty at the time of seeking special immigrant status under this subparagraph and who has reenlisted to incur a total active duty service obligation of at least 12 years,

and the spouse or child of any such immigrant if accompanying or following to join the immigrant, but only if the executive department under which the immigrant serves or served recommends the granting of special immigrant status to the immigrant;

(L) an immigrant who would be described in clause (i), (ii), (iii), or (iv) of subparagraph (I) if any reference in such a clause—

(i) to an international organization described in paragraph (15)(G)(i) were treated as a reference to the North Atlantic Treaty Organization (NATO);

(ii) to a nonimmigrant under paragraph (15)(G)(iv) were treated as a reference to a nonimmigrant classifiable under NATO–6 (as a member of a civilian component accompanying a force entering in accordance with the provisions of the NATO Status-of-Forces Agreement, a member of a civilian component attached to or employed by an Allied Headquarters under the "Protocol on the Status of International Military Headquarters" set up pursuant to the North Atlantic Treaty, or as a dependent); and

(iii) to the Immigration Technical Corrections Act of 1988 or to the Immigration and Nationality Technical Corrections Act of 1994 were a reference to the American Competitiveness and Workforce Improvement Act of 1998

(M) subject to the numerical limitations of section 203(b)(4), an immigrant who seeks to enter the United States to work as a broadcaster in the United States for the International Broadcasting Bureau of the Broadcasting Board of Governors, or for a grantee of the Broadcasting Board of Governors, and the immigrant's accompanying spouse and children.

(28) The term "organization" means, but is not limited to, an organization, corporation, company, partnership, association, trust, foundation or fund; and includes a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects.

(29) The term "outlying possessions of the United States" means American Samoa and Swains Island.

(30) The term "passport" means any travel document issued by competent authority showing the bearer's origin, identity, and nationality if any, which is valid for the admission of the bearer into a foreign country.

(31) The term "permanent" means a relationship of continuing or lasting nature, as distinguished from temporary, but a relationship may be permanent even though it is one that may be dissolved eventually at the instance either of the United States or of the individual, in accordance with law.

(32) The term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

(33) The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.

(34) The term "Service" means the Immigration and Naturalization Service of the Department of Justice.

(35) The term "spouse", "wife", or "husband" does not include a spouse, wife, or husband by reason of any marriage ceremony where the contracting parties thereto are not physically present in the presence of each other, unless the marriage shall have been consummated.

(36) The term "State" includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(37) The term "totalitarian party" means an organization which advocates the establishment in the United States of a totalitarian dictatorship or totalitarianism. The terms "totalitarian dictatorship" and "totalitarianism" mean and refer to systems of government not representative in fact, characterized by (A) the existence of a single political party, organized on a dictatorial basis, with so close an identity between such party and its policies and the governmental policies of the country in which it exists, that the party and the government constitute an indistinguishable unit, and (B) the forcible suppression of opposition to such party.

(38) The term "United States", except as otherwise specifically herein provided, when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

(39) The term "unmarried", when used in reference to any individual as of any time, means an individual who at such time is not married, whether or not previously married.

(40) The term "world communism" means a revolutionary movement, the purpose of which is to establish eventually a Communist totalitarian dictatorship in any or all the countries of the world through the medium of an internationally coordinated Communist political movement.

(41) The term "graduates of a medical school" means aliens who have graduated from a medical school or who have qualified to practice medicine in a foreign state, other than such aliens who are of national or international renown in the field of medicine.

(42) The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person hav-

ing no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

(43) The term "aggravated felony" means—

(A) murder, rape, or sexual abuse of a minor;

(B) illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act), including a drug trafficking crime (as defined in section 924(c) of title 18, United States Code);

(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18, United States Code) or in explosive materials (as defined in section 841(c) of that title);

(D) an offense described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $10,000;

(E) an offense described in—

(i) section 842 (h) or (i) of title 18, United States Code, or section 844 (d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

(ii) section 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924 (b) or (h) of title 18, United States Code (relating to firearms offenses); or

(iii) section 5861 of the Internal Revenue Code of 1986 (relating to firearms offenses);

(F) a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment at least one year;

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment imposed

(regardless of any suspension of such imprisonment) at least one year;

(H) an offense described in section 875, 876, 877, or 1202 of title 18, United States Code (relating to the demand for or receipt of ransom);

(I) an offense described in section 2251, 2251A, or 2252 of title 18, United States Code (relating to child pornography);

(J) an offense described in section 1962 of title 18, United States Code (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;

(K) an offense that—

(i) relates to the owning, controlling, managing, or supervising of a prostitution business;

(ii) is described in section 2421, 2422, or 2423 of title 18, United States Code (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or

(iii) is described in any of sections 1581–1585 or 1588–1591 of title 18, United States Code (relating to peonage, slavery, involuntary servitude, and trafficking in persons);

(L) an offense described in—

(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18, United States Code;

(ii) section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to protecting the identity of undercover intelligence agents); or

(iii) section 601 of the National Security Act of 1947 (relating to protecting the identity of undercover agents);

(M) an offense that—

(i) involves fraud or deceit in which the loss to the victim or victims exceeds $10,000; or

(ii) is described in section 7201 of the Internal Revenue Code of 1986 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000;

(N) an offense described in paragraph (1)(A) or (2) of section 274(a) (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act

(O) an offense described in section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

(P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18, United States Code, or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment im-

posed (regardless of any suspension of such imprisonment) is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this Act;

(Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

(U) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after the date of enactment of this paragraph.

(44)(A) The term "managerial capacity" means an assignment within an organization in which the employee primarily—

(i) manages the organization, or a department, subdivision, function, or component of the organization;

(ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

(iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization) or, if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

(iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority.

A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

(B) The term "executive capacity" means an assignment within an organization in which the employee primarily—

(i) directs the management of the organization or a major component or function of the organization;

(ii) establishes the goals and policies of the organization, component, or function;

(iii) exercises wide latitude in discretionary decision-making; and

(iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

(C) If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, the Attorney General shall take into account the reasonable needs of the organization, component, or function in light of the overall purpose and stage of development of the organization, component, or function. An individual shall not be considered to be acting in a managerial or executive capacity (as previously defined) merely on the basis of the number of employees that the individual supervises or has supervised or directs or has directed.

(45) The term "substantial" means, for purposes of paragraph (15)(E) with reference to trade or capital, such an amount of trade or capital as is established by the Secretary of State, after consultation with appropriate agencies of Government.

(46) The term "extraordinary ability" means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction.

(47)(A) The term "order of deportation" means the order of the special inquiry officer, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable or ordering deportation.

(B) The order described under subparagraph (A) shall become final upon the earlier of—

(i) a determination by the Board of Immigration Appeals affirming such order; or

(ii) the expiration of the period in which the alien is permitted to seek review of such order by the Board of Immigration Appeals.

(48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

(49) The term "stowaway" means any alien who obtains transportation without the consent of the owner, charterer, master or person in command of any vessel or aircraft through concealment aboard such vessel or aircraft. A passenger who boards with a valid ticket is not to be considered a stowaway.

(50) The term "intended spouse" means any alien who meets the criteria set forth in section 204(a)(1)(A)(iii)(II)(aa)(BB), 204(a)(1)(B)(ii)(II)(aa)(BB), or 240A(b)(2)(A)(i)(III).

(51) The term "VAWA self-petitioner" means an alien, or a child of the alien, who qualifies for relief under—

(A) clause (iii), (iv), or (vii) of section 204(a)(1)(A);

(B) clause (ii) or (iii) of section 204(a)(1)(B);

(C) section 216(c)(4)(C);

(D) the first section of Public Law 89–732 (8 U.S.C. 1255 note) (commonly known as the Cuban Adjustment Act) as a child or spouse who has been battered or subjected to extreme cruelty;

(E) section 902(d)(1)(B) of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note);

(F) section 202(d)(1) of the Nicaraguan Adjustment and Central American Relief Act; or

(G) section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208).

(52) The term "accredited language training program" means a language training program that is accredited by an accrediting agency recognized by the Secretary of Education.

(b) As used in titles I and II—

(1) The term "child" means an unmarried person under twenty-one years of age who is—

(A) a child born in wedlock;

(B) a stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;

(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

(D) a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;

(E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household: *Provided,* That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

(ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years; or

(F)(i) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or

surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen who is at least 25 years of age, at least 1 of whom personally saw and observed the child before or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: *Provided,* That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: *Provided further,* That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

(ii) subject to the same provisos as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (E)(i); (II) has been adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b).

(G)(i) a child, younger than 16 years of age at the time a petition is filed on the child's behalf to accord a classification as an immediate relative under section 201(b), who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, done at The Hague on May 29, 1993, or who is emigrating from such a foreign state to be adopted in the United States by a United States citizen and spouse jointly or by an unmarried United States citizen who is at least 25 years of age, Provided, That—

(I) the Secretary of Homeland Security is satisfied that proper care will be furnished the child if admitted to the United States;

(II) the child's natural parents (or parent, in the case of a child who has one sole or surviving parent because of the death or disappearance of, abandonment or desertion by, the other parent), or other persons or institutions that retain legal custody of the child, have freely given their written irrevocable consent to the termination of their legal relationship with the child, and to the child's emigration and adoption;

(III) in the case of a child having two living natural parents, the natural parents are incapable of providing proper care for the child;

(IV) the Secretary of Homeland Security is satisfied that the purpose of the adoption is to form a bona fide parent-child relationship, and the parent-child relationship of the child and the natural parents has been terminated (and in carrying out both obligations under this subclause the Secretary of Homeland Security

may consider whether there is a petition pending to confer immigrant status on one or both of such natural parents); and

(V) in the case of a child who has not been adopted—

(aa) the competent authority of the foreign state has approved the child's emigration to the United States for the purpose of adoption by the prospective adoptive parent or parents; and

(bb) the prospective adoptive parent or parents has or have complied with any pre-adoption requirements of the child's proposed residence; and

(ii) except that no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this chapter; or

(iii) subject to the same provisos as in clauses (i) and (ii), a child who—

(I) is a natural sibling of a child described in clause (i), subparagraph (E)(i), or subparagraph (F)(i);

(II) was adopted abroad, or is coming to the United States for adoption, by the adoptive parent (or prospective adoptive parent) or parents of the sibling described in clause (i), subparagraph (E)(i), or subparagraph (F)(i); and

(III) is otherwise described in clause (i), except that the child is younger than 18 years of age at the time a petition is filed on his or her behalf for classification as an immediate relative under section 201(b).

(2) The term "parent", "father", or "mother" means a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in (1) above, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) in the case of a child born out of wedlock described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term "parent" does not include the natural father or the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

(3) The term "person" means an individual or an organization.

[(4) The term "immigration judge" means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.**]**

(4) The term "immigration judge" means an immigration appeals judge or immigration trial judge appointed to serve in the United States Immigration Courts established under title VI.

(5) The term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad,

Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

(c) As used in title III—

(1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 320 and 321 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

(2) The terms "parent", "father", and "mother" include in the case of a posthumous child a deceased parent, father, and mother.

(e) For the purpose of this Act—

(1) The giving, loaning, or promising of support or of money or any other thing of value to be used for advocating any doctrine shall constitute the advocating of such doctrine; but nothing in this paragraph shall be construed as an exclusive definition of advocating.

(2) The giving, loaning, or promising of support or of money or any other thing of value for any purpose to any organization shall be presumed to constitute affiliation therewith; but nothing in this paragraph shall be construed as an exclusive definition of affiliation.

(3) Advocating the economic, international, and governmental doctrines of world communism means advocating the establishment of a totalitarian Communist dictatorship in any or all of the countries of the world through the medium of an internationally coordinated Communist movement.

(f) For the purposes of this Act—

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was—

(1) a habitual drunkard;

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in paragraphs (2)(D), (6)(E), and (10)(A) of section 212(a) of this Act; or subparagraphs (A) and (B) of section 212(a)(2) and subparagraph (C) thereof of such section (except as such paragraph relates to a single offense of simple possession of 30 grams or less of marihuana); if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

(4) one whose income is derived principally from illegal gambling activities;

(5) one who has been convicted of two or more gambling offenses committed during such period;

(6) one who has given false testimony for the purpose of obtaining any benefits under this Act;

(7) one who during such period has been confined, as a result of conviction, to a penal institution for an aggregate period of one hundred and eighty days or more, regardless of whether

the offense, or offenses, for which he has been confined were committed within or without such period;

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43)); or

(9) one who at any time has engaged in conduct described in section 212(a)(3)(E) (relating to assistance in Nazi persecution, participation in genocide, or commission of acts of torture or extrajudicial killings) or 212(a)(2)(G) (relating to severe violations of religious freedom).

