

A BILL

To establish the United States Immigration Court.

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

SECTION 1. SHORT TITLE; AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Immigration Court Act of 2013”.

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.—Whenever in this Act an amendment or repeal is expressed as the amendment or repeal of a section or other provision, the reference shall be considered to be made to that section or provision in the Immigration and Nationality Act.

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

Sec. 1. Short title; amendments to Immigration and Nationality Act;

table of contents.

Sec. 2. Establishment of United States Immigration Court.

Sec. 3. Conforming provisions.

Sec. 4. Effective date; transition.

SEC. 2. ESTABLISHMENT OF UNITED STATES IMMIGRATION COURT.

(a) NEW CHAPTER 2.—Title I is amended—

(1) by inserting the following after the title heading:

“CHAPTER 1—DEFINITIONS AND POWERS” ;

and

(2) by adding at the end the following new chapter:

“CHAPTER 2—UNITED STATES IMMIGRATION COURT

“ESTABLISHMENT OF IMMIGRATION COURT

“SEC. 111. (a) IN GENERAL.—There is established,

under article I of the Constitution of the United States,

a court of record to be known as the United States Immigration Court.

“(b) DIVISIONS.—The Immigration Court shall consist of an appellate

division, and trial-level immigration courts.

“APPELLATE DIVISION

“SEC. 112. (a) APPOINTMENT OF APPEALS

JUDGES.—The appellate division of the Immigration

Court shall be composed of a chief immigration appeals judge and 15 other immigration appeals judges, appointed by the President by and with the advice and consent of the Senate.

“(b) TERM OF OFFICE.—The term of office of each immigration appeals judge shall be 15 years, except that—

“(1) of the judges first appointed under this subsection, five shall each be appointed for terms of 5, 10, and 15 years,

“(2) a judge appointed to fill a vacancy occurring before the expiration of the term for which a predecessor was appointed shall be appointed only for the remainder of such term, and

“(3) a judge may serve after the expiration of the judge’s term until reappointed or a successor has taken office.

“(c) COMPENSATION.—Each immigration appeals judge shall receive a salary at the rate equal to 93 percent of the rate of Executive Schedule II;

“(d) CHIEF IMMIGRATION APPEALS JUDGE.—

(1) Shall be appointed for a term of 5 years.

(2) Shall receive a salary at the rate equal to 95 percent of the rate of Executive Schedule II.

(3) Shall be responsible for the administrative operations of the Immigration Court and shall have the power to appoint such administrative assistants, attorneys, clerks, and other personnel as may be needed for that purpose.

“(e) QUORUM.—Three immigration appeals judges constitute a quorum of the appellate division, except that the chief immigration appeals judge (or any immigration appeals judge designated by the chief judge) is empowered to decide nondispositive motions.

“(f) ACTING IN PANELS.—The appellate division shall act in panels of 3 or more judges or in banc (as designated by the chief immigration appeals judge in accordance with the rules of the appellate division). A final decision of such a panel shall be considered to be a final decision of the appellate division. Should a member of a panel become unavailable at any time during the deliberations of a panel, a decision may be made by two members of the panel.

“(g) REMOVAL OF JUDGES FOR CAUSE.—(1) Removal of an immigration appeals judge (including the chief administrative appeals judge) during the term for which the judge is appointed shall be only for incompetency, misconduct, neglect of duty, or physical or mental disability. Removal shall be by the United States Court of Appeals for the Federal Circuit, but removal may not occur unless a majority of all judges of such court of appeals concur in the order of removal.

“(2) Before any order of removal may be entered, a full specification of the charges shall be furnished to the immigration appeals judge involved, and such judge shall be accorded an opportunity to be heard on the charges.

“(3) Any cause for removal of any immigration appeals judge coming to the knowledge of the Director of the Administrative Office of the United States Courts shall be reported by the Director to the Chief Judge of the United States Court of Appeals for the Federal Circuit, and a copy of the report shall at the same time be transmitted to the immigration appeals judge.

“(4) An immigration appeals judge removed from office in accordance with this subsection shall not be permitted at any time to practice before the Immigration

Court.

“(h) EXPENSES FOR TRAVEL AND SUBSISTENCE.—

Immigration appeals judges shall receive necessary traveling expenses and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, subject to the same limitations in amount as are new or may hereafter be applicable to the United States Court of International Trade.

