

104TH CONGRESS  
2D SESSION

# H. R. 4258

To establish the United States Immigration Court.

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IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 1996

Mr. McCOLLUM introduced the following bill; which was referred to the  
Committee on the Judiciary

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## A BILL

To establish the United States Immigration Court.

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

3       **SECTION 1. SHORT TITLE; AMENDMENTS TO IMMIGRATION**  
4                       **AND NATIONALITY ACT; TABLE OF CON-**  
5                       **TENTS.**

6       (a) SHORT TITLE.—This Act may be cited as the  
7 “United States Immigration Court Act of 1996”.

8       (b) AMENDMENTS TO IMMIGRATION AND NATIONAL-  
9 ITY ACT.—Except as otherwise specifically provided,  
10 whenever in this Act an amendment or repeal is expressed  
11 as the amendment or repeal of a section or other provision,

1 the reference shall be considered to be made to that sec-  
 2 tion or provision in the Immigration and Nationality Act.

3 (c) TABLE OF CONTENTS.—

- Sec. 1. Short title; amendments to Immigration and Nationality Act; table of contents.  
 Sec. 2. Establishment of United States Immigration Court.  
 Sec. 3. Judicial review of Immigration Court decisions.  
 Sec. 4. Reform of asylum.  
 Sec. 5. Conforming amendments.  
 Sec. 6. Effective date; severability.

4 **SEC. 2. ESTABLISHMENT OF UNITED STATES IMMIGRATION**  
 5 **COURT.**

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

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

9 “CHAPTER 1—DEFINITIONS AND POWERS” and

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

12 “CHAPTER 2—UNITED STATES IMMIGRATION COURT

13 “ESTABLISHMENT OF IMMIGRATION COURT

14 “SEC. 111. ARTICLE I UNITED STATES IMMIGRA-

15 TION COURT.—(a) There is established, under article I of

16 the Constitution of the United States, a court of record

17 to be known as the United States Immigration Court.

18 “(b) The Immigration Court shall consist of a trial  
 19 division and an appellate division.

20 “APPELLATE DIVISION

21 “SEC. 112. (a) APPOINTMENT OF APPEALS

22 JUDGES.—The appellate division of the Immigration

1 Court shall be composed of a chief immigration appeals  
2 judge and five other immigration appeals judges, ap-  
3 pointed by the President by and with the advice and con-  
4 sent of the Senate.

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

8 “(1) of the judges first appointed under this  
9 subsection, two shall each be appointed for terms of  
10 five, ten, and fifteen years,

11 “(2) a judge appointed to fill a vacancy occur-  
12 ring before the expiration of the term for which a  
13 predecessor was appointed shall be appointed only  
14 for the remainder of such term, and

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

18 “(c) COMPENSATION.—Each judge of the appellate  
19 division shall receive a salary at the rate equal to 93 per-  
20 cent of the next to the highest rate of basic pay for the  
21 Senior Executive Service, except that the chief immigra-  
22 tion appeals judge shall receive a salary at the rate equal  
23 to 94 percent of the next to the highest rate of basic pay  
24 for the Senior Executive Service.

1       “(d) CHIEF IMMIGRATION APPEALS JUDGE.—The  
2 chief immigration appeals judge shall be responsible on be-  
3 half of the appellate division for the administrative oper-  
4 ations of the Immigration Court and shall have the power  
5 to appoint such administrative assistants, attorneys,  
6 clerks, and other personnel as may be needed for that pur-  
7 pose.

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

13       “(f) ACTING IN PANELS.—The appellate division  
14 shall act in panels of three or more judges or in banc (as  
15 designated by the chief immigration appeals judge in ac-  
16 cordance with the rules of the appellate division). A final  
17 decision of such a panel shall be considered to be a final  
18 decision of the appellate division.

19       “(g) REMOVAL OF JUDGES FOR CAUSE.—(1) Re-  
20 moval of an immigration appeals judge of the Immigration  
21 Court during the term for which the judge is appointed  
22 shall be only for incompetency, misconduct, neglect of  
23 duty, engaging in the practice of law, or physical or mental  
24 disability. Removal shall be by the United States Court  
25 of Appeals for the Federal Circuit, but removal may not

1 occur unless a majority of all judges of such court of ap-  
2 peals concur in the order of removal.

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

7 “(3) Any cause for removal of any immigration ap-  
8 peals judge coming to the knowledge of the Director of  
9 the Administrative Office of the United States Courts or  
10 to the Attorney General of the United States shall be re-  
11 ported by the Director or the Attorney General to the  
12 Chief Judge of the United States Court of Appeals for  
13 the Federal Circuit, and a copy of the report shall at the  
14 same time be transmitted to the immigration appeals  
15 judge.

16 “(4) An immigration appeals judge removed from of-  
17 fice in accordance with this subsection shall not be per-  
18 mitted at any time to practice before the Immigration  
19 Court.

20 “(h) EXPENSES FOR TRAVEL AND SUBSISTENCE.—  
21 Immigration appeals judges shall receive necessary travel-  
22 ing expenses and expenses actually incurred for subsist-  
23 ence while traveling on duty and away from their des-  
24 ignated stations, subject to the same limitations in amount

1 as are new or may hereafter be applicable to the United  
2 States Court of International Trade.