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. In the case of an alien who makes a false statement or claim of citizenship, or who registers to vote or votes in a Federal, State, or local election (including an initiative, recall, or referendum) in violation of a lawful restriction of such registration or voting to citizens, if each natural parent of the alien (or, in the case of an adopted alien, each adoptive parent of the alien) is or was a citizen (whether by birth or naturalization), the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of such statement, claim, or violation that he or she was a citizen, no finding that the alien is, or was, not of good moral character may be made based on it.

(g) For the purposes of this Act any alien ordered deported or removed (whether before or after the enactment of this Act) who has left the United States, shall be considered to have been deported or removed in pursuance of law, irrespective of the source from which the expenses of his transportation were defrayed or of the place to which he departed.

(h) For purposes of section 212(a)(2)(E), the term "serious criminal offense" means—

(1) any felony;

(2) any crime of violence, as defined in section 16 of title 18 of the United States Code; or

(3) any crime of reckless driving or of driving while intoxicated or under the influence of alcohol or of prohibited substances if such crime involves personal injury to another.

(i) With respect to each nonimmigrant alien described in subsection (a)(15)(T)(i)—

(1) the Secretary of Homeland Security, the Attorney General, and other Government officials, where appropriate, shall provide the alien with a referral to a nongovernmental organization that would advise the alien regarding the alien's options while in the United States and the resources available to the alien; and

(2) the Secretary of Homeland Security shall, during the period the alien is in lawful temporary resident status under that subsection, grant the alien authorization to engage in employment in the United States and provide the alien with an "employment authorized" endorsement or other appropriate work permit.

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TITLE II—IMMIGRATION

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CHAPTER 4—INSPECTION, APPREHENSION, EXAMINATION, EXCLUSION, AND REMOVAL

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EXPEDITED REMOVAL OF ALIENS CONVICTED OF COMMITTING AGGRAVATED FELONIES

SEC. 238. (a) REMOVAL OF CRIMINAL ALIENS.—

(1) IN GENERAL.—The [Attorney General] *Immigration Courts* shall provide for the availability of special removal proceedings at certain Federal, State, and local correctional facilities for aliens convicted of any criminal offense covered in section 241(a)(2)(A)(iii), (B), (C), or (D), or any offense covered by section 241(a)(2)(A)(ii) for which both predicate offenses are, without regard to the date of their commission, otherwise covered by section 241(a)(2)(A)(i). Such proceedings shall be conducted in conformity with section 240 (except as otherwise provided in this section), and in a manner which eliminates the need for additional detention at any processing center of the [Service] *Department of Homeland Security* and in a manner which assures expeditious removal following the end of the alien's incarceration for the underlying sentence. Nothing in this section shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(2) IMPLEMENTATION.—With respect to an alien convicted of an aggravated felony who is taken into custody by the [Attorney General] *Secretary of Homeland Security* pursuant to section 236(c), the [Attorney General] *Secretary of Homeland Security* shall, to the maximum extent practicable, detain any such felon at a facility at which other such aliens are detained. In the selection of such facility, the [Attorney General] *Secretary of Homeland Security* shall make reasonable efforts to ensure that the alien's access to counsel and right to counsel under section 292 are not impaired.

(3) EXPEDITED PROCEEDINGS.—[(A) Notwithstanding any other provision of law, the Attorney General shall provide for the initiation and, to the extent possible, the completion of removal proceedings, and any administrative appeals thereof, in the case of any alien convicted of an aggravated felony before the alien's release from incarceration for the underlying aggravated felony.] *(A) Notwithstanding any other provision of law, in the case of any alien convicted of an aggravated felony, removal proceedings, and any administrative appeals thereof, shall be completed, to the extent possible, before the alien's release from incarceration for the underlying aggravated felony.*

(B) Nothing in this section shall be construed as requiring the [Attorney General] *Secretary of Homeland Security* to effect the removal of any alien sentenced to actual incarceration, before release from the penitentiary or correctional institution where such alien is confined.

(4) REVIEW.—(A) The [Attorney General] *administrative council of the Immigration Courts* shall review and evaluate removal proceedings conducted under this section. Within 12 months after the effective date of this section, the [Attorney General] *administrative council of the Immigration Courts* shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate concerning the effectiveness of such removal proceedings in facilitating the removal of aliens convicted of aggravated felonies.

(B) The Comptroller General shall monitor, review, and evaluate removal proceedings conducted under this section.

(b) REMOVAL OF ALIENS WHO ARE NOT PERMANENT RESIDENTS.—

(1) The [Attorney General] *immigration judge* may, in the case of an alien described in paragraph (2), determine the deportability of such alien under section 237(a)(2)(A)(iii) (relating to conviction of an aggravated felony) and issue an order of removal pursuant to the procedures set forth in this subsection or section 240.

(2) An alien is described in this paragraph if the alien—

(A) was not lawfully admitted for permanent residence at the time at which proceedings under this section commenced; or

(B) had permanent resident status on a conditional basis (as described in section 216) at the time that proceedings under this section commenced.

(3) The [Attorney General] *Secretary of Homeland Security* may not execute any order described in paragraph (1) until 14 calendar days have passed from the date that such order was issued, unless waived by the alien, in order that the alien has an opportunity to [apply for] *seek* judicial review under section 242.

[(4) Proceedings before the Attorney General under this subsection shall be in accordance with such regulations as the Attorney General shall prescribe. The Attorney General shall provide that—

[(A) the alien is given reasonable notice of the charges and of the opportunity described in subparagraph (C);

[(B) the alien shall have the privilege of being represented (at no expense to the government) by such counsel, authorized to practice in such proceedings, as the alien shall choose;

[(C) the alien has a reasonable opportunity to inspect the evidence and rebut the charges;

[(D) a determination is made for the record that the individual upon whom the notice for the proceeding under this section is served (either in person or by mail) is, in fact, the alien named in such notice;

[(E) a record is maintained for judicial review; and

[(F) the final order of removal is not adjudicated by the same person who issues the charges.]

(4) In any proceeding under this subsection—

(A) the alien shall—

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

(ii) have the privilege of being represented (at no expense to the government) by such counsel, authorized to practice in such proceedings, as the alien shall choose; and

(iii) have a reasonable opportunity to inspect the evidence and rebut the charges; and

(B) the immigration judge shall ensure that—

(i) a determination is made for the record that the individual upon whom the notice for the proceeding under this section is served (either in person or by mail) is, in fact, the alien named in such notice; and

(ii) a record is maintained for judicial review.

(5) No alien described in this section shall be eligible for any relief from removal that the ⟦Attorney General⟧ *immigration judge* may grant in the ⟦Attorney General's⟧ *immigration judge's* discretion.

(c) PRESUMPTION OF DEPORTABILITY.—An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States.

⟦(c)⟧ *(d)* JUDICIAL REMOVAL.—

(1) AUTHORITY.—Notwithstanding any other provision of this Act, a United States district court shall have jurisdiction to enter a judicial order of removal at the time of sentencing against an alien who is deportable, if such an order has been requested by the United States Attorney with the concurrence of the ⟦Commissioner⟧ *Secretary of Homeland Security* and if the court chooses to exercise such jurisdiction.

(2) PROCEDURE.—

(A) The United States Attorney shall file with the United States district court, and serve upon the defendant and the ⟦Service⟧ *Secretary of Homeland Security*, prior to commencement of the trial or entry of a guilty plea a notice of intent to request judicial removal.

(B) Notwithstanding section 242B, the United States Attorney, with the concurrence of the ⟦Commissioner⟧ *Secretary of Homeland Security*, shall file at least 30 days prior to the date set for sentencing a charge containing factual allegations regarding the alienage of the defendant and identifying the crime or crimes which make the defendant deportable under section 241(a)(2)(A).

(C) If the court determines that the defendant has presented substantial evidence to establish prima facie eligibility for relief from removal under this Act, the ⟦Commissioner⟧ *Secretary of Homeland Security* shall provide the court with a recommendation and report regarding the alien's eligibility for relief. The court shall either grant or deny the relief sought.

(D)(i) The alien shall have a reasonable opportunity to examine the evidence against him or her, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the Government.

(ii) The court, for the purposes of determining whether to enter an order described in paragraph (1), shall only consider evidence that would be admissible in proceedings conducted pursuant to section 240.

(iii) Nothing in this subsection shall limit the information a court of the United States may receive or consider for the purposes of imposing an appropriate sentence.

(iv) The court may order the alien removed if the [Attorney General] *Secretary of Homeland Security* demonstrates that the alien is deportable under this Act.

(3) NOTICE, APPEAL, AND EXECUTION OF JUDICIAL ORDER OF REMOVAL.—

(A)(i) A judicial order of removal or denial of such order may be appealed by either party to the court of appeals for the circuit in which the district court is located.

(ii) Except as provided in clause (iii), such appeal shall be considered consistent with the requirements described in section 242.

(iii) Upon execution by the defendant of a valid waiver of the right to appeal the conviction on which the order of removal is based, the expiration of the period described in section 242(b)(1), or the final dismissal of an appeal from such conviction, the order of removal shall become final and shall be executed at the end of the prison term in accordance with the terms of the order. If the conviction is reversed on direct appeal, the order entered pursuant to this section shall be void.

(B) As soon as is practicable after entry of a judicial order of removal, the [Commissioner] *Secretary of Homeland Security* shall provide the defendant with written notice of the order of removal, which shall designate the defendant's country of choice for removal and any alternate country pursuant to section 243(a).

(4) DENIAL OF JUDICIAL ORDER.—Denial of a request for a judicial order of removal shall not preclude the [Attorney General] *Secretary of Homeland Security* from initiating removal proceedings pursuant to section 240 upon the same ground of deportability or upon any other ground of deportability provided under section 241(a).

(5) STIPULATED JUDICIAL ORDER OF REMOVAL.—The United States Attorney, with the concurrence of the [Commissioner] *Secretary of Homeland Security*, may, pursuant to Federal Rule of Criminal Procedure 11, enter into a plea agreement which calls for the alien, who is deportable under this Act, to waive the right to notice and a hearing under this section, and stipulate to the entry of a judicial order of removal from the United States as a condition of the plea agreement or as a condition of probation or supervised release, or both. The United States district court, in both felony and misdemeanor cases, and a United States magistrate judge in misdemeanor cases, may accept such a stipulation and shall have jurisdiction to enter a judicial order of removal pursuant to the terms of such stipulation.

INITIATION OF REMOVAL PROCEEDINGS

SEC. 239. (a) NOTICE TO APPEAR.—

(1) IN GENERAL.—In removal proceedings under section 240, written notice (in this section referred to as a "notice to appear") shall be given in person to the alien (or, if personal serv-

ice is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying the following:

(A) The nature of the proceedings against the alien.

(B) The legal authority under which the proceedings are conducted.

(C) The acts or conduct alleged to be in violation of law.

(D) The charges against the alien and the statutory provisions alleged to have been violated.

(E) The alien may be represented by counsel and the alien will be provided (i) a period of time to secure counsel under subsection (b)(1) and (ii) a current list of counsel prepared under subsection (b)(2).

(F)(i) The requirement that the alien must immediately provide (or have provided) the [Attorney General] *Immigration Courts* with a written record of an address and telephone number (if any) at which the alien may be contacted respecting proceedings under section 240.

(ii) The requirement that the alien must provide the [Attorney General] *Immigration Courts* immediately with a written record of any change of the alien's address or telephone number.

(iii) The consequences under section 240(b)(5) of failure to provide address and telephone information pursuant to this subparagraph.

(G)(i) The time and place at which the proceedings will be held.

(ii) The consequences under section 240(b)(5) of the failure, except under exceptional circumstances, to appear at such proceedings.

(2) NOTICE OF CHANGE IN TIME OR PLACE OF PROCEEDINGS.—

(A) IN GENERAL.—In removal proceedings under section 240, in the case of any change or postponement in the time and place of such proceedings, subject to subparagraph (B) a written notice shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying—

(i) the new time or place of the proceedings, and

(ii) the consequences under section 240(b)(5) of failing, except under exceptional circumstances, to attend such proceedings.