“(i) OFFICE OF COURT.—The principal office of the appellate division of the Immigration Court shall be in, or within twenty miles of, the District of Columbia, but immigration appeals judges may hold court at such times and in such places as the appellate division may provide by rule.

" (j) TRANSITION.- (1) The Director of the Executive Office for Immigration Review shall act as the chief immigration appeals judge until appointment of the chief immigration appeals judge under paragraph (a) above.

(2) Each individual who is serving as a permanent member of the Board of Immigration Appeals as of the date of the enactment of this chapter shall be deemed appointed to serve initially as an immigration appellate judge pursuant to paragraph (a) above. The term of the initial appointment (5, 10 or 15 years) shall be randomly determined.

(3) Should there be more than 15 permanent members of the Board of Immigration appeals serving on the date of enactment, only the 15 most senior permanent board members shall be deemed appointed as immigration appeals judges.

“IMMIGRATION JUDGES

“SEC. 113. (a) APPOINTMENT OF IMMIGRATION JUDGES.—

(1) Each immigration judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the court of appeals of the United States for the judicial circuit in which such judicial district is located. Such appointments shall be made after considering the recommendations of the Judicial Conference submitted pursuant to paragraph (b).

(2) Immigration judges appointed pursuant to this section shall be appointed for the several judicial districts as follows:

[insert court locations and number of judges]

(3) Whenever a majority of the judges of any court of appeals cannot agree upon the appointment of an immigration judge, the chief judge of such court shall

make the appointment.

(b) THE JUDICIAL CONFERENCE

(1) The Judicial Conference of the United States shall from time to time, and after considering the recommendations submitted by the Director of the Administrative Office of the United States Courts, after such Director has consulted with the judicial council of the circuit involved, determine the official duty stations of immigration judges and places of holding court.

(2) The Judicial Conference shall, from time to time, submit recommendations to the Congress regarding the number of immigration judges needed and the districts in which such judges are needed.

“(c) TERM OF OFFICE.—The term of office of each immigration judge shall be 15 years, except that—

“(1) a judge appointed to fill a vacancy occurring before the expiration of the term for which a predecessor was appointed shall be appointed only for the remainder of such term, and

“(2) a judge may serve after the expiration of such judge’s term until reappointed or a successor has taken office.

“(d) COMPENSATION.— Each immigration judge shall receive a salary at the rate equal to 92 percent

of the rate of Executive Schedule II.

“(3) TRANSITION.—Each individual who is serving as an immigration judge, or as an administrative law judge assigned to the Office of the Chief Administrative Hearing Officer, as of the date of the enactment of this chapter shall be deemed appointed to serve as an immigration judge, for a full 15 year term.

“(e) REMOVAL FOR CAUSE.—Immigration judges may be removed from office in the same manner as immigration appeals judges may be removed under section 112(g), except that any reference in that section to the United States Court of Appeals for the Federal Circuit shall be deemed a reference to the Court of Appeals for the judicial district in which the Immigration judge is based.

“(f) AUTHORITY OF JUDGES.—Immigration judges shall administer oaths, receive evidence, and interrogate, examine, and cross-examine the alien and any witnesses. Immigration judges may take depositions, issue subpoenas requiring the attendance and testimony of witnesses and the production of documentation or other evidence from any place in the United States or any territory or possession thereof, order the taking of depositions, and order responses to written interrogatories.

“(g) WITNESS FEES.—Witnesses appearing under subpoena before the

Immigration Court shall be paid the same fee and mileage allowance as are paid subpoenaed witnesses in any other court of the United States.

“(h) EXPENSES FOR TRAVEL AND SUBSISTENCE.—

Immigration judges shall receive necessary traveling expenses, and expenses actually incurred for subsistence while traveling on duty and away from their designated stations, subject to the same limitations in amount as are now or may hereafter be applicable to the United States Court of International Trade.

“JURISDICTION

“SEC. 114. (a) THE APPELLATE DIVISION.—

“(1) IN GENERAL.—The appellate division of the Immigration Court shall hear and determine appeals from any of the following:

“(A) A final decision of an immigration judge under this Act, other than an in absentia order of removal, or a determination granting voluntary departure under section 240B within a period of at least 30 days if the sole ground of appeal is that a greater period of departure time should have been fixed.