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

8 “TRIAL DIVISION

9 “SEC. 113. (a) APPOINTMENT OF TRIAL JUDGES.—

10 “(1) The trial division of the Immigration  
11 Court shall be composed of a chief immigration trial  
12 judge and other immigration trial judges, appointed  
13 by the Chief Immigration Appeals Judge.

14 “(2) Every immigration judge who is serving as  
15 an immigration judge as of the time of enactment of  
16 paragraph (1) and who is qualified under this Act  
17 to serve as an immigration trial judge shall be ap-  
18 pointed by the Chief Immigration Appeals Judge to  
19 serve as an immigration trial judge pursuant to  
20 paragraph (1).

21 “(b) TERM OF OFFICE.—The term of office of each  
22 immigration trial judge shall be fifteen years, except  
23 that—

24 “(1) a judge appointed to fill a vacancy occur-  
25 ring before the expiration of the term for which a

1 predecessor was appointed shall be appointed only  
2 for the remainder of such term, and

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

6 “(c) COMPENSATION.—

7 “(1) IN GENERAL.—There shall be four levels  
8 of pay for immigration trial judges, under the Immi-  
9 gration Judge Schedule, (designated as IJ–1, 2, 3,  
10 and 4, respectively), and each such judge shall be  
11 paid at one of those levels, in accordance with the  
12 provisions of this subsection.

13 “(2) RATES OF PAY.—(A) The rates of basic  
14 pay for the levels established under paragraph (1)  
15 shall be as follows:

“IJ–1 .....	70 percent of the next to highest rate of basic pay for the Senior Execu- tive Service
“IJ–2 .....	80 percent of the next to highest rate of basic pay for the Senior Execu- tive Service
“IJ–3 .....	90 percent of the next to highest rate of basic pay for the Senior Execu- tive Service
“IJ–4 .....	92 percent of the next to highest rate of basic pay for the Senior Execu- tive Service.

16 “(B) Locality pay, where applicable, shall be  
17 calculated into the basic pay for immigration trial  
18 judges.

19 “(3) APPOINTMENT.—(A) Upon appointment,  
20 an immigration trial judge shall be paid at IJ–1,

1 and shall be advanced to IJ-2 upon completion of  
2 104 weeks of service, to IJ-3 upon completion of  
3 104 weeks of service in the next lower rate, and to  
4 IJ-4 upon completion of 52 weeks of service in the  
5 next lower rate.

6 “(B) Notwithstanding subparagraph (A), the  
7 chief immigration appeals judge may provide for a  
8 newly- appointed immigration trial judge to be paid  
9 at an advanced rate under such circumstances as the  
10 chief immigration appeals judge may determine ap-  
11 propriate.

12 “(4) TRANSITION.—Immigration trial judges  
13 serving as immigration judges as of the effective  
14 date of this Act shall be paid at the rate that cor-  
15 responds to the amount of time, as provided under  
16 paragraph (3)(A), that they have served as an immi-  
17 gration judge, and in no case shall such an immigra-  
18 tion trial judge be paid less than such judge was  
19 paid prior to the effective date.

20 “(d) CHIEF IMMIGRATION TRIAL JUDGE.—In ac-  
21 cordance with rules established by the appellate division  
22 of the Immigration Court, the chief immigration trial  
23 judge—

24 “(1) shall have responsibility for the adminis-  
25 trative activities affecting immigration trial judges

1 and shall have the power to appoint such adminis-  
2 trative assistants, attorneys, clerks, and other per-  
3 sonnel as may be needed for the purpose, and

4 “(2) may designate any immigration trial judge  
5 in active service to hear and decide any cases de-  
6 scribed in section 114.

7 “(e) REMOVAL FOR CAUSE.—Immigration trial  
8 judges may be removed from office in the same manner  
9 as immigration appeals judges may be removed under sec-  
10 tion 112(g), except that any reference in that section to  
11 the United States Court of Appeals for the Federal Circuit  
12 shall be deemed a reference to the appellate division of  
13 the Immigration Court.

14 “(f) AUTHORITY OF JUDGES.—Immigration trial  
15 judges shall administer oaths, receive evidence, and inter-  
16 rogate, examine, and cross-examine the alien and any wit-  
17 nesses. Immigration trial judges may take depositions,  
18 issue subpoenas requiring the attendance and testimony  
19 of witnesses and the production of documentation or other  
20 evidence from any place in the United States or any terri-  
21 tory or possession thereof, order the taking of depositions,  
22 and order responses to written interrogatories.

23 “(g) WITNESS FEES.—Witnesses (whether appearing  
24 voluntarily or under subpoena) shall be paid the same fee

1 and mileage allowance as are paid subpoenaed witnesses  
2 in any other court in the United States.

3 “(h) EXPENSES FOR TRAVEL AND SUBSISTENCE.—  
4 Immigration trial judges shall receive necessary traveling  
5 expenses, and expenses actually incurred for subsistence  
6 while traveling on duty and away from their designated  
7 stations, subject to the same limitations in amount as are  
8 now or may hereafter be applicable to the United States  
9 Court of International Trade.