(B) EXCEPTION.—In the case of an alien not in detention, a written notice shall not be required under this paragraph if the alien has failed to provide the address required under paragraph (1)(F).

(3) CENTRAL ADDRESS FILES.—The [Attorney General] *Immigration Courts* shall create a system to record and preserve on a timely basis notices of addresses and telephone numbers (and changes) provided under paragraph (1)(F).

(b) SECURING OF COUNSEL.—

(1) IN GENERAL.—In order that an alien be permitted the opportunity to secure counsel before the first hearing date in proceedings under section 240, the hearing date shall not be scheduled earlier than 10 days after the service of the notice

to appear, unless the alien requests in writing an earlier hearing date.

(2) CURRENT LISTS OF COUNSEL.—The [Attorney General] *Immigration Courts* shall provide for lists (updated not less often than quarterly) of persons who have indicated their availability to represent pro bono aliens in proceedings under section 240. Such lists shall be provided under subsection (a)(1)(E) and otherwise made generally available.

(3) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to prevent the [Attorney General] *immigration judge* from proceeding against an alien pursuant to section 240 if the time period described in paragraph (1) has elapsed and the alien has failed to secure counsel.

(c) SERVICE BY MAIL.—Service by mail under this section shall be sufficient if there is proof of attempted delivery to the last address provided by the alien in accordance with subsection (a)(1)(F).

(d) PROMPT INITIATION OF REMOVAL.—(1) In the case of an alien who is convicted of an offense which makes the alien deportable, the [Attorney General] *immigration judge* shall begin any removal proceeding as expeditiously as possible after the date of the conviction.

(2) Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

(e) CERTIFICATION OF COMPLIANCE WITH RESTRICTIONS ON DISCLOSURE.—

(1) IN GENERAL.—In cases where an enforcement action leading to a removal proceeding was taken against an alien at any of the locations specified in paragraph (2), the Notice to Appear shall include a statement that the provisions of section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367) have been complied with.

(2) LOCATIONS.—The locations specified in this paragraph are as follows:

(A) At a domestic violence shelter, a rape crisis center, supervised visitation center, family justice center, a victim services, or victim services provider, or a community-based organization.

(B) At a courthouse (or in connection with that appearance of the alien at a courthouse) if the alien is appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking, or stalking in which the alien has been battered or subject to extreme cruelty or if the alien is described in subparagraph (T) or (U) of section 101(a)(15).

REMOVAL PROCEEDINGS

SEC. 240. (a) PROCEEDING.—

(1) IN GENERAL.—An immigration judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien.

(2) CHARGES.—An alien placed in proceedings under this section may be charged with any applicable ground of inadmis-

sibility under section 212(a) or any applicable ground of deportability under section 237(a).

(3) EXCLUSIVE PROCEDURES.—Unless otherwise specified in this Act, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States. Nothing in this section shall affect proceedings conducted pursuant to section 238.

(b) CONDUCT OF PROCEEDING.—

[(1) AUTHORITY OF IMMIGRATION JUDGE.—The immigration judge shall administer oaths, receive evidence, and interrogate, examine, and cross-examine the alien and any witnesses. The immigration judge may issue subpoenas for the attendance of witnesses and presentation of evidence. The immigration judge shall have authority (under regulations prescribed by the Attorney General) to sanction by civil money penalty any action (or inaction) in contempt of the judge's proper exercise of authority under this Act.

[(2) FORM OF PROCEEDING.—

[(A) IN GENERAL.—The proceeding may take place—

[(i) in person,

[(ii) where agreed to by the parties, in the absence of the alien,

[(iii) through video conference, or

[(iv) subject to subparagraph (B), through telephone conference.

[(B) CONSENT REQUIRED IN CERTAIN CASES.—An evidentiary hearing on the merits may only be conducted through a telephone conference with the consent of the alien involved after the alien has been advised of the right to proceed in person or through video conference.]

(1) FORM OF PROCEEDING.—The proceeding may take place—

(A) in person; or

(B) through video conference, subject to rules promulgated under section 622(a)(5).

[(3)] *(2)* PRESENCE OF ALIEN.—If it is impracticable by reason of an alien's mental incompetency for the alien to be present at the proceeding, the [Attorney General] *immigration judge* shall prescribe safeguards to protect the rights and privileges of the alien.

[(4)] *(3)* ALIENS RIGHTS IN PROCEEDING.—In proceedings under this section[, under regulations of the Attorney General]—

(A) the alien shall have the privilege of being represented[, at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in such proceedings] *in accordance with section 623(a)*,

(B) the alien shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government but these rights shall not entitle the alien to examine such national security information as the Government may proffer in opposition to the alien's admission to the United States or to an application by the alien for discretionary relief under this Act, and

(C) a complete record shall be kept of all testimony and evidence produced at the proceeding.

[(5)] *(4)* CONSEQUENCES OF FAILURE TO APPEAR.—

(A) IN GENERAL.—Any alien who, after written notice required under paragraph (1) or (2) of section 239(a) has been provided to the alien or the alien's counsel of record, does not attend a proceeding under this section, shall be ordered removed in absentia if the [Service] *Government* establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable (as defined in subsection (e)(2)). [The written notice by the Attorney General shall be considered sufficient for purposes of this subparagraph if provided at the most recent address provided under section 239(a)(1)(F).] *Written notice shall be considered sufficient for purposes of this subparagraph if provided at the most recent address provided under section 239(a)(1)(F).*

(B) NO NOTICE IF FAILURE TO PROVIDE ADDRESS INFORMATION.—No written notice shall be required under subparagraph (A) if the alien has failed to provide the address required under section 239(a)(1)(F).

(C) RESCISSION OF ORDER.—Such an order may be rescinded only—

(i) upon a motion to reopen filed within 180 days after the date of the order of removal if the alien demonstrates that the failure to appear was because of exceptional circumstances (as defined in subsection (e)(1)), or

(ii) upon a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice in accordance with paragraph (1) or (2) of section 239(a) or the alien demonstrates that the alien was in Federal or State custody and the failure to appear was through no fault of the alien.

The filing of the motion to reopen described in clause (i) or (ii) shall stay the removal of the alien pending disposition of the motion by the immigration judge.

(D) EFFECT ON JUDICIAL REVIEW.—Any petition for review under section 242 of an order entered in absentia under this paragraph shall (except in cases described in section 242(b)(5)) be confined to (i) the validity of the notice provided to the alien, (ii) the reasons for the alien's not attending the proceeding, and (iii) whether or not the alien is removable.

(E) ADDITIONAL APPLICATION TO CERTAIN ALIENS IN CONTIGUOUS TERRITORY.—The preceding provisions of this paragraph shall apply to all aliens placed in proceedings under this section, including any alien who remains in a contiguous foreign territory pursuant to section 235(b)(2)(C).

[(6) TREATMENT OF FRIVOLOUS BEHAVIOR.—The Attorney General shall, by regulation—

[(A) define in a proceeding before an immigration judge or before an appellate administrative body under this title, frivolous behavior for which attorneys may be sanctioned,

[(B) specify the circumstances under which an administrative appeal of a decision or ruling will be considered frivolous and will be summarily dismissed, and

[(C) impose appropriate sanctions (which may include suspension and disbarment) in the case of frivolous behavior.]

Nothing in this paragraph shall be construed as limiting the authority of the Attorney General to take actions with respect to inappropriate behavior.

[(7)] *(5)* LIMITATION ON DISCRETIONARY RELIEF FOR FAILURE TO APPEAR.—Any alien against whom a final order of removal is entered in absentia under this subsection and who, at the time of the notice described in paragraph (1) or (2) of section 239(a), was provided oral notice, either in the alien's native language or in another language the alien understands, of the time and place of the proceedings and of the consequences under this paragraph of failing, other than because of exceptional circumstances (as defined in subsection (e)(1)) to attend a proceeding under this section, shall not be eligible for relief under section 240A, 240B, 245, 248, or 249 for a period of 10 years after the date of the entry of the final order of removal.

(c) DECISION AND BURDEN OF PROOF.—

(1) DECISION.—

(A) IN GENERAL.—At the conclusion of the proceeding the immigration judge shall decide whether an alien is removable from the United States. The determination of the immigration judge shall be based only on the evidence produced at the hearing.

(B) CERTAIN MEDICAL DECISIONS.—If a medical officer or civil surgeon or board of medical officers has certified under section 232(b) that an alien has a disease, illness, or addiction which would make the alien inadmissible under paragraph (1) of section 212(a), the decision of the immigration judge shall be based solely upon such certification.

(2) BURDEN ON ALIEN.—In the proceeding the alien has the burden of establishing—

(A) if the alien is an applicant for admission, that the alien is clearly and beyond doubt entitled to be admitted and is not inadmissible under section 212; or

(B) by clear and convincing evidence, that the alien is lawfully present in the United States pursuant to a prior admission.

In meeting the burden of proof under subparagraph (B), the alien shall have access to the alien's visa or other entry document, if any, and any other records and documents, not considered by the [Attorney General] *Secretary of Homeland Security* to be confidential, pertaining to the alien's admission or presence in the United States.

(3) BURDEN ON [SERVICE] *GOVERNMENT* IN CASES OF DEPORTABLE ALIENS.—

(A) IN GENERAL.—In the proceeding the [Service] *Government* has the burden of establishing by clear and convincing evidence that, in the case of an alien who has been admitted to the United States, the alien is deportable. No

decision on deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence.

(B) PROOF OF CONVICTIONS.—In any proceeding under this Act, any of the following documents or records (or a certified copy of such an official document or record) shall constitute proof of a criminal conviction:

(i) An official record of judgment and conviction.

(ii) An official record of plea, verdict, and sentence.

(iii) A docket entry from court records that indicates the existence of the conviction.

(iv) Official minutes of a court proceeding or a transcript of a court hearing in which the court takes notice of the existence of the conviction.

(v) An abstract of a record of conviction prepared by the court in which the conviction was entered, or by a State official associated with the State's repository of criminal justice records, that indicates the charge or section of law violated, the disposition of the case, the existence and date of conviction, and the sentence.

(vi) Any document or record prepared by, or under the direction of, the court in which the conviction was entered that indicates the existence of a conviction.

(vii) Any document or record attesting to the conviction that is maintained by an official of a State or Federal penal institution, which is the basis for that institution's authority to assume custody of the individual named in the record.

(C) ELECTRONIC RECORDS.—In any proceeding under this Act, any record of conviction or abstract that has been submitted by electronic means to the [Service] *Government* from a State or court shall be admissible as evidence to prove a criminal conviction if it is—

(i) certified by a State official associated with the State's repository of criminal justice records as an official record from its repository or by a court official from the court in which the conviction was entered as an official record from its repository, and

(ii) certified in writing by a [Service] *Government* official as having been received electronically from the State's record repository or the court's record repository.

A certification under clause (i) may be by means of a computer-generated signature and statement of authenticity.

(4) APPLICATIONS FOR RELIEF FROM REMOVAL.—

(A) IN GENERAL.—An alien applying for relief or protection from removal has the burden of proof to establish that the alien—

(i) satisfies the applicable eligibility requirements; and

(ii) with respect to any form of relief that is granted in the exercise of discretion, that the alien merits a favorable exercise of discretion.

(B) SUSTAINING BURDEN.—The applicant must comply with the applicable requirements to submit information or documentation in support of the applicant's application for

relief or protection as provided by law or by regulation or in the instructions for the application form. In evaluating the testimony of the applicant or other witness in support of the application, the immigration judge will determine whether or not the testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant has satisfied the applicant's burden of proof. In determining whether the applicant has met such burden, the immigration judge shall weigh the credible testimony along with other evidence of record. Where the immigration judge determines that the applicant should provide evidence which corroborates otherwise credible testimony, such evidence must be provided unless the applicant demonstrates that the applicant does not have the evidence and cannot reasonably obtain the evidence.

(C) CREDIBILITY DETERMINATION.—Considering the totality of the circumstances, and all relevant factors, the immigration judge may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

(5) NOTICE.—If the immigration judge decides that the alien is removable and orders the alien to be removed, the judge shall inform the alien of the right to appeal that decision and of the consequences for failure to depart under the order of removal, including civil and criminal penalties.