“(B) A decision involving the imposition of administrative fines and penalties under title II of this Act, including mitigation thereof.

“(C)(i) A decision on a petition filed in accordance with section 204.

“(ii) A decision on a request for revalidation and a decision revoking approval of such a petition under section 205.

“(2) REVIEW OF DECISIONS.—(A) Either party to a case described in paragraph (1) may appeal an immigration judge’s decision to the appellate division.

“(B) Appeals to the appellate division from a final order of removal (including an order respecting asylum or other relief contained in such an order) shall be filed not later than 30 days after the date of the final order.

“(C) The appellate division shall review the decision of an immigration judge based solely upon the trial record upon which the decision is made. With respect to the standard of review, the following shall apply:

(i) The appellate division shall not engage in de novo review

of findings of facts determined by an immigration judge. Facts determined by the immigration judge, including findings as to the credibility of testimony, shall be reviewed only to determine whether the findings of the immigration judge are clearly erroneous. However, negative credibility findings based primarily on the demeanor of a witness shall not be sustained.

(ii) The appellate division may review questions of law, discretion, and judgment and all other issues in appeals from immigration judges de novo.

(iii) The appellate division may review all questions arising in appeals from decisions of Department of Homeland Security officers de novo.

(iv) Except for taking judicial notice of commonly known facts, such as current events or the contents of official documents, the appellate division may not engage in factfinding in the course of deciding appeals. A party asserting that the appellate division cannot properly resolve an appeal without further factfinding must file a motion for remand. If the appellate division finds that further factfinding is needed in a particular case, the appellate division may remand the proceeding to the immigration judge.

“(3) BINDING DECISIONS.—A final decision of the appellate division shall be binding on all immigration judges, immigration officers, and consular officers under this Act unless and until otherwise modified or reversed by the Court of Appeals for the Judicial Circuit in which the case was tried, or by the United States

Supreme Court.

“(b) JURISDICTION OF IMMIGRATION JUDGE.—

“(1) IN GENERAL.—Immigration judges shall hear and decide the following:

“(A) Removal proceedings under sections

238, 240, proceedings under section 360(c); and deportation and exclusion proceedings.

“(B) Rescission of adjustment of status

cases under section 246.

“(C) Applications for asylum and withholding of removal referred to the Immigration Court for adjudication.

“(D) The assessment of civil penalties under section 274A.

“(E) Determinations relating to bond, parole, or detention of an alien under this Act.

" (F) Applications for relief from removal, including de novo review

of relief denied by the Department of Homeland Security.

" (G) Cases arising under sections 274A, 274B, and 274C of the Immigration and Nationality Act.

“(H) Such other cases arising under this Act as the appellate division may provide by regulation.

“(2) DUTIES OF IMMIGRATION JUDGES.—In considering and deciding cases coming before them, immigration judges shall record and receive evidence and render findings of fact and conclusions of law, shall determine all applications for discretionary relief which may properly be raised in the proceedings, and shall exercise such discretion conferred upon the Attorney General by law as may be necessary for the just and equitable disposition of cases coming before them.

“RULES OF COURT

“SEC. 115. (a) RULES OF PRACTICE AND PROCEDURE.—The appellate division shall promulgate rules of court, consistent with this Act, governing practice and procedure

in the appellate division and before the immigration judges. Only such selected provisions of the Federal Rules of Evidence and the Federal Rules of Civil Procedure as the appellate division deems appropriate for inclusion in the rules of the Immigration Court shall apply to proceedings in the Immigration Court.

“(b) REPRESENTATION.—(1) In any proceeding before the Immigration Court, each nongovernmental party shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as the party shall choose.

“(2) The rules of the Immigration Court shall provide for the admission of qualified attorneys and nonattorneys to practice before the court.

“(c) FEES.—The Immigration Court may impose fees for appeals, motions to reopen, review of decisions of the Department of Homeland Security, adjudication of applications for relief, and such other fees as it may provide for under its rules and procedures. ”

“RETIREMENT OF JUDGES

“SEC. 116. RETIREMENT OF JUDGES.—

(a) a judge of the Immigration Court may retire under the terms of the judge's current retirement system- the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS). Alternatively, the judge, if eligible, may elect retirement benefits under 28 U.S.C. Section 377, to the same extent, and under the same terms, applicable to bankruptcy and magistrate judges.