10 “JURISDICTION

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

12 “(1) IN GENERAL.—The appellate division of  
13 the Immigration Court shall hear and determine ap-  
14 peals from—

15 “(A) final decisions of immigration trial  
16 judges under this Act, other than a determina-  
17 tion granting voluntary departure under section  
18 244(e) within a period of at least 30 days if the  
19 sole ground of appeal is that a greater period  
20 of departure time should have been fixed;

21 “(B) decisions involving the imposition of  
22 administrative fines and penalties under title II  
23 of this Act, including mitigation thereof; and

24 “(C)(i) decisions on petitions filed in ac-  
25 cordance with section 204, other than petitions  
26 to accord preference status under section

1           203(b) or petitions on behalf of a child de-  
2           scribed in section 101(b)(1)(F), and

3                   “(ii) decisions on requests for revalidations  
4           and decisions revoking approval of such peti-  
5           tions under section 205.

6                   “(2) REVIEW OF DECISIONS.—(A) Either party  
7           to a case may appeal an immigration trial judge’s  
8           decision to the appellate division.

9                   “(B) Appeals to the appellate division from  
10          final orders of deportation or exclusion (including an  
11          order respecting asylum contained in such an order)  
12          shall be filed not later than 20 days after the date  
13          of the final order.

14                  “(C) The appellate division shall review the de-  
15          cision of an immigration trial judge based solely  
16          upon the trial record upon which the decision is  
17          made, and the findings of fact in the judge’s order,  
18          if supported by reasonable, substantial, and pro-  
19          bative evidence on the record considered as a whole,  
20          shall be conclusive.

21                  “(3) BINDING DECISIONS.—A final decision of  
22          the appellate division shall be binding on all immi-  
23          gration trial judges, immigration officers, and con-  
24          sular officers under this Act unless and until other-  
25          wise modified or reversed by the Court of Appeals

1 for the Federal Circuit or by the United States Su-  
2 preme Court.

3 “(4) DECISIONS WITHIN 60 DAYS.—In a case in  
4 which the appellate division is considering an appeal  
5 of a decision of an immigration trial judge respect-  
6 ing an application for asylum, the division shall  
7 render its decision on the appeal not later than 60  
8 days after the date the appeal is filed.

9 “(b) JURISDICTION OF TRIAL DIVISION.—

10 (1) IN GENERAL.—Immigration trial judges  
11 shall hear and decide—

12 “(A) exclusion cases under section 236 and  
13 360(c) and discretionary relief under section  
14 212(c),

15 “(B) deportation cases and discretionary  
16 relief cases under sections 212(c), 242, 242A,  
17 243, and 244,

18 “(C) rescission of adjustment of status  
19 cases under section 246,

20 “(D) claims for asylum raised in proceed-  
21 ings before the judges and in applications re-  
22 ferred to the Immigration Court for adjudica-  
23 tion,

24 “(E) contested assessments of civil pen-  
25 alties under section 274A,

1           “(F) contested determinations relating to  
2           bond, parole, or detention of an alien, and

3           “(G) such other cases arising under this  
4           Act as the appellate division may provide by  
5           regulation.

6           “(2) DUTIES OF TRIAL JUDGES.—In consider-  
7           ing and deciding cases coming before them, immi-  
8           gration trial judges shall record and receive evidence  
9           and render findings of fact and conclusions of law,  
10          shall determine all applications for discretionary re-  
11          lief which may properly be raised in the proceedings,  
12          and shall exercise such discretion conferred upon the  
13          Attorney General by law as may be necessary for the  
14          just and equitable disposition of cases coming before  
15          such judges.

16                           “RULES OF COURT

17          “SEC. 115. (a) RULES OF PRACTICE AND PROCE-  
18          DURE.—The appellate division shall promulgate rules of  
19          court, consistent with this Act, governing practice and pro-  
20          cedure in the appellate division and the trial division. Only  
21          such selected provisions of the Federal Rules of Evidence  
22          and the Federal Rules of Civil Procedure as the appellate  
23          division deems appropriate for inclusion in the rules of the  
24          Immigration Court shall apply to proceedings in the Immi-  
25          gration Court.

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

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

9       “(c) CONTEMPT OF COURT.—Each division of the  
10 Immigration Court shall have the power to punish by fine  
11 or imprisonment, at its discretion, such contempt of its  
12 authority, and none other, as—

13               “(1) misbehavior of any person in its presence  
14 or so near thereto as to obstruct the administration  
15 of justice,

16               “(2) misbehavior of any of its officers in their  
17 official transactions, or

18               “(3) disobedience or resistance to its lawful writ,  
19 process, order, rule, decree, or command.

20 Each such division shall have such assistance in the carry-  
21 ing out of its lawful writ, process, order, rule, decree, or  
22 command as is available to a court of the United States.

23       “(d) FEES.—The Immigration Court may impose  
24 fees for the adjudication of asylum applications and for

1 judicial review and such other fees as it may provide for  
2 under its rules and procedures.

3 “RETIREMENT OF JUDGES; SENIOR JUDGES

4 “SEC. 116. (a) RETIREMENT OF JUDGES.—(1) a  
5 judge of the Immigration Court who attains the age of  
6 70 shall be retired upon attaining such age.

7 “(2) A judge of the Immigration Court who has at-  
8 tained the age of sixty-five may retire at any time after  
9 serving as a judge for fifteen years or more.

10 “(3) A judge of the Immigration Court who is not  
11 reappointed following the expiration of such judge’s term  
12 of office may retire upon the completion of such term if—

13 “(A) the judge has served as a judge of the Im-  
14 migration Court for fifteen years or more; and

15 “(B) not earlier than nine months preceding  
16 the date of the expiration of such term of office and  
17 not later than six months preceding such date, the  
18 judge advised the President, in the case of an immi-  
19 gration appeals judge, or the Chief Immigration Ap-  
20 peals Judge, in the case of an immigration trial  
21 judge, that the judge was willing to accept re-  
22 appointment to the court.