(6) MOTIONS TO RECONSIDER.—

(A) IN GENERAL.—The alien may file one motion to reconsider a decision that the alien is removable from the United States.

(B) DEADLINE.—The motion must be filed within 30 days of the date of entry of a final administrative order of removal.

(C) CONTENTS.—The motion shall specify the errors of law or fact in the previous order and shall be supported by pertinent authority.

(7) MOTIONS TO REOPEN.—

(A) IN GENERAL.—An alien may file one motion to reopen proceedings under this section, except that this limitation shall not apply so as to prevent the filing of one motion to reopen described in subparagraph (C)(iv).

(B) CONTENTS.—The motion to reopen shall state the new facts that will be proven at a hearing to be held if the motion is granted, and shall be supported by affidavits or other evidentiary material.

(C) DEADLINE.—

(i) IN GENERAL.—Except as provided in this subparagraph, the motion to reopen shall be filed within 90 days of the date of entry of a final administrative order of removal.

(ii) ASYLUM.—There is no time limit on the filing of a motion to reopen if the basis of the motion is to apply for relief under sections 208 or 241(b)(3) and is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and would not have been discovered or presented at the previous proceeding.

(iii) FAILURE TO APPEAR.—The filing of a motion to reopen an order entered pursuant to subsection (b)(5) is subject to the deadline specified in subparagraph (C) of such subsection.

(iv) SPECIAL RULE FOR BATTERED SPOUSES, CHILDREN, AND PARENTS.—Any limitation under this section on the deadlines for filing such motions shall not apply—

(I) if the basis for the motion is to apply for relief under clause (iii) or (iv) of section 204(a)(1)(A), clause (ii) or (iii) of section 204(a)(1)(B), or 240A(b)(2);

(II) if the motion is accompanied by a cancellation of removal application to be filed with the **[**Attorney General**]** *immigration judge* or by a copy of the self-petition that has been or will be filed with the **[**Immigration and Naturalization Service**]** *Secretary of Homeland Security* upon the granting of the motion to reopen;

(III) if the motion to reopen is filed within 1 year of the entry of the final order of removal, except that the **[**Attorney General**]** *immigration judge* may, in the **[**Attorney General's**]** *immigration judge's* discretion, waive this time limitation in the case of an alien who demonstrates extraordinary circumstances or extreme hardship to the alien's child; and

(IV) if the alien is physically present in the United States at the time of filing the motion.

The filing of a motion to reopen under this clause shall only stay the removal of a qualified alien (as defined in section 431(c)(1)(B) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)(1)(B)) pending the final disposition of the motion, including exhaustion of all appeals if the motion establishes that the alien is a qualified alien.

(d) STIPULATED REMOVAL.—**[**The Attorney General shall provide by regulation for the entry by an immigration judge of an order of

removal stipulated to by the alien (or the alien's representative) and the Service.] *An immigration judge may enter an order of removal stipulated to by the alien (or the alien's representative) and the Government.* A stipulated order shall constitute a conclusive determination of the alien's removability from the United States.

(e) DEFINITIONS.—In this section and section 240A:

(1) EXCEPTIONAL CIRCUMSTANCES.—The term "exceptional circumstances" refers to exceptional circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the alien.

(2) REMOVABLE.—The term "removable" means—

(A) in the case of an alien not admitted to the United States, that the alien is inadmissible under section 212, or

(B) in the case of an alien admitted to the United States, that the alien is deportable under section 237.

* * * * * * *

JUDICIAL REVIEW OF ORDERS OF REMOVAL

SEC. 242. (a) APPLICABLE PROVISIONS.—

(1) GENERAL ORDERS OF REMOVAL.—Judicial review of a final order of removal (other than an order of removal without a hearing pursuant to section 235(b)(1)) is governed only by chapter 158 of title 28 of the United States Code, except as provided in subsection (b) and except that the court may not order the taking of additional evidence under section 2347(c) of such title.

(2) MATTERS NOT SUBJECT TO JUDICIAL REVIEW.—

(A) REVIEW RELATING TO SECTION 235(b)(1).—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review—

(i) except as provided in subsection (e), any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 235(b)(1),

(ii) except as provided in subsection (e), a decision by the [Attorney General] *Secretary of Homeland Security* to invoke the provisions of such section,

(iii) the application of such section to individual aliens, including the determination made under section 235(b)(1)(B), or

(iv) except as provided in subsection (e), procedures and policies adopted by the [Attorney General] *Secretary of Homeland Security* to implement the provisions of section 235(b)(1).

(B) DENIALS OF DISCRETIONARY RELIEF.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States

Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review—

(i) any judgment regarding the granting of relief under section 212(h), 212(i), 240A, 240B, or 245, or

(ii) any other decision or action of the [Attorney General] *the appellate division of the Immigration Courts* or the Secretary of Homeland Security the authority for which is specified under this title to be in the discretion of the [Attorney General] *the appellate division of the Immigration Courts* or the Secretary of Homeland Security, other than the granting of relief under section 208(a).

(C) ORDERS AGAINST CRIMINAL ALIENS.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in section 212(a)(2) or 237(a)(2)(A)(iii), (B), (C), or (D), or any offense covered by section 237(a)(2)(A)(ii) for which both predicate offenses are, without regard to their date of commission, otherwise covered by section 237(a)(2)(A)(i).

(D) JUDICIAL REVIEW OF CERTAIN LEGAL CLAIMS.—Nothing in subparagraph (B) or (C), or in any other provision of this Act (other than this section) which limits or eliminates judicial review, shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.

(3) TREATMENT OF CERTAIN DECISIONS.—No alien shall have a right to appeal from a decision of an immigration judge which is based solely on a certification described in section 240(c)(1)(B).

(4) CLAIMS UNDER THE UNITED NATIONS CONVENTION.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of any cause or claim under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment, except as provided in subsection (e).

(5) EXCLUSIVE MEANS OF REVIEW.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or

issued under any provision of this Act, except as provided in subsection (e). For purposes of this Act, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms "judicial review" and "jurisdiction to review" include habeas corpus review pursuant to section 2241 of title 28, United States Code, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).

(6) VENUE.—For purposes of judicial review under this section and section 625(d), the venue of a proceeding before the court of appeals is in the judicial circuit in which—

(A) an immigration trial judge of the Immigration Court issued the original underlying decision in the matter; or

(B) the underlying administrative action reviewed by the appellate division of the Court occurred.

(b) REQUIREMENTS FOR REVIEW OF ORDERS OF REMOVAL.—With respect to review of an order of removal under subsection (a)(1), the following requirements apply:

(1) DEADLINE.—The petition for review must be filed not later than 30 days after the date of the final order of removal.

(2) VENUE AND FORMS.—The petition for review shall be filed with the court of appeals for the judicial circuit in which the immigration *trial* judge completed the proceedings. The record and briefs do not have to be printed. The court of appeals shall review the proceeding on a typewritten record and on typewritten briefs.

(3) SERVICE.—

(A) IN GENERAL.—The respondent is the **[**Attorney General**]** *United States*. **[**The petition shall be served on the Attorney General and on the officer or employee of the Service in charge of the Service district in which the final order of removal under section 240 was entered.**]** *The petition shall be served on the Attorney General and on the officer or employee of the Department of Homeland Security in charge of the district in which the final order of removal under section 240 was entered.*

(B) STAY OF ORDER.—Service of the petition on the officer or employee does not stay the removal of an alien pending the court's decision on the petition, unless the court orders otherwise.

(C) ALIEN'S BRIEF.—The alien shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available, and may serve and file a reply brief not later than 14 days after service of the brief of the Attorney General, and the court may not extend these deadlines except upon motion for good cause shown. If an alien fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result.

(4) SCOPE AND STANDARD FOR REVIEW.—Except as provided in paragraph (5)(B)—

(A) the court of appeals shall decide the petition only on the administrative record on which the order of removal is based,

(B) the administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary,

(C) a decision that an alien is not eligible for admission to the United States is conclusive unless manifestly contrary to law, and

(D) the [Attorney General's] *immigration judge's* discretionary judgment whether to grant relief under section 208(a) shall be conclusive unless manifestly contrary to the law and an abuse of discretion.

No court shall reverse a determination made by a trier of fact with respect to the availability of corroborating evidence, as described in section 208(b)(1)(B), 240(c)(4)(B), or 241(b)(3)(C), unless the court finds, pursuant to section 242(b)(4)(B), that a reasonable trier of fact is compelled to conclude that such corroborating evidence is unavailable.

(5) TREATMENT OF NATIONALITY CLAIMS.—

(A) COURT DETERMINATION IF NO ISSUE OF FACT.—If the petitioner claims to be a national of the United States and the court of appeals finds from the pleadings and affidavits that no genuine issue of material fact about the petitioner's nationality is presented, the court shall decide the nationality claim.

(B) TRANSFER IF ISSUE OF FACT.—If the petitioner claims to be a national of the United States and the court of appeals finds that a genuine issue of material fact about the petitioner's nationality is presented, the court shall transfer the proceeding to the district court of the United States for the judicial district in which the petitioner resides for a new hearing on the nationality claim and a decision on that claim as if an action had been brought in the district court under section 2201 of title 28, United States Code.

(C) LIMITATION ON DETERMINATION.—The petitioner may have such nationality claim decided only as provided in this paragraph.

(6) CONSOLIDATION WITH REVIEW OF MOTIONS TO REOPEN OR RECONSIDER.—When a petitioner seeks review of an order under this section, any review sought of a motion to reopen or reconsider the order shall be consolidated with the review of the order.

(7) CHALLENGE TO VALIDITY OF ORDERS IN CERTAIN CRIMINAL PROCEEDINGS.—

(A) IN GENERAL.—If the validity of an order of removal has not been judicially decided, a defendant in a criminal proceeding charged with violating section 243(a) may challenge the validity of the order in the criminal proceeding only by filing a separate motion before trial. The district court, without a jury, shall decide the motion before trial.

(B) CLAIMS OF UNITED STATES NATIONALITY.—If the defendant claims in the motion to be a national of the United States and the district court finds that—

(i) no genuine issue of material fact about the defendant's nationality is presented, the court shall decide the motion only on the administrative record on which the removal order is based and the administra-

tive findings of fact are conclusive if supported by reasonable, substantial, and probative evidence on the record considered as a whole; or

(ii) a genuine issue of material fact about the defendant's nationality is presented, the court shall hold a new hearing on the nationality claim and decide that claim as if an action had been brought under section 2201 of title 28, United States Code.

The defendant may have such nationality claim decided only as provided in this subparagraph.

(C) CONSEQUENCE OF INVALIDATION.—If the district court rules that the removal order is invalid, the court shall dismiss the indictment for violation of section 243(a). The United States Government may appeal the dismissal to the court of appeals for the appropriate circuit within 30 days after the date of the dismissal.

(D) LIMITATION ON FILING PETITIONS FOR REVIEW.—The defendant in a criminal proceeding under section 243(a) may not file a petition for review under subsection (a) during the criminal proceeding.

(8) CONSTRUCTION.—This subsection—

(A) does not prevent the **[**Attorney General**]** *Secretary of Homeland Security*, after a final order of removal has been issued, from detaining the alien under section 241(a);

(B) does not relieve the alien from complying with section 241(a)(4) and section 243(g); and

(C) does not require the **[**Attorney General**]** *Secretary of Homeland Security* to defer removal of the alien.

(9) CONSOLIDATION OF QUESTIONS FOR JUDICIAL REVIEW.—Judicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this title shall be available only in judicial review of a final order under this section. Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28, United States Code, or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.

(c) REQUIREMENTS FOR PETITION.—A petition for review or for habeas corpus of an order of removal—

(1) shall attach a copy of such order, and

(2) shall state whether a court has upheld the validity of the order, and, if so, shall state the name of the court, the date of the court's ruling, and the kind of proceeding.

(d) REVIEW OF FINAL ORDERS.—A court may review a final order of removal only if—

(1) the alien has exhausted all administrative remedies available to the alien as of right, and

(2) another court has not decided the validity of the order, unless the reviewing court finds that the petition presents grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior pro-

ceeding was inadequate or ineffective to test the validity of the order.