“(b) SENIOR JUDGES.—(1) Any judge of the Immigration Court who has retired from regular active service under subchapter III of chapter 83 of title 5 United States Code, shall be known and designated as a senior immigration appeals judge or senior immigration judge and may perform duties as such when recalled pursuant to paragraph (2).

“(2) The chief immigration appeals judge may recall any senior immigration appeals judge and/or senior immigration judge, with such judge’s consent, to perform such duties for such period of time as the chief immigration appeals judge may specify.

“(3) Any senior immigration appeals or senior immigration judge performing duties pursuant to this section shall not be counted as an immigration judge for purposes of the number of judgeships authorized by law.

“(4) Any senior immigration appeals judge or senior immigration judge, while performing duties pursuant to this section, shall be paid the same allowances for travel and other expenses as a judge in active service. Such senior judge shall also receive from the Immigration Court supplemental pay in an amount sufficient, when added to the judge's civil service retirement annuity, to equal the salary of an immigration appeals judge or immigration judge, as applicable, in active service for the same period or periods of time. Such supplemental pay shall be paid in the same manner as the salary of an immigration appeals judge or immigration judge.”.

(b) CONFORMING AMENDMENTS TO THE TABLE OF CONTENTS.—The table of contents is amended—

(1) by inserting before the item relating to section 101 the following:

“CHAPTER 1—DEFINITIONS AND POWERS”;

and

(2) by inserting after the item relating to section 106 the following:

“CHAPTER 2—UNITED STATES IMMIGRATION COURT

“Sec. 111. Establishment of Immigration Court.

“Sec. 112. Appellate division.

“Sec. 113. Trial division.

“Sec. 114. Jurisdiction.

“Sec. 115. Rules of Court.

“Sec. 116. Retirement of judges and senior judges.”.

SEC. 3. CONFORMING PROVISIONS.

(a) REFERENCES.—Notwithstanding any other provision of law, except as may be provided under subsection (c), any reference in law or regulation in relation to the Immigration and Nationality Act and related immigration laws to an immigration judge or to an administrative appeals process is deemed a reference to an immigration judge under this Act and to an appeals process through the Immigration Court, respectively, and the Immigration Court, in exercising authority under such Act for activities previously under the authority of the Attorney General, shall have the same ancillary authorities as the Attorney General previously had under Act or laws.

(b) SUPERSEDING OTHER PROVISIONS OF LAW.—

(1) IN GENERAL.—Chapter 2 of title I, as added by section 2(a)(2), is amended by adding at

the end the following:

“RELATIONSHIP TO OTHER PROVISIONS

“SEC. 117. The provisions of this chapter supersede the other provisions of law to the extent such provisions are inconsistent with the provisions of this chapter.”.

(2) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 116, as inserted by section 2(b)(2), the following new item:

“Sec. 117. Relationship to other provisions.”.

(c) SUBMISSION OF LEGISLATIVE PROPOSAL FOR TECHNICAL AND CONFORMING AMENDMENTS.—Not later than 30 days after the date of the enactment of this Act, the Attorney General shall submit to the Congress, a legislative proposal proposing such technical and conforming amendments to the Immigration and Nationality Act and other immigration-related laws as are necessary to bring the law into conformity with the policies embodied in this Act.

(3) Section 101(b)(4) is hereby repealed.

(4) Section 240(b)(1) is amended to strike, "The immigration judge shall have authority (under regulations promulgated 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."

(5) In sections 274A, 274B, and 274C, all references to an "administrative hearing officer" shall be deemed to refer to an immigration judge of the United States Immigration Court.

SEC. 4. EFFECTIVE DATES AND TRANSITION.

(a) IN GENERAL.—(1) Except as otherwise provided in this section, the amendments made by this Act take effect on the date of enactment of this Act.

(2) Sections 112(j) and 113(c) of the Immigration and Nationality Act, as added by section 2, take effect 90 days after the date of the enactment of this Act.

(b) TIMETABLE FOR ESTABLISHMENT OF COURT.—

(1) The President shall nominate the chief immigration appeals judge not later than 90 days after the date of the enactment of this Act.