23 “(4)(A) A judge of the Immigration Court who be-  
24 comes permanently disabled from performing judicial du-  
25 ties under this chapter shall be retired.

1           “(B) A judge of the Immigration Court who becomes  
2 permanently disabled from performing judicial duties  
3 under this chapter shall certify to the President, or in the  
4 case of an immigration trial judge to the Chief Immigra-  
5 tion Appeals Judge, such disability in writing, and such  
6 certificate of disability shall be signed by the chief judge  
7 of the division. If the Chief Immigration Appeals Judge  
8 retires for disability, such retirement shall not take effect  
9 until concurred in by the President.

10           “(5) The provisions of subsection (d) (relating to  
11 computation and payment of retired pay), subsection (e)  
12 (relating to election to receive retired pay), subsection (g)  
13 (relating to coordination with civil service retirement), and  
14 subsection (i) (relating to revocation of an election to re-  
15 ceive retired pay) of section 7447 of the Internal Revenue  
16 Code of 1954 shall apply to judges within a division of  
17 the Immigration Court in the same manner as such provi-  
18 sions apply to judges of the United States Tax Court.

19           “(6) A person who has elected to receive retired pay  
20 under the application of section 7447(e) of the Internal  
21 Revenue Code of 1954 to judges of the Immigration Court  
22 in accordance with paragraph (5) who thereafter—

23                   “(A) accepts any civil office or employment  
24           under the Government of the United States (other

1 than the performance of judicial duties pursuant to  
2 subsection (c)); or

3 “(B) provides legal services to a client in a case  
4 arising under this chapter;

5 shall forfeit all rights to retired pay under the application  
6 of such section of the Internal Revenue Code of 1954 for  
7 periods during which such person accepts such office or  
8 employment or provides such legal services.

9 “(7) In any determination of the length of service of  
10 any person as a judge of the Immigration Court there  
11 shall be included all periods of service (whether or not con-  
12 secutive) during which the person served as a judge of the  
13 Immigration Court under this chapter.

14 “(b)(1) Judges of the Immigration court may provide  
15 annuities to their surviving spouses and dependent chil-  
16 dren in the same manner and subject to the same terms  
17 and conditions as judges of the United States Tax Court  
18 provide annuities to their surviving spouse and dependent  
19 children under section 7448 of the Internal Revenue Code  
20 of 1986.

21 “(2) Amounts deducted and withheld from the sala-  
22 ries of judges of the Immigration Court in the application  
23 of section 7448(c) of the Internal Revenue Code of 1954  
24 to such judges in accordance with paragraph (1) shall be  
25 deposited in the Treasury to the credit of a fund to be

1 known as the ‘Immigration Court judges survivors annuity  
2 fund’.

3 “(c) SENIOR JUDGES.—(1) Any immigration appeals  
4 or trial judge of the Immigration Court who has retired  
5 from regular active service under subchapter III of chap-  
6 ter 83 of title 5, United States Code, shall be known and  
7 designated as a senior immigration appeals or trial judge  
8 and may perform duties as an immigration appeals or trial  
9 judge when recalled pursuant to paragraph (2).

10 “(2) The chief immigration appeals judge may recall  
11 any senior immigration appeals or trial judge, with such  
12 judge’s consent, to perform such duties as an immigration  
13 appeals or trial judge and for such period of time as such  
14 chief judge may specify.

15 “(3) Any senior immigration appeals judge perform-  
16 ing duties pursuant to this section shall not be counted  
17 as an immigration appeals judge for purposes of the num-  
18 ber of judgeships authorized by subsection (a).

19 “(4) Any senior immigration appeals or trial judge,  
20 while performing duties pursuant to this section, shall be  
21 paid the same allowances for travel and other expenses  
22 as an immigration appeals or trial judge in active service.  
23 Such senior immigration appeals or trial judge shall also  
24 receive from the Immigration Court supplemental pay in  
25 an amount sufficient, when added to his civil service re-

1 tirement annuity, to equal the salary of an immigration  
 2 appeals or trial judge in active service for the same period  
 3 or periods of time. Such supplemental pay shall be paid  
 4 in the same manner as the salary of an immigration ap-  
 5 peals or trial judge.”.

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

8 (1) by inserting before the item relating to section  
 9 101 the following:

“CHAPTER 1—DEFINITIONS AND POWERS”,

10 and

11 (2) by inserting after the item relating to sec-  
 12 tion 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; Senior Judges.”.

13 (c) EFFECTIVE DATES AND TRANSITION.—

14 (1) IN GENERAL.—(A) Except as otherwise pro-  
 15 vided in this subsection, the amendments made by  
 16 this section take effect on the date of enactment of  
 17 this Act.

18 (B) Section 113(e) of chapter 2 as added by  
 19 this section shall take effect 90 days after the date  
 20 of enactment of this Act.

1           (2) TIMETABLE FOR ESTABLISHMENT OF  
2 COURT.—(A) The President shall nominate the chief  
3 immigration appeals judge and other immigration  
4 appeals judges of the appellate division of the United  
5 States Immigration Court (hereinafter in this sub-  
6 section referred to as the “Court”) not later than 14  
7 days after the date of the enactment of this Act.