(e) JUDICIAL REVIEW OF ORDERS UNDER SECTION 235(b)(1).—

(1) LIMITATIONS ON RELIEF.—Without regard to the nature of the action or claim and without regard to the identity of the party or parties bringing the action, no court may—

(A) enter declaratory, injunctive, or other equitable relief in any action pertaining to an order to exclude an alien in accordance with section 235(b)(1) except as specifically authorized in a subsequent paragraph of this subsection, or

(B) certify a class under Rule 23 of the Federal Rules of Civil Procedure in any action for which judicial review is authorized under a subsequent paragraph of this subsection.

(2) HABEAS CORPUS PROCEEDINGS.—Judicial review of any determination made under section 235(b)(1) is available in habeas corpus proceedings, but shall be limited to determinations of—

(A) whether the petitioner is an alien,

(B) whether the petitioner was ordered removed under such section, and

(C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 207, or has been granted asylum under section 208, such status not having been terminated, and is entitled to such further inquiry [as prescribed by the Attorney General] pursuant to section 235(b)(1)(C).

(3) CHALLENGES ON VALIDITY OF THE SYSTEM.—

(A) IN GENERAL.—Judicial review of determinations under section 235(b) and its implementation is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of—

(i) whether such section, or any regulation issued to implement such section, is constitutional; or

(ii) whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the [Attorney General] *Secretary of Homeland Security* to implement such section, is not consistent with applicable provisions of this title or is otherwise in violation of law.

(B) DEADLINES FOR BRINGING ACTIONS.—Any action instituted under this paragraph must be filed no later than 60 days after the date the challenged section, regulation, directive, guideline, or procedure described in clause (i) or (ii) of subparagraph (A) is first implemented.

(C) NOTICE OF APPEAL.—A notice of appeal of an order issued by the District Court under this paragraph may be filed not later than 30 days after the date of issuance of such order.

(D) EXPEDITIOUS CONSIDERATION OF CASES.—It shall be the duty of the District Court, the Court of Appeals, and the Supreme Court of the United States to advance on the

docket and to expedite to the greatest possible extent the disposition of any case considered under this paragraph.

(4) DECISION.—In any case where the court determines that the petitioner—

(A) is an alien who was not ordered removed under section 235(b)(1), or

(B) has demonstrated by a preponderance of the evidence that the alien is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 207, or has been granted asylum under section 208, the court may order no remedy or relief other than to require that the petitioner be provided a hearing in accordance with section 240. Any alien who is provided a hearing under section 240 pursuant to this paragraph may thereafter obtain judicial review of any resulting final order of removal pursuant to subsection (a)(1).

(5) SCOPE OF INQUIRY.—In determining whether an alien has been ordered removed under section 235(b)(1), the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. There shall be no review of whether the alien is actually inadmissible or entitled to any relief from removal.

(f) LIMIT ON INJUNCTIVE RELIEF.—

(1) IN GENERAL.—Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of chapter 4 of title II, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such chapter have been initiated.

(2) PARTICULAR CASES.—Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law.

(g) EXCLUSIVE JURISDICTION.—Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the [Attorney General] *Secretary of Homeland Security* to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act.

* * * * * * *

CHAPTER 5—ADJUSTMENT AND CHANGE OF STATUS

* * * * * * *

RESCISSION OF ADJUSTMENT OF STATUS

SEC. 246. (a) If, at any time within five years after the status of a person has been otherwise adjusted under the provisions of sec-

tion 245 or 249 of this Act or any other provision of law to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the [Attorney General] *Secretary of Homeland Security* that the person was not in fact eligible for such adjustment of status, the [Attorney General] *Secretary of Homeland Security* shall rescind the action taken granting an adjustment of status to such person and cancelling removal in the case of such person if that occurred and the person shall thereupon be subject to all provisions of this Act to the same extent as if the adjustment of status had not been made. [Nothing in this subsection shall require the Attorney General to rescind the alien's status prior to commencement of procedures to remove the alien under section 240, and an order of removal issued by an immigration judge shall be sufficient to rescind the alien's status.] *Upon request of the individual whose status has been rescinded, the Secretary of Homeland Security shall refer such rescission to the United States Immigration Courts for review in accordance with section 604(b)(1)(B).*

(b) Any person who has become a naturalized citizen of the United States upon the basis of a record of a lawful admission for permanent residence, created as a result of an adjustment of status for which such person was not in fact eligible, and which is subsequently rescinded under subsection (a) of this section, shall be subject to the provisions of section 340 of this Act as a person whose naturalization was procured by concealment of a material fact or by willful misrepresentation.

* * * * * * *

TITLE VI—UNITED STATES IMMIGRATION COURTS

Subtitle A—Organization and Jurisdiction

SEC. 601. ESTABLISHMENT AND STRUCTURE.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established, under article I of the Constitution of the United States, a system of courts of record to be known as the United States Immigration Courts (referred to in this Act as the "Immigration Courts"). Each such court of record may be referred to as an "immigration court". The Immigration Courts is not an agency of, and shall be independent of, the executive branch of the Government.

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

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

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

(b) APPELLATE DIVISION.—

(1) IN GENERAL.—The appellate division of the Immigration Courts shall be composed of 21 immigration appeals judges, one of whom shall serve as chief judge, in accordance with paragraph (3).

(2) APPOINTMENT OF IMMIGRATION APPEALS JUDGES.—

(A) IN GENERAL.—Each immigration appeals judge shall be appointed by the President, by and with the advice and consent of the Senate, consistent with the requirements described in section 602.

(B) TERM OF OFFICE.—Each immigration appeals judge shall be appointed for a term of 15 years and may be reappointed for additional 15-year terms. An immigration appeals judge who is not reappointed for an additional term may continue to serve after the expiration of the prior term until the earlier of—

(i) the date that a successor is appointed; or

(ii) the date that is 1 year after the expiration of the prior term.

(C) SPECIAL RULE.—If an immigration appeals judge does not serve the entirety of an appointed term, the resulting vacancy shall be filled by a successor appointed for the remainder of the term in accordance with this paragraph. At the conclusion of the term, such successor may be reappointed in accordance with subparagraph (B).

(3) CHIEF JUDGE.—

(A) DESIGNATION.—

(i) IN GENERAL.—The chief judge shall be the immigration appeals judge who is most senior in appointment among the immigration appeals judges who, at that time of appointment to the appellate division—

(I) have served for 1 or more years;

(II) have at least 5 years remaining in their term of office as an immigration appeals judge; and

(III) have not previously served as chief judge.

(ii) ACTING CHIEF JUDGE.—If no immigration appeals judge in regular active service satisfies all of the requirements in clause (i), the immigration appeals judge who is most senior in commission and who has not previously served as chief judge shall serve as acting chief judge until an immigration appeals judge becomes eligible under such clause.

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

(B) TERM OF OFFICE.—

(i) IN GENERAL.—Except as provided in clause (ii), the chief judge shall serve a term that shall end on the earliest of—

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

(II) the date that the judge is removed from service for cause in accordance with section 602(f);

(III) the date that the judge leaves regular active service as an immigration appeals judge; and

(IV) the date that the judge provides written notice to the other immigration appeals judges that such judge is resigning from service as chief judge.

(ii) CONTINUATION OF SERVICE.—If, upon conclusion of the chief judge's term of office described in clause (i)(I), no other immigration appeals judge is eligible to assume the role of chief judge as provided in subparagraph (A), the incumbent shall continue to serve as chief judge until another immigration appeals judge becomes eligible.

(4) EN BANC EXERCISE OF APPELLATE DIVISION AUTHORITY IN NON-ADJUDICATIVE MATTERS.—

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

(i) appoint immigration trial judges to the trial division;

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

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

(iv) promulgate rules and set policies and procedures of the Immigration Courts; and

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

(B) MAJORITY VOTE.—The appellate division shall exercise its en banc authority as provided in subparagraph (A) by a majority vote, a quorum being present.

(C) QUORUM.—For purposes of this paragraph, not less than three immigration appeals judges in regular active service or ⅔ of all immigration appeals judges in regular active service, whichever is greater, shall constitute a quorum.

(c) TRIAL DIVISION.—

(1) IN GENERAL.—The trial division of the Immigration Courts shall be composed of immigration trial courts, the number and geographical location of which shall be determined by the administrative council, in accordance with the procedures described in subsection (d)(3)(B). Each immigration trial court shall be overseen by a chief trial judge.

(2) APPOINTMENT OF IMMIGRATION TRIAL JUDGES.—

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

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

(3) CHIEF TRIAL JUDGES.—

(A) DESIGNATION.—The chief judge shall designate one immigration trial judge to serve as the chief trial judge for

each geographical area. If only one immigration trial judge presides over a geographical area, that judge shall be designated the chief trial judge.

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

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

(i) overseeing the administrative operations of the trial division in the geographical area in which they are located; and

(ii) fulfilling all other duties and responsibilities articulated in this Act or delegated to the chief trial judges by the chief judge.

(d) ADMINISTRATIVE DIVISION.—

(1) IN GENERAL.—The administrative division of the Immigration Courts shall consist of an administrative office and an administrative council.

(2) ADMINISTRATIVE OFFICE.—The administrative office shall be managed by a chief administrative officer, who shall be responsible for—

(A) implementing and administering operational rules, policies, and procedures of the Immigration Courts established by the appellate division or the administrative council;

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

(C) fulfilling all other administrative duties and responsibilities articulated in this Act or delegated by the chief judge.

(3) ADMINISTRATIVE COUNCIL.—

(A) IN GENERAL.—The chief judge of the appellate division shall summon annually the chief trial judge of each court of the trial division to a meeting at such time and place in the United States as the chief judge may designate. The chief judge shall preside at such meeting which shall be known as the administrative council of the Immigration Courts. Special sessions of the council may be called by the chief judge at such times and places as the chief judge may designate. If the chief trial judge of any court of the trial division is unable to attend, the chief judge may summon any other judge from such court. Every judge summoned shall attend and, unless excused by the chief judge, shall remain throughout the sessions of the council and advise as to the needs of that judge's court and as to any matters in respect of which the administration of justice in the Immigration Courts may be improved.

(B) DETERMINATION OF NUMBER OF REQUIRED JUDGES AND GEOGRAPHICAL AREAS OF SERVICE.—

(i) SURVEY.—Not later than 1 year after the application date described in section 6 of the Real Courts, Rule of Law Act of 2022, and every 4 years thereafter, the administrative council shall conduct a survey, which shall include the solicitation of information and

recommendations from the public, to determine the number of immigration trial courts required to provide for the expeditious and effective administration of justice, as well as the geographical areas to be served by such courts. In conducting the survey, the administrative council shall—

(I) assess the continuing need for existing immigration trial court positions and the need for additional positions in each geographical location;

(II) evaluate local conditions in each geographical location, including the proximity to populations to be served, the quality and availability of infrastructure to support transportation and communication, and the availability of legal services for indigent and non-English speaking individuals;

(III) consider proximity and access to judicial and Department of Homeland Security facilities; and

(IV) consider the allocation of immigration trial courts and judges among existing geographical areas and whether the administration of justice would be better served by the presence of immigration trial courts and judges in new or different areas.

(ii) PUBLICATION OF SURVEY RESULTS.—The administrative council shall publish the results of the survey described in subparagraph (A).

(iii) NOTICE OF VACANCIES.—The administrative council shall publish notice of any immigration judge vacancies or new staff positions.

(C) MERIT SELECTION PANEL.—

(i) APPOINTMENT OF IMMIGRATION JUDGES.—The administrative council shall establish a merit selection panel to assist in identifying and recommending individuals who are best qualified to serve as immigration judges, consistent with subsections (a), (b), and (c) of section 602.

(ii) COMPOSITION.—The panel described in paragraph (1) shall consist of qualified individuals with experience in a diverse range of settings, including academia, nongovernmental organizations, private immigration practice, and government service.

SEC. 602. IMMIGRATION APPEALS JUDGES AND TRIAL JUDGES.

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

(1) be a member in good standing of the bar of a Federal court or the highest court of a State, or any combination thereof, for not less than 10 years;

(2) possess, and have a reputation for, integrity and good character;

(3) possess and have demonstrated a commitment to equal justice under the law;

(4) possess and have demonstrated outstanding legal ability and competence, as evidenced by substantial legal experience,

ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and court processes;

(5) exhibit demeanor, character, and personality that indicate a judicial temperament; and

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

(b) ADDITIONAL FACTORS FOR THE APPOINTMENT OF IMMIGRATION JUDGES.—In appointing immigration judges, the President and the appellate division shall ensure that—

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

(2) to the extent practicable, the corps of immigration judges—

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

(B) reflects a balance of individuals with prior legal experience in the public sector and private sector; and

(3) candidates are selected without regard to political party affiliation or perceived political ideology.