(2) The acting chief immigration appeals judge (pursuant to section

112 (j)), in consultation with the Director of the Administrative Office of the United States Courts, shall designate a date, not later than 90 days after enactment of this Act, on which the appellate division shall assume the present functions of the Board of Immigration Appeals (under existing rules and regulations).

(3) The appellate division of the Court shall provide promptly for establishment of interim final rules of practice and procedure which will apply to the Court and immigration judges under the Immigration and Nationality Act after the transition date designated under subsection (c).

(c) HEARING TRANSITION DATE.—(1) In order to provide for the orderly transfer of proceedings from the existing system to the Court, the acting chief immigration appeals judge, in consultation with the Director of the Administrative Office of the United States Courts, shall designate a transition date, to be not later than 45 days after the date interim final rules of practice and procedure are established under subsection (b)(3).

(2) During the period before the transition date, any proceeding or hearing under the Immigration and Nationality Act which may be conducted by an immigration judge may be conducted by an individual appointed and qualified as an immigration judge in accordance with all the rules and procedures otherwise applicable to the conduct of such proceeding or hearing.

(d) CONTINUATION OF AUTHORITY.—Individuals acting as immigration judges on the date of the enactment of this Act and on the transition date may (without regard to other provisions of law) continue to conduct proceedings or hearings under the Immigration and Nationality Act after such transition date during the period ending two years after the date of the enactment of this Act.

(e) CONTINUATION OF RIGHTS.—(1) The enactment of this Act shall not result in any loss of rights or powers, interruption of jurisdiction, or prejudice to matters pending in the Board of Immigration Appeals or before immigration judges on the day before this Act takes effect.

(2) Under rules established by the appellate division of the United States Immigration Court, with respect to removal cases and asylum applications pending as of the transition date, the appellate division shall be deemed to be a continuation of the Board of Immigration Appeals and immigration judges hereunder shall be deemed a continuation of immigration judges under prior law for the purposes of effectuating the continuation of all existing powers, rights, and jurisdiction.

(f) REPORTING REQUIREMENT-

(1) The Attorney General, in consultation with the Secretaries of

State, Labor, and Homeland Security, shall conduct a study of the measures, funding and implementation required to consolidate the review of all immigration-related adjudications within the United States Immigration Court. The purpose is to develop a consistent body of immigration-related precedential jurisprudence, and centralize and streamline the review of all decisions arising under the Immigration and Nationality Act, as amended from time to time.

(2) Such study shall include review of all adjudications of legal issues arising in the visa application process currently within the jurisdiction of the Department of State's Bureau of Consular Affairs, Visa Office, Advisory Opinions Division; immigration-related adjudications currently within the jurisdiction of the Department of Labor's Board of Alien Labor Certifications (BALCA), Administrative Review Board (ARB) and the Administrative Law Judges; Administrative Appeals Office (AAO) adjudications within U.S. Citizenship and Immigration Services, Department of Homeland Security; and any other adjudications arising under the Immigration and Naturalization Act.

(3) Such study shall include an analysis of costs and efficiency (including the reallocation of existing budget and resources) of centralizing these review functions, as well as any national security implications.

(4) Such study shall be completed within 24 months of the enactment of this Act. The Attorney General shall transmit to the Congress and publish a report-

(A) not later than 12 months after the date of enactment, describing the

status of such study; and

(B) not later than 24 months after the date of enactment, setting forth the findings of such study and a plan of action and timetable for the consolidation of all immigration-related adjudications, within the United States Immigration Court, of all of the Federal departments, agencies and components identified in paragraph (2) of this subsection, not later than 36 months after the date of enactment.

(5) It is the sense of Congress that due process of law and prudent management of judicial and adjudicative resources would be enhanced by developing a consistent body of immigration-related precedential jurisprudence, and centralizing and streamlining the review of all immigration-related adjudications and decisions arising under the Immigration and Naturalization Act within the United States Immigration Court.

(g) SEVERABILITY.—If any provision or amendment made by this Act or the application of such provision or amendment to any person or circumstance is held to be invalid, the remainder of this Act and its amendments and the application of such provisions or amendments to any person or circumstance shall not be affected thereby.