8           (B) The chief immigration appeals judge, in  
9 consultation with the Attorney General, shall des-  
10 ignate a date, not later than 30 days after the chief  
11 immigration appeals judge and a majority of the im-  
12 migration appeals judges are appointed, on which  
13 the appellate division shall assume the present func-  
14 tions of the Board of Immigration Appeals (under  
15 existing rules and regulations).

16           (C) Promptly after the chief immigration ap-  
17 peals judge is appointed, such chief judge shall ap-  
18 point immigration trial judges pursuant to section  
19 113(a)(2).

20           (D) The appellate division of the Court shall provide  
21 promptly for establishment of interim final rules of  
22 practice and procedure which will apply to the Court  
23 and immigration trial judges under the immigration  
24 and Nationality Act after the transition date des-  
25 ignated under paragraph (3).

1           (3) HEARING TRANSITION DATE.—(A) In order  
2 to provide for the orderly transfer of proceedings  
3 from the existing system to the Court, the chief im-  
4 migration appeals judge, in consultation with the At-  
5 torney General, shall designate a transition date, to  
6 be not later than 45 days after the date interim final  
7 rules of practice and procedure are established under  
8 paragraph (2)(C).

9           (B) During the period before the transition  
10 date, any proceeding or hearing under the Immigra-  
11 tion and Nationality Act which may be conducted by  
12 a special inquiry officer or immigration judge may  
13 be conducted by an individual appointed as an immi-  
14 gration trial judge in accordance with all the rules  
15 and procedures otherwise applicable to the conduct  
16 of such proceeding or hearing.

17           (4) CONTINUATION OF AUTHORITY.—Individ-  
18 uals acting as special inquiry officers or immigration  
19 judges on the date of enactment of this Act and on  
20 the transition date may (without regard to other  
21 provisions of law) continue to conduct proceedings or  
22 hearings under the Immigration and Nationality Act  
23 after such transition date during the period ending  
24 two years after the date of the enactment of this  
25 Act.

1           (5) CONTINUATION OF RIGHTS.—(A) The en-  
2           actment of this Act shall not result in any loss of  
3           rights or powers, interruption of jurisdiction, or  
4           prejudice to matters pending in the Board of Immi-  
5           gration Appeals or before special inquiry officers or  
6           immigration judges on the day before this Act takes  
7           effect.

8           (B) Under rules established by the appellate di-  
9           vision of the United States Immigration Court, with  
10          respect to deportation and exclusion cases and asy-  
11          lum applications pending as of the transition date,  
12          the appellate division shall be deemed to be a con-  
13          tinuation of the Board of Immigration Appeals and  
14          immigration trial judges shall be deemed a continu-  
15          ation of special inquiry officers or immigration  
16          judges for the purposes of effectuating the continu-  
17          ation of all existing powers, rights, and jurisdiction.

18 **SEC. 3. JUDICIAL REVIEW OF IMMIGRATION COURT DECI-**  
19 **SIONS.**

20          (a) IN GENERAL.—Section 106(a) is amended—

21               (1) by striking “the judicial review” and insert-  
22               ing “the review”,

23               (2) by striking “to administrative proceedings”  
24               and inserting “to proceedings”,

1           (3) in paragraph (1), by striking “90 days” and  
2 inserting “30 days” and by striking “,or, in the  
3 case” and all that follows through “of such order”,

4           (4) by amending paragraph (2) to read as fol-  
5 lows:

6           “(2) a petition for review shall be filed with the  
7 Court of Appeals for the Federal Circuit;” and

8           (5) by amending paragraph (4) to read as fol-  
9 lows:

10           “(4) except as provided in paragraph (5)(B)—

11           “(A) the Court of Appeals shall decide the  
12 petition only on the record of the Immigration  
13 Court on which the order of deportation is  
14 based,

15           “(B) the Immigration Court’s findings of  
16 fact are conclusive if supported by reasonable,  
17 substantial, and probative evidence on the  
18 record considered as a whole, and

19           “(C) a decision that an alien is not eligible  
20 for admission to the United States is conclusive  
21 unless manifestly contrary to law.”.

22           (b) ASYLUM.—Section 106 is amended by adding at  
23 the end the following new subsections:

24           “(f) JUDICIAL REVIEW OF ORDERS UNDER SECTION  
25 208.—To the extent that an order relates to a determina-

1 tion on an application for asylum, the Court of Appeals  
2 shall only have jurisdiction to review (1) whether the juris-  
3 diction of the Immigration Court was properly exercised,  
4 (2) whether the asylum determination was made in accord-  
5 ance with applicable laws and regulations, (3) the con-  
6 stitutionality of the laws and regulations pursuant to  
7 which the determination was made, and (4) whether the  
8 decision was arbitrary or capricious.

9       “(g)(1)(A) No court shall have jurisdiction to enter-  
10 tain a petition relating to a determination concerning asy-  
11 lum under section 208 except the United States Court of  
12 Appeals for the Federal Circuit.

13       “(B) No application for habeas corpus shall be enter-  
14 tained and no extraordinary writ shall be directed to any  
15 government official or employee and no injunctive or de-  
16 claratory relief shall be granted with respect to an immi-  
17 gration matter (as defined in subparagraph (E)), other  
18 than by the Immigration Court, the United States Court  
19 of Appeals for the Federal Circuit, or the Supreme Court.