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

(d) CONTINUING EDUCATION.—In addition to the training required under section 603(c) of the International Religious Freedom Act of 1998 (22 U.S.C. 6473(c)), all immigration judges shall be required to satisfy continuing education requirements, as determined by the administrative council.

(e) SALARIES.—

(1) IMMIGRATION APPEALS JUDGES.—Each immigration appeals judge shall serve on a full-time basis and shall receive as compensation for such services, an annual salary that is equal to the salary of a judge of the district court of the United States as determined pursuant to section 135 of title 28, United States Code.

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

(3) PROHIBITION ON THE PRACTICE OF LAW.—No immigration judge may engage in the practice of law or any other practice, business, occupation, or employment that is inconsistent with the expeditious, proper, and impartial performance of such judge's duties.

(f) REMOVAL.—

(1) IN GENERAL.—An immigration judge may be removed from office only on grounds of incapacity, misconduct, neglect of duty, or having engaged in the practice of law, and in accordance with the following:

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

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

(C) No immigration judge may be removed from office unless such judge is provided with notice of the allegations forming the basis for removal and an opportunity to appear in person at a hearing to rebut such allegations.

(2) COMPLAINTS.—

(A) IN GENERAL.—The appellate division shall promulgate rules, consistent with chapter 16 of title 28, United States Code, for receiving, investigating, and resolving complaints regarding the conduct of immigration judges. In investigating and acting upon any such complaint, the appellate division shall have the powers granted to a judicial council under such chapter.

(B) JUDICIAL CONFERENCE.—The provisions of sections 354(b) through 360 of title 28, United States Code, regarding referral or certification to, and petition for review in the Judicial Conference of the United States, and action thereon, shall apply to the exercise of the powers of a judicial council by the appellate division. The grounds for removal specified in paragraph (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 80.

(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 office and not later than 6 months preceding such date, he advised the President or the appellate division, as appropriate, in writing that he was willing to accept reappointment as an immigration judge.

(4) Any immigration judge who becomes permanently disabled from performing his duties shall retire.

(h) RETIRED PAY.—Any individual who—

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

(2) retires under paragraph (4) of subsection (b) and elects under subsection (i) to receive retired pay under this subsection shall receive retired pay during any period at a rate—(A) equal to the rate of the salary payable to an immigration judge during such period if before he retired he had served as an immigration judge not less than 10 years; or (B) one-half of the rate of the salary payable to an immigration judge during such period if before he retired he had served as an immigration judge less than 10 years.

Such retired pay shall begin to accrue on the day following the day on which his salary as immigration judge ceases to accrue, and shall continue to accrue during the remainder of his life. Retired pay under this subsection shall be paid in the same manner as the salary of an immigration judge. In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, that portion of the aggregate number of years he has served as an immigration judge which is a fractional part of 1 year shall be eliminated if it is less than 6 months, or shall be counted as a full year if it is 6 months or more. In computing the rate of the retired pay under paragraph (1) of this subsection for any individual who is entitled thereto, any period during which such individual performs services under subsection (c) on a substantially full-time basis shall be treated as a period during which he has served as an immigration judge.

(i) ELECTION TO RECEIVE RETIRED PAY.—Any immigration judge may elect to receive retired pay under subsection (h). Such an election—

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

(2) once made, shall be irrevocable;

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

(4) in the case of the chief judge, shall be made by filing notice thereof in writing with the Office of Personnel Management.

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

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

(1) 1-YEAR FORFEITURE FOR FAILURE TO PERFORM JUDICIAL DUTIES.—If such individual during any calendar year fails to perform judicial duties required of him by section 603, such individual shall forfeit all rights to retired pay under subsection

(d) for the 1-year period which begins on the first day on which he so fails to perform such duties.

(2) SUSPENSION OF RETIRED PAY DURING PERIOD OF COMPENSATED GOVERNMENT SERVICE.—If such individual accepts compensation for civil office or employment under the Government of the United States (other than the performance of judicial duties pursuant to section 603), such individual shall forfeit all rights to retired pay under subsection (h) for the period for which such compensation is received.

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

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

(i) paragraph (1) and section 603 shall not apply to such individual beginning on the date such election takes effect, and

(ii) the retired pay under subsection (h) payable to such individual for periods beginning on or after the date such election takes effect shall be equal to the retired pay to which such individual would be entitled without regard to this clause at the time of such election.

(B) ELECTION.—An election under this paragraph—

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

(ii) may be made only during the period during which the individual may make an election to receive retired pay or while the individual is receiving retired pay, and

(iii) shall be made in the same manner as the election to receive retired pay.

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

(C) WHEN ELECTION TAKES EFFECT.—Any election under this paragraph shall take effect on the first day of the first month following the month in which the election is made.

(k) COORDINATION WITH CIVIL SERVICE RETIREMENT.—

(1) GENERAL RULE.—Except as otherwise provided in this subsection, the provisions of the civil service retirement laws (including the provisions relating to the deduction and withholding of amounts from basic pay, salary, and compensation) shall apply in respect of service as an immigration judge (together with other service as an officer or employee to whom such civil service retirement laws apply) as if this section had not been enacted.

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

(A) no annuity or other payment shall be payable to any person under the civil service retirement laws with respect to any service performed by such individual (whether performed before or after such election is filed and whether performed as immigration judge or otherwise);

(B) no deduction for purposes of the Civil Service Retirement and Disability Fund shall be made from retired pay payable to him under subsection (h) or from any other salary, pay, or compensation payable to him, for any period beginning after the day on which such election is filed; and

(C) such individual shall be paid the lump-sum credit computed under section 8331(8) of title 5, United States Code, upon making application therefor with the Office of Personnel Management.

(l) RETIREMENT FOR DISABILITY.—

(1) Any immigration judge who becomes permanently disabled from performing his duties shall certify to the President, or the appellate division, as applicable, his disability in writing. If the chief judge retires for disability, his retirement shall not take effect until concurred in by the President.

(2) Whenever any immigration judge who becomes permanently disabled from performing his duties does not retire or the appellate division, as applicable, and the President finds that such immigration judge is unable to discharge efficiently all the duties of his office by reason of permanent mental or physical disability and that the appointment of an additional immigration judge is necessary for the efficient dispatch of business, the President or the appellate division, as applicable, shall declare such immigration judge to be retired.

(m) REVOCATION OF ELECTION TO RECEIVE RETIRED PAY.—

(1) IN GENERAL.—Notwithstanding subsection (e)(2), an individual who has filed an election to receive retired pay under subsection (h) may revoke such election at any time before the first day on which retired pay (or compensation under section 603 in lieu of retired pay) would (but for such revocation) begin to accrue with respect to such individual.

(2) MANNER OF REVOKING.—Any revocation under this subsection shall be made by filing a notice thereof in writing with the Civil Service Commission. The Civil Service Commission shall transmit to the chief judge a copy of each notice filed under this subsection.

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

(A) for purposes of this section, the individual shall be treated as not having filed an election to receive retired pay under subsection (h),

(B) no credit shall be allowed for any service as an immigration judge unless with respect to such service either there has been deducted and withheld the amount required by the civil service retirement laws or there has been deposited in the Civil Service Retirement and Disability Fund an amount equal to the amount so required, with interest,

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

(D) if subparagraph (C) is complied with, service on the Immigration Courts shall be treated as service with respect to which deductions and contributions had been made during the period of service.

(n) THRIFT SAVINGS PLAN.—

(1) ELECTION TO CONTRIBUTE.—

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

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

(2) APPLICABILITY OF TITLE 5 PROVISIONS.—Except as otherwise provided in this subsection, the provisions of subchapters III and VII of chapter 84 of title 5, United States Code, shall apply with respect to an immigration judge who makes an election under paragraph (1).

(3) SPECIAL RULES.—

(A) AMOUNT CONTRIBUTED.—The amount contributed by an immigration judge to the Thrift Savings Fund in any pay period shall not exceed the maximum percentage of such immigration judge's basic pay for such period as allowable under section 8440f of title 5, United States Code. Basic pay does not include any retired pay paid pursuant to this section.

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

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

(i) retires under subsection (g), or

(ii) ceases to serve as an immigration judge but does not retire under subsection (g).

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

(D) APPLICABILITY OF SECTION 8351(b)(5) OF TITLE 5.—The provisions of section 8351(b)(5) of title 5, United States Code, shall apply with respect to an immigration judge who makes an election under paragraph (1).

(E) EXCEPTION.—Notwithstanding subparagraph (C), if any immigration judge retires under this section, or resigns without having met the age and service requirements set forth under subsection (g)(2), and such immigration judge's nonforfeitable account balance is less than an amount that the Executive Director of the Federal Retirement Thrift Investment Board prescribes by regulation, the Executive Director shall pay the nonforfeitable account balance to the participant in a single payment.

SEC. 603. TEMPORARY IMMIGRATION JUDGES AND COURT FACILITIES.

(a) IN GENERAL.—Subject to subsection (c), if the administrative council determines, based on specific and credible facts, that the current resources of the Immigration Courts are insufficient for the

expeditious and effective administration of justice, the appellate division may exercise its authority en banc to—

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

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

(3) establish temporary court facilities in designated geographic areas.

(b) RECALL OF RETIRED JUDGES.—

(1) ELIGIBILITY.—A retired immigration judge may be recalled for service if the judge provides to the clerk of the Immigration Courts written notice that the judge is willing to be recalled for service in accordance with the terms of this subsection.

(2) AUTHORITY OF RECALLED JUDGES.—An immigration judge who is recalled to serve as an immigration appeals judge or immigration trial judge may exercise all of the judicial powers and duties of such judges in regular active service, except as specifically provided in this subtitle. Such judge shall not be counted for purposes of section 601(b)(1) or (c)(2).

(3) COMPENSATION.—An immigration judge who is recalled for service shall be paid at the rate of pay in effect under section 602(e) for the position at the time of such recall, less the amount of the judge's retirement annuity, if any.

(4) EFFECT ON CIVIL SERVICE RETIREMENT.—Except as provided in subsection (d), an immigration judge who is recalled for service who retired under chapter 83 or 84 of title 5, United States Code, shall be considered to be a reemployed annuitant under that chapter. Nothing in this subsection affects the right of an immigration judge who retired under chapter 83 or 84 of title 5, United States Code, to serve as a reemployed annuitant in accordance with the provisions of title 5, United States Code.

(c) REPORTING REQUIREMENTS.—

(1) INITIAL REPORT.—Prior to exercising the authority described in subsection (a), the appellate division shall transmit a report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate detailing—

(A) the specific and credible facts that led to the determination that additional court resources are required;

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

(C) an estimate as to how long the appellate division expects the immigration judges or court facilities described in subsection (a) to remain in place.

(2) ADDITIONAL REPORTING.—Not later than 30 days after exercising the authority under subsection (a) and every 30 days thereafter, the appellate division shall report to the Committees named in paragraph (1) on the current status of the Immigration Courts and the continuing need for the temporary immigration judges or court facilities.

(3) REDUCTION IN RESOURCES AND TERMINATION.—

(A) GRADUAL REDUCTION IN RESOURCES.—The appellate division shall, exercising its authority en banc in accord-

ance with section 601(b)(4), terminate the appointment of individual temporary immigration judges and close individual temporary court facilities as the appellate division, in consultation with the administrative council, determines they are no longer required. For purposes of this subparagraph, section 602(g) does not apply.

(B) TERMINATION.—All temporary immigration judge appointments shall be rescinded and all temporary court facilities closed upon the earliest of—

(i) the date that the appellate division determines, in consultation with the administrative council, that regular court resources are sufficient to resume normal court operations;

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

(iii) 210 days after the appellate division submits its initial report under paragraph (1)(A), unless Congress extends such 210-day period by law.

SEC. 604. JURISDICTION.

(a) APPELLATE DIVISION JURISDICTION.—

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

(A) appeals of immigration trial judge decisions, as described in section 625(c);

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

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

(2) SAVINGS CLAUSE.—In addition to the matters described in paragraph (1), the appellate division shall have jurisdiction to hear and decide all other matters over which the Board of Immigration Appeals had authority on the day before the application date described in section 6(a) of the Real Courts, Rule of Law Act of 2022.