20       “(C) The Court of Appeals for the Federal Circuit  
21 shall have exclusive jurisdiction to review all Constitu-  
22 tional issues (including habeas corpus and writs for other  
23 extraordinary relief) with respect to immigration matters  
24 by writ of certiorari filed no later than 30 days from the

1 date of the final order of the appellate division of the Im-  
2 migration Court relating to that matter.

3 “(D) In the case of a writ of certiorari filed under  
4 this section which the Court finds that a question of fact  
5 is presented—

6 “(i) if a determination with respect to that fact  
7 was previously made by the Attorney General or the  
8 Immigration Court, such determination shall be con-  
9 clusive if supported in the record by reasonable, sub-  
10 stantial, and probative evidence on the record con-  
11 sidered as a whole, and

12 “(ii) if no such determination was made, the  
13 Court may provide, in accordance with rules estab-  
14 lished by the Court in cooperation with the Immigra-  
15 tion Court, for a hearing before an immigration trial  
16 judge to make the appropriate findings of fact.

17 “(E) As used in this paragraph, the term ‘immigra-  
18 tion matter’ means a determination under this Act re-  
19 specting deportation, exclusion, or asylum (or the custody  
20 or detention of an alien associated therewith) or any mat-  
21 ter reviewable by the appellate division of the Immigration  
22 Court under section 114.

23 “(2) Notwithstanding any other provision of law, no  
24 court of the United States shall have jurisdiction to review  
25 determinations of immigration trial judges or of the appel-

1 late division of the Immigration Court respecting the re-  
2 opening or reconsideration of deportation or exclusion pro-  
3 ceedings or asylum determinations outside of such pro-  
4 ceedings, the reopening of an application for asylum be-  
5 cause of changed circumstances, or the Attorney General’s  
6 denial of a stay of execution of a deportation order.”.

7 (c) EXPANDING JURISDICTION OF THE UNITED  
8 STATES COURT OF APPEALS FOR THE FEDERAL CIR-  
9 CUIT.—(1) Section 1295(a) of title 28, United States Code  
10 is amended—

11 (A) by striking out “and” at the end of para-  
12 graph (9),

13 (B) by striking out the period at the end of  
14 paragraph (1) and inserting in lieu thereof “; and”,  
15 and

16 (C) by adding at the end the following new  
17 paragraph:

18 “(11) by writ of certiorari of an appeal under  
19 section 106 of the Immigration and Nationality Act  
20 and to entertain and grant applications for writs of  
21 habeas corpus and petitions for relief respecting im-  
22 migration matters pursuant to such section.”.

23 (2) Section 2241(a) of such title is amended by strik-  
24 ing out “Writs” and inserting in lieu thereof “Except as  
25 provided in section 1295(a)(11) of this title, writs”.

1 (d) EFFECTIVE DATE.—The amendments made by  
2 this section shall take effect on the hearing transition date  
3 designated pursuant to section 2(c)(3) of this Act.

4 **SEC. 4. REFORM OF ASYLUM.**

5 (a) ASYLUM REFORM.—Section 208 (8 U.S.C. 1158)  
6 is amended to read as follows:

7 “ASYLUM

8 SEC. 208. (a) AUTHORITY TO APPLY FOR ASYLUM.—

9 “(1) IN GENERAL.—Any alien who is physically  
10 present in the United States or who arrives in the  
11 United States (whether or not at a designated port  
12 of entry and including an alien who is brought to the  
13 United States after having been interdicted in inter-  
14 national or United States water), irrespective of  
15 such alien’s status, may apply for asylum in accord-  
16 ance with this section or, where applicable, section  
17 235(b).

18 “(2) EXCEPTIONS.—

19 “(A) SAFE THIRD COUNTRY.—Paragraph  
20 (1) shall not apply to an alien if the Attorney  
21 General determines that the alien may be re-  
22 moved, including pursuant to a bilateral or mul-  
23 tilateral agreement, to a country (other than  
24 the country of the alien’s nationality or, in the  
25 case of an alien having no nationality, the coun-  
26 try of the alien’s last habitual residence) in

1           which the alien’s life or freedom would not be  
2           threatened on account of race, religion, nation-  
3           ality, membership in a particular social group,  
4           or political opinion, and where the alien would  
5           have access to a full and fair procedure for de-  
6           termining a claim to asylum or equivalent tem-  
7           porary protection, unless the Attorney General  
8           finds that it is in the public interest for the  
9           alien to receive asylum in the United States.

10           “(B) TIME LIMIT.—Subject to subpara-  
11           graph (D), paragraph (1) shall not apply to an  
12           alien unless the alien demonstrates by clear and  
13           convincing evidence that the application has  
14           been filed within 180 days after the date of the  
15           alien’s arrival in the United States.

16           “(C) PREVIOUS ASYLUM APPLICATIONS.—  
17           Subject to subparagraph (D), paragraph (1)  
18           shall not apply to an alien if the alien pre-  
19           viously has applied for asylum and had such ap-  
20           plication denied.

21           “(D) CHANGED OR EXCEPTIONAL CIR-  
22           CUMSTANCES.—An application for asylum of an  
23           alien may be considered, notwithstanding sub-  
24           paragraphs (B) and (C), if the alien dem-  
25           onstrates to the satisfaction of the Attorney

1           General either the existence of fundamentally  
2           changed circumstances that materially affect  
3           the applicant’s eligibility for asylum or extraor-  
4           dinary circumstances relating to the delay in fil-  
5           ing an application within the period specified in  
6           subparagraph (B).