(b) TRIAL DIVISION JURISDICTION.—

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

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

(B) review of rescissions of lawful permanent residence under section 246;

(C) review of credible fear determinations under section 235 and reasonable fear determinations for aliens subject to reinstated orders of removal under section 241;

(D) review of applications for asylum referred by the Secretary of Homeland Security where the applicant is barred from being placed in removal proceedings under section 240, and referrals for protection under section 241(b)(3) or the United Nations Convention Against Torture where the individual is not in removal proceedings and is barred from asylum under this Act;

(E) determinations relating to bond, custody, or the detention of any alien in the custody of the Department of Homeland Security;

(F) determinations as to whether administrative actions arising from applications or petitions filed by or on behalf of the alien and that are pending during the course of the alien's removal proceedings under section 240 have been unlawfully withheld or unreasonably delayed; and

(G) disciplinary matters concerning attorneys and practitioners before the Immigration Courts.

(2) SAVINGS CLAUSE.—In addition to the matters described in paragraph (1), the trial division shall have jurisdiction to hear and decide all other matters over which immigration judges had authority on the day before the application date described in section 6(a) of the Real Courts, Rule of Law Act of 2022.

Subtitle B—Procedure and Appellate Review

SEC. 621. PROCEEDINGS.

(a) TRIAL DIVISION PROCEEDINGS.—

(1) IN GENERAL.—Except as provided in section 604(a), all proceedings before the Immigration Courts shall originate in the trial division. Proceedings before the trial division shall be heard and decided by a single immigration trial judge, with matters assigned to such judges in a manner determined by the appellate division.

(2) AUTHORITY OF TRIAL DIVISION.—In presiding over matters before the trial division, immigration trial judges may—

(A) record and receive evidence, administer oaths, examine and cross-examine witnesses, set deadlines, and render findings of fact and conclusions of law;

(B) render decisions on respondents' prima facie and discretionary eligibility for relief from removal; and

(C) order and take depositions, issue subpoenas requiring the attendance and testimony of witnesses and the production of documents or other evidence, and order responses to written interrogatories.

(b) APPELLATE DIVISION PROCEEDINGS.—

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

(2) PRECEDENCE IN APPELLATE DIVISION.—The chief judge of the Immigration Courts shall have precedence and preside at any session of the appellate division that such judge attends. Other immigration appeals judges shall have precedence and preside in the appellate division according to the seniority of their original commissions and, for judges whose commissions bear the same date, according to seniority in age.

(c) CONTEMPT AUTHORITY.—

(1) IN GENERAL.—Immigration judges shall have the authority, to sanction by civil money penalty, any individual whose action or inaction obstructs the administration of justice or is otherwise in contempt of the lawful authority of such judge or the Immigration Courts.

(2) NOTICE.—No individual may be sanctioned for contempt under paragraph (1) without first receiving notice of the charges and an opportunity to rebut such charges.

(d) ASSISTANCE TO THE COURT.—The Immigration Courts shall have such assistance in carrying out its lawful writ, process, order, rule, decree, or command, including nationwide service of a subpoena, as is available to a court of the United States, as that term is defined in section 451 of title 28, United States Code. The United States marshal for a district in which the immigration trial judge is sitting shall, if requested by the presiding judge, attend any court proceeding in that district, and may otherwise provide, when requested by the chief trial judge of that immigration trial court, for the security of the immigration trial court, including the personal protection of judges, court officers, witnesses, and other threatened persons in the interests of justice, where criminal intimidation impedes on the functioning of the judicial process or any other official proceeding. The United States Marshals Service retains final authority regarding security requirements for the Immigration Courts.

(e) OPINIONS AND ORDERS.—

(1) IN GENERAL.—Opinions and orders shall be issued in accordance with rules promulgated by the appellate division, except that decisions on the merits of an application or request for relief from removal rendered by the trial division or the appellate division shall, to the greatest extent practicable, be issued in the form of a written opinion and shall include an analysis of the facts of the case and the legal reasoning for the decision.

(2) PRECEDENTS.—Unless subsequently modified or reversed by the appellate division, the court of appeals for the respective judicial circuit, or the Supreme Court, precedent decisions of the appellate division shall be binding on all immigration judges and all officers and employees of executive agencies (as defined in section 105 of title 5, United States Code) with powers, functions, and duties under this Act and other laws relating to the immigration and naturalization of aliens.

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

SEC. 622. IMMIGRATION COURTS RULES OF PRACTICE AND PROCEDURE.

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

(1) rules governing the representation of parties, which shall—

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

(B) prescribe standards of practice and professional conduct, which shall apply to all attorneys and practitioners that appear before the Immigration Courts; and

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

(2) rules governing the exercise of the appellate division's en banc authority over adjudicative matters, including decisions of an appellate division panel;

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

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

(5) rules governing the use of video teleconferencing technology or other similar technologies, with a presumption against the use of video teleconferencing in proceedings where the alien's eligibility for relief from removal is being evaluated, unless requested by the alien;

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

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

(b) LOCAL RULES.—Each chief trial judge may establish local rules of practice and procedure, provided that—

(1) such rules are consistent with the provisions of this title;

(2) a majority of immigration trial judges on the immigration trial court of that chief judge concur to the local rules; and

(3) the chief judge approves the local rules.

(c) IMMIGRATION COURT FEES.—

(1) IN GENERAL.—The appellate division shall prescribe rules which provide for the collection of reasonable filing fees and other fees, as appropriate. Each such fee may not exceed the fee charged and collected for the same or a substantially similar purpose by the Federal district courts or the Department of Homeland Security.

(2) WAIVER.—Rules promulgated by the appellate division shall include procedures under which any such fee may be waived in the case of financial hardship.

(d) PUBLICATION OF RULES AND FEES.—The administrative division shall maintain a public website that contains or consolidates current information on all rules and fees of the Immigration Courts, including all local rules established under this subsection.

SEC. 623. REPRESENTATION OF PARTIES AND OTHER ASSISTANCE.

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

(b) INTERPRETERS.—The Immigration Courts shall establish a program to ensure the use of qualified interpreters in proceedings before the Immigration Courts.

(c) LEGAL ORIENTATION PROGRAM.—The Immigration Courts shall maintain, through agreements with legal services and other nonprofit organizations, a legal orientation program that explains the Court's procedures and provides basic legal information to individuals who are or may become parties to proceedings before the Immigration Courts.

SEC. 624. AVAILABILITY OF INFORMATION.

(a) PUBLICATION OF PRECEDENT DECISIONS.—Precedent decisions of the appellate division shall be published in such form and manner as may be best adapted for public information and use.

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

(1) IN GENERAL.—Subject to paragraph (2), all non-precedent decisions of the Immigration Courts and all briefs, motions, documents, and exhibits received by such court (including hearing transcripts) shall be made available to the public.

(2) CONFIDENTIAL INFORMATION.—The Immigration Courts shall preserve the confidentiality of information relating to matters involving national security, asylum and other forms of protection, and claims under the Violence Against Women Act (Public Law 103–322, title IV, 108 Stat. 1902), as amended, or any other applicable law. The Immigration Courts may make any provision necessary to prevent the disclosure of confidential information in its proceedings and records, including requiring that such information be placed under seal to be opened only as directed by the Immigration Courts.

SEC. 625. SCOPE OF REVIEW AND APPEALS.

(a) IN GENERAL.—In any proceeding before the Immigration Courts, the immigration judge shall—

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

(2) compel administrative action on an application or petition filed by or on behalf of the alien that is unlawfully withheld or unreasonably delayed.

(b) TRIAL DIVISION PROCEEDINGS.—The decision of an immigration trial judge shall be based only on the evidence produced at the hearing and shall set forth the judge's findings of fact, reasoning to support discretionary determinations, and conclusions of law. Immigration trial judges may take judicial notice of commonly known facts.

(c) REVIEW BY APPELLATE DIVISION.—

(1) IN GENERAL.—In considering an appeal from an immigration trial judge decision, the appellate division shall limit its review to the scope of issues raised on appeal and shall conduct its review of the decision based on the record of proceedings of the trial division.

(2) FACT FINDING.—Aside from taking judicial notice of commonly known facts, the appellate division shall not engage in fact finding in considering an appeal of an immigration trial judge decision, and shall defer to the factual findings of the immigration trial judge unless such findings are challenged and determined to be clearly erroneous.

(d) REVIEW BY THE UNITED STATES COURTS OF APPEALS.—A decision of the appellate division may be appealed by a party to such proceeding and reviewed by the United States court of appeals for the judicial circuit wherein venue lies, in accordance with section 242, as applicable. If the Government appeals a decision pursuant to this subsection, and the court finds that the alien party to such appeal is financially unable to obtain adequate representation, representation for such alien shall be provided through the plan for

representation on appeal that is in effect under section 3006A of title 18, United States Code.

ETHICS IN GOVERNMENT ACT OF 1978

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TITLE I—FINANCIAL DISCLOSURE REQUIREMENTS OF FEDERAL PERSONNEL

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DEFINITIONS

SEC. 109. For the purposes of this title, the term—

(1) "congressional ethics committees" means the Select Committee on Ethics of the Senate and the Committee on Standards of Official Conduct of the House of Representatives;

(2) "dependent child" means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who—

(A) is unmarried and under age 21 and is living in the household of such reporting individual; or

(B) is a dependent of such reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986;

(3) "designated agency ethics official" means an officer or employee who is designated to administer the provisions of this title within an agency;

(4) "executive branch" includes each Executive agency (as defined in section 105 of title 5, United States Code), other than the General Accounting Office, and any other entity or administrative unit in the executive branch;

(5) "gift" means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include—

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(D) food and beverages which are not consumed in connection with a gift of overnight lodging;

(E) communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals; or

(F) consumable products provided by home-State businesses to the offices of a reporting individual who is an elected official, if those products are intended for consumption by persons other than such reporting individual;

(6) "honoraria" has the meaning given such term in section 505 of this Act;

(7) "income" means all income from whatever source derived, including but not limited to the following items: compensation for services, including fees, commissions, and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property; interest; rents; royalties; dividends; annuities; income from life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust;

(8) "judicial employee" means any employee of the judicial branch of the Government, of the United States Sentencing Commission, of the Tax Court, of the Claims Court, of the Court of Appeals for Veterans Claims, *of the United States Immigration Courts,* or of the United States Court of Appeals for the Armed Forces, who is not a judicial officer and who is authorized to perform adjudicatory functions with respect to proceedings in the judicial branch, or who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule;

(9) "Judicial Conference" means the Judicial Conference of the United States;

(10) "judicial officer" means the Chief Justice of the United States, the Associate Justices of the Supreme Court, and the judges of the United States courts of appeals, United States district courts, including the district courts in the Guam, the Northern Mariana Islands, and the Virgin Islands, Court of Appeals for the Federal Circuit, Court of International Trade, Tax Court, Claims Court, Court of Appeals for Veterans Claims, *United States Immigration Courts,* United States Court of Appeals for the Armed Forces, and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior;

(11) "legislative branch" includes—

(A) the Architect of the Capitol;

(B) the Botanic Gardens;

(C) the Congressional Budget Office;

(D) the General Accounting Office;

(E) the Government Printing Office;

(F) the Library of Congress;

(G) the United States Capitol Police;

(H) the Office of Technology Assessment; and

(I) any other agency, entity, office, or commission established in the legislative branch;

(12) "Member of Congress" means a United States Senator, a Representative in Congress, a Delegate to Congress, or the Resident Commissioner from Puerto Rico;

(13) "officer or employee of the Congress" means—

(A) any individual described under subparagraph (B), other than a Member of Congress or the Vice President, whose compensation is disbursed by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives;

(B)(i) each officer or employee of the legislative branch (except any officer or employee of the Government Ac-

countability Office) who, for at least 60 days, occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule;

(ii) each officer or employee of the Government Accountability Office who, for at least 60 consecutive days, occupies a position for which the rate of basic pay, minus the amount of locality pay that would have been authorized under section 5304 of title 5, United States Code (had the officer or employee been paid under the General Schedule) for the locality within which the position of such officer or employee is located (as determined by the Comptroller General), is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule; and

(iii) at least one principal assistant designated for purposes of this paragraph by each Member who does not have an employee who occupies a position for which the rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule;

(14) "personal hospitality of any individual" means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of that individual or his family or on property or facilities owned by that individual or his family;

(15) "reimbursement" means any payment or other thing of value received by the reporting individual, other than gifts, to cover travel-related expenses of such individual other than those which are—

(A) provided by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(B) required to be reported by the reporting individual under section 7342 of title 5, United States Code; or

(C) required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434);

(16) "relative" means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiance or fiancee of the reporting individual;

(17) "Secretary concerned" has the meaning set forth in section 101(a)(9) of title 10, United States Code, and, in addition, means—

(A) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration;

(B) the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(C) the Secretary of State, with respect to matters concerning the Foreign Service;

(18) "supervising ethics office" means—

(A) the Select Committee on Ethics of the Senate, for Senators, officers and employees of the Senate, and other officers or employees of the legislative branch required to file financial disclosure reports with the Secretary of the Senate pursuant to section 103(h) of this title;

(B) the Committee on Standards of Official Conduct of the House of Representatives, for Members, officers and employees of the House of Representatives and other officers or employees of the legislative branch required to file financial disclosure reports with the Clerk of the House of Representatives pursuant to section 103(h) of this title;

(C) the Judicial Conference for judicial officers and judicial employees; and

(D) the Office of Government Ethics for all executive branch officers and employees; and

(19) "value" means a good faith estimate of the dollar value if the exact value is neither known nor easily obtainable by the reporting individual.