7           “(3) LIMITATION ON JUDICIAL REVIEW.—A de-  
8           termination of the Attorney General under para-  
9           graph (2) is subject to review by the Immigration  
10          Court. A final decision by the Immigration Court re-  
11          garding such a determination is not subject to fur-  
12          ther judicial review.

13          “(b) CONDITIONS FOR GRANTING ASYLUM.—

14                 “(1) IN GENERAL.—The Attorney General may  
15                 grant asylum to an alien who has applied for asylum  
16                 in accordance with the requirements and procedures  
17                 established under this section whom the Immigration  
18                 Court or an asylum officer determines is a refugee  
19                 within the meaning of section 101(a)(42)(A).

20                 “(2) EXCEPTIONS.—

21                         “(A) IN GENERAL.—Paragraph (1) shall  
22                         not apply to an alien if the Immigration Court  
23                         finds that—

24                                 “(i) the alien ordered, incited, as-  
25                                 sisted, or otherwise participated in the per-

1           secution of any person on account of race,  
2           religion, nationality, membership in a par-  
3           ticular social group, or political opinion;

4           “(ii) the alien, having been convicted  
5           by a final judgment of a particularly seri-  
6           ous crime, constitutes a danger to the com-  
7           munity of the United States;

8           “(iii) there are serious reasons for be-  
9           lieving that the alien has committed a seri-  
10          ous nonpolitical crime outside the United  
11          States prior to the arrival of the alien in  
12          the United States;

13          “(iv) there are reasonable grounds for  
14          regarding the alien as a danger to the se-  
15          curity of the United States;

16          “(v) the alien is excludable under sub-  
17          clause (I), (II), (III), or (IV) of section  
18          212(a)(3)(B)(i) or deportable under sec-  
19          tion 241(a)(4)(B) (relating to terrorist ac-  
20          tivity), unless, in the case only of an alien  
21          excludable under subclause (IV) of section  
22          212(a)(3)(B)(i), the Attorney General de-  
23          termines, in the Attorney General’s discre-  
24          tion, that there are not reasonable grounds

1 for regarding the alien as a danger to the  
2 security of the United States; or

3 “(vi) the alien was firmly resettled in  
4 another country prior to arriving in the  
5 United States.

6 “(B) SPECIAL RULES.—

7 “(i) CONVICTION OF AGGRAVATED  
8 FELONY.—For purposes of clause (ii) of  
9 subparagraph (A), an alien who has been  
10 convicted of an aggravated felony shall be  
11 considered to have been convicted of a par-  
12 ticularly serious crime.

13 “(ii) OFFENSES.—The Attorney Gen-  
14 eral may designate by regulation offenses  
15 that will be considered to be a crime de-  
16 scribed in clause (ii) or (iii) of subpara-  
17 graph (A).

18 “(C) ADDITIONAL LIMITATIONS.—The At-  
19 torney General may by regulation establish ad-  
20 ditional limitations and conditions, consistent  
21 with this section, under which an alien shall be  
22 ineligible for asylum under paragraph (1).

23 “(D) JUDICIAL REVIEW.—There shall be  
24 no judicial review of a determination of the At-  
25 torney General under subparagraph (A)(v).

1           “(3) TREATMENT OF SPOUSE AND CHIL-  
2 DREN.—A spouse or child (as defined in subpara-  
3 graphs (A), (B), (C), (D), or (E) of section  
4 101(b)(1)) of an alien who is granted asylum under  
5 this subsection may, if not otherwise eligible for asy-  
6 lum under this section, be granted the same status  
7 as the alien if accompanying, or following to join,  
8 such alien.

9           “(c) ASYLUM STATUS.—

10           “(1) IN GENERAL.—In the case of an alien  
11 granted asylum under subsection (b), the Attorney  
12 General—

13           “(A) shall not remove or return the alien  
14 to the alien’s country of nationality or, in the  
15 case of a person having no nationality, the  
16 country of the alien’s last habitual residence;

17           “(B) shall authorize the alien to engage in  
18 employment in the United States and provide  
19 the alien with appropriate endorsement of that  
20 authorization; and

21           “(C) may allow the alien to travel abroad  
22 with the prior consent of the Attorney General.

23           “(2) TERMINATION OF ASYLUM.—Asylum  
24 granted under subsection (b) does not convey a right  
25 to remain permanently in the United States, and

1       may be terminated if the Attorney General asserts  
2       and the Immigration Court finds that—

3               “(A) the alien no longer meets the condi-  
4               tions described in subsection (b)(1) owing to a  
5               fundamental change in circumstances;

6               “(B) the alien meets a condition described  
7               in subsection (b)(2);

8               “(C) the alien may be deported, including  
9               pursuant to a bilateral or multilateral agree-  
10              ment, to a country (other than the country of  
11              the alien’s nationality or, in the case of an alien  
12              having no nationality, the country of the alien’s  
13              last habitual residence) in which the alien’s life  
14              or freedom would not be threatened on account  
15              of race, religion, nationality, membership in a  
16              particular social group, or political opinion, and  
17              where the alien is eligible to receive asylum or  
18              equivalent temporary protection;

19              “(D) the alien has voluntarily availed him-  
20              self or herself of the protection of the alien’s  
21              country of nationality or, in the case of an alien  
22              having no nationality, the alien’s country of last  
23              habitual residence, by returning to such country  
24              with permanent resident status or the reason-  
25              able possibility of obtaining such status with

1 the same rights and obligations pertaining to  
2 other permanent residents of that country; or

3 “(E) the alien has acquired a new nation-  
4 ality and enjoys the protection of the country of  
5 his or her new nationality.