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Minority Views

During April 2022, U.S. Customs and Border Protection (CBP) officials encountered more than 234,000 illegal aliens along the southwest U.S. border—the highest monthly total in history.[1] Since President Biden took office, CBP officials have encountered over 2.7 million illegal aliens along the southwest border.[2] Nearly one million of those aliens have been released into the U.S. by the Department of Homeland Security (DHS) pursuant to DHS policy.[3] At the same time, over 600,000 illegal alien "gotaways" have made their way across the southwest border and into the U.S. undetected.[4]

Amid this crisis on border, H.R. 6577, the Real Courts, Rule of Law Act of 2022 does nothing to address the root causes of record-high illegal immigration and would only exacerbate the problem. H.R. 6577 radically reshapes the system of immigration court proceedings in the United States, removing the U.S. immigration court system from its current placement within the Department of Justice (DOJ) and creating the "United States Immigration Courts" as an Article I court system. The bill also makes substantive changes to U.S. immigration law and procedure such as altering the original jurisdiction of immigration courts and authorizing U.S. tax-

[1] U.S. Customs and Border Protections, Southwest Land Border Encounters, https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters.

[2] *Id.*

[3] *Texas v. Biden,* Case No: 2:21–cv–00067–Z (N.D. Texas) (Brief For America First Legal Foundation As Amicus Curiae In Support of Respondents, Defendants' Monthly Report For March 2022, Defendants' Monthly Report For April 2022).

[4] Post Editorial Board, *Biden Resumes 'Air Illegal' Into Westchester as Migrant Tide Grows Even Worse*, N.Y. POST (Apr. 18, 2022) https://nypost.com/2022/04/18/biden-resumes-air-illegal-into-westchester-as-migrant-tide-grows-worse/.

payer-funded counsel for aliens in removal proceedings whose cases are appealed by the government.

Creating an Article I immigration court system will not "empower the courts to function efficiently and effectively," as proponents of H.R. 6577 claim.[5] In 2017, the Government Accountability Office (GAO) recognized the likely limitations of an Article I system, noting that "a court system independent of the executive branch may not address the immigration courts" management challenges, such as the case backlog," and that "requiring presidential nomination and Senate confirmation of immigration judges under an independent court system" might cause problems "by making the appointment of additional judges more dependent on external parties."[6] In addition, the GAO noted difficulties in procuring resources and administering a court system outside of the DOJ.[7]

H.R. 6577 WILL NOT HELP TO REDUCE THE CURRENT IMMIGRATION COURT CASE BACKLOG

The backlog of cases in immigration court has been an increasing concern for several years. Nothing in H.R. 6577, however, would reduce the backlog or even prevent additional increase. In 2017, the GAO found that the immigration court "case backlog . . . more than doubled from fiscal years 2006 through 2015 primarily due to declining cases completed per year."[8] It also found that the median pending time for a case went from 198 days in fiscal year (FY) 2006 to 404 days in FY 2015.[9] According to the GAO, judge-issued continuances contributed to the delay in addressing immigration cases.[10] In addition, from FY 2006 to FY 2015, "use of all types of continuances increased by 23 percent" and "immigration judge-related continuances increased by 54 percent. . . ."[11]

The increase of the immigration court backlog shows no sign of stopping. According to Syracuse University's Transactional Records Access Clearinghouse (TRAC) Data Research, a government watchdog organization, "[o]n average, cases completed during the first nine months of FY 2021 took 891 days from the date of their Notice to Appear to a decision, twice as long compared with 451 days on average during FY 2020."[12] Primarily driven by the Biden-Harris Border Crisis, the backlog climbed to nearly 1.4 million cases in June 2021,[13] and jumped by 300,000 to nearly 1.7 million by the end of April 2022.[14] As long as the Biden-Harris Administration

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[5] American Immigration Lawyers Association, *Congress Must Pass the Real Courts, Rule of Law Act of 2022 (H.R. 6577), Statement of the American Immigration Lawyers Association Submitted to the House Judiciary Committee for the Markup of the Real Courts, Rule of Law Act of 2022* (H.R. 6577) (Apr. 6, 2022) https://www.aila.org/infonet/markup-of-real-courts-rule-of-law-act-of-2022.

[6] U.S. GOV'T AACCOUNTABILITY OFFICE, GAO 17–438, IMMIGRATION COURTS: ACTIONS NEEDED TO REDUCE CASE BACKLOG AND ADDRESS LONG-STANDING MANAGEMENT AND OPERATIONAL CHALLENGES (2017).

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] Syracuse University, Transactional Records Access Clearinghouse (TRAC) Data Research, "Immigration Court Cases Jump in June 2021; Delays Double This Year," https://trac.syr.edu/immigration/reports/654/.

[13] *Id.*

[14] Syracuse University, Transactional Records Access Clearinghouse (TRAC) Data Research, Immigration Court Backlog Tool, Pending Cases and Length of Wait by Nationality State, Court, and Hearing Location, https://trac.syr.edu/phptools/immigration/court_backlog/.

continues its open borders policies that encourage illegal immigration, the immigration courts case backlog will continue to grow.

H.R. 6577 inserts political decisions into an already-fraught immigration-adjudication process. It makes appellate immigration judges subject to Presidential appointment and Senate confirmation.[15] Inserting the politically charged Senate confirmation process into immigration courts will likely ensure that fewer judges are in place to adjudicate cases, adding to the existing delays in case processing. In addition, H.R. 6577's provision regarding a "merit selection panel"—which would make recommendations regarding individuals "who are best qualified to serve as immigration judges"—will likely skew the court's decisions, as the panel would consist of members with experience in more liberal settings including "academia, nongovernmental organizations, private immigration practice, and government service."[16] The bill contains no provision that the panel include members with relevant experience in the military, law enforcement, or on the border. Thus, the bill seems to give the immigration bar and immigration academics influence over who is selected as an immigration judge.

H.R. 6577 INTERFERES WITH THE EXECUTIVE BRANCH'S CONSTITUTIONAL ROLE IN FOREIGN POLICY

Removing the immigration courts from the DOJ could have separation of powers implications given the executive branch's supremacy in matters of foreign policy and given that the executive branch is responsible for ensuring that immigration enforcement is consistent with foreign policy.[17] H.R. 6577 makes the new immigration court "independent of" the Executive Branch and requires the Judicial Conference of the United States to oversee aspects of the new court.[18] However, the Judicial Conference has long opposed the establishment of an Article I immigration court administered by the Judiciary.[19] It has raised concerns about the ability to "handle the high volume of immigration cases, what effect removing Attorney General discretion over the adjudication of immigration cases would have on the adjudication process, and possible constitutional and administrative concerns."[20]

Under current law, the Attorney General is able to certify decisions to himself or herself and issue precedential decisions binding on the executive branch's interpretation of immigration law.[21] This authority is an important one, giving the Attorney General the final say in immigration policy, to announce new standards for the agency, and to overturn Board of Immigration Appeals precedent.[22] Every administration since the Lyndon B. Johnson Administration has used the certification authority as it existed at the time. Mov-

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[15] Real Courts, Rule of Law Act of 2022, H.R. 6577, 117th Cong. § 2.
[16] *Id.*
[17] *Strengthening and Reforming America's Immigration Court System: Hearing Before the Subcomm. on Border and Immigration of the S. Judiciary Comm.,* 115th Cong. (2018) (Testimony of Art Arthur).
[18] Real Courts, Rule of Law Act of 2022, H.R. 6577, 117th Cong.
[19] Report of the Proceedings of the Judiciary Conference of the United States, 18–19 (Sept. 13, 2016).
[20] *Id.*
[21] 8 C.F.R. § 1003.1(h).
[22] Gonzales, Hon. Alberto R. & Patrick Glen. *Advancing Executive Branch Immigration Policy Through the Attorney General's Review Authority.* 101 Iowa L. Rev. 841 (2016), available at https://ilr.law.uiowa.edu/print/volume-101-issue-3/advancing-executive-branch-immigration-policy-through-the-attorney-generals-review-authority/.

ing the immigration courts outside of the Executive branch would remove this important policy-making authority from the Executive Branch and make the courts the ultimate arbiter of immigration policy.

H.R. 6577 CHANGES THE ORIGINAL JURISDICTION OF IMMIGRATION COURTS AND REMOVES THE ADVERSARIAL PROCESS FROM THE ADJUDICATION OF CERTAIN ASYLUM CLAIMS

H.R 6577 removes original jurisdiction of claims arising out of the credible fear process from the immigration courts. Under current law, immigration courts have original jurisdiction over any application stemming from any outcome of a credible fear determination, positive or negative, made by an asylum officer.[23] Aliens encountered along the southern border who claim asylum and are found to have credible fear are placed in removal proceedings before an immigration judge who determines the alien's eligibility for asylum. The judge would consider testimony and other evidence presented in court by the alien and a trial attorney representing the government.

In March 2022, the Biden-Harris Administration issued an interim final rule that would upend the credible fear process by giving asylum officers the ability to interview and grant asylum to those aliens found to have a credible fear of persecution without the government being represented, and in a setting where only the alien's statements and evidence will be considered.[24] H.R. 6577 would codify the interim final rule. This profound change in U.S. asylum policy and procedure should be properly debated and considered, as opposed to being hidden in a 69-page bill whose proponents claim simply changes the current immigration court system into an Article I court.

In addition, current law precludes aliens in removal proceedings from being provided taxpayer-funded counsel.[25] H.R. 6577 specifically provides for U.S taxpayer-funded counsel for aliens whose removal case is appealed by the government to the U.S. Court of Appeals.

DEMOCRATS REJECTED REPUBLICAN AMENDMENTS

During the Committee's consideration of H.R. 6577, Rep. Andy Biggs offered an amendment to delay the bill's effective date until such time as all final orders of removals issued lawfully by an immigration judge have been executed. He also offered an amendment to clarify that immigration judges retain original jurisdiction of any applications arising from a credible fear determination, positive or negative, made by an asylum officer. The Democrats rejected both amendments.

Democrats also rejected an amendment offered by Rep. Mike Johnson, which would have delayed the bill's effective date until the Secretary of Homeland Security certifies to Congress that the performance of all contracts awarded by the Department of Homeland Security and the Department of Defense between January 20th, 2017, and January 20th, 2021, for the construction of a bar-

[23] 8 U.S.C. § 1103(g).
[24] Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 87 Fed. Reg. 18078 (Mar. 29, 2022).
[25] 8 U.S.C. § 1362.

rier along the international border between the United States and Mexico, have been completed. The Democrats rejected this amendment as well.

CONCLUSION

At a time when our southwest border is experiencing a humanitarian and security crisis unlike every before, Congress's first priority should be to address and stop the root causes of that problem. H.R. 6577, unfortunately, does nothing to address the root causes of record-high illegal immigration and will only make the Biden border crisis even worse.

JIM JORDAN,
Ranking Member.