6 “(3) REMOVAL WHEN ASYLUM IS TERMI-  
7 NATED.—An alien described in paragraph (2) is sub-  
8 ject to any applicable grounds of exclusion or deport-  
9 ability under section 212(a) and 241(a), and the  
10 alien’s deportation or return shall be directed by the  
11 Attorney General in accordance with section 242 or  
12 242A.

13 “(d) ASYLUM PROCEDURE.—

14 “(1) APPLICATIONS.—The Attorney General  
15 shall establish a procedure for the filing and consid-  
16 eration of asylum applications.

17 “(A) The Attorney General may require  
18 applicants to submit fingerprints and a photo-  
19 graph at such time and in such manner to be  
20 determined by regulation by the Attorney Gen-  
21 eral.

22 “(B) Except for asylum claims first raised  
23 in a proceeding before an Immigration trial  
24 judge, an asylum officer shall review each asy-  
25 lum application and interview applicants.

1           “(i) If the asylum officer determines  
2           that an applicant is beyond a reasonable  
3           doubt eligible for asylum, the application  
4           shall be referred directly to the Attorney  
5           General.

6           “(ii) If the asylum officer determines  
7           that an applicant is not beyond a reason-  
8           able doubt eligible for asylum, the applica-  
9           tion shall be referred to the Immigration  
10          Court for adjudication of the applicant’s  
11          claim to be a refugee within the meaning  
12          of section 101(a)(42)(A).

13          “(iii) The asylum officer shall prepare  
14          a written record of a determination under  
15          clause (i) or (ii). Such record shall include  
16          a summary of the material facts as stated  
17          by the applicant, such additional facts (if  
18          any) relied upon by the officer, and the of-  
19          ficer’s analysis of why, in light of such  
20          facts, the alien has or has not established  
21          eligibility beyond a reasonable doubt for  
22          asylum. A copy of the officer’s interview  
23          notes shall be attached to the written sum-  
24          mary.

1           “(iv) In the absence of exceptional cir-  
2           cumstance, the administrative actions re-  
3           garding an asylum application shall be  
4           completed not later than 45 days after the  
5           date an application is filed.

6           “(v) The Attorney General shall re-  
7           port to Congress annually regarding the  
8           number and nature of applications ap-  
9           proved under clause (i).

10          “(C) The Attorney General shall check the  
11          identify of each applicant against all appro-  
12          priate records or databases maintained by the  
13          Attorney General and by the Secretary of State,  
14          including the Automated Visa Lookout System,  
15          to determine any grounds on which the alien  
16          may be excludable or deportable from the Unit-  
17          ed States, or ineligible to apply for or be grant-  
18          ed asylum.

19          “(D) An applicant for assylum is not enti-  
20          tled to employment authorization, but such au-  
21          thorization may be provided under regulation by  
22          the Attorney General. An applicant who is not  
23          otherwise eligible for employment authorization  
24          shall not be granted such authorization prior to

1 180 days after the date of filing of the applica-  
2 tion for asylum.

3 “(E) The Attorney General may impose  
4 fees for the consideration of an application for  
5 asylum, for employment authorization under  
6 this section, and for adjustment of status under  
7 section 209(b). Such fees shall not exceed the  
8 Attorney General’s costs in processing the ap-  
9 plications. The Attorney General may provide  
10 for the assessment and payment of such fees  
11 over a period of time or by installments. Noth-  
12 ing in this paragraph shall be construed to re-  
13 quire the Attorney General to charge fees for  
14 processing services provided to asylum appli-  
15 cants, or to limit the authority of the Attorney  
16 General to set adjudication and naturalization  
17 fees in accordance with section 286(m).

18 “(2) NOTICE OF PRIVILEGE OF COUNSEL AND  
19 CONSEQUENCES OF FRIVOLOUS APPLICATION.—At  
20 the time of filing an application for asylum, the At-  
21 torney General shall—

22 “(A) advise the alien of the privilege of  
23 being represented by counsel and of the con-  
24 sequences, under paragraph (6), of knowingly  
25 filing a frivolous application for asylum; and

1           “(B) provide the alien a list of persons  
2           (updated not less often than quarterly) who  
3           have indicated their availability to represent  
4           aliens in asylum proceedings on a pro bono  
5           basis. Such lists are to be compiled and updated  
6           by the Immigration Court.

7           “(3) ADJUDICATION OF ASYLUM APPLICA-  
8           TIONS.—

9           “(A) DECISION BY IMMIGRATION TRIAL  
10          JUDGE.—In the absence of exceptional cir-  
11          cumstances, a final decision by an immigration  
12          trial judge on an asylum application referred to  
13          the Immigration Court by an asylum officer  
14          shall be issued not later than 45 days after the  
15          application has been referred to the Immigra-  
16          tion Court.

17          “(B) APPEAL TO APPELLATE DIVISION.—  
18          Any appeal to the appellate division shall be  
19          filed within 20 days of a decision granting or  
20          denying asylum, or within 20 days of the com-  
21          pletion of deportation or exclusion proceedings  
22          before an immigration trial judge under section  
23          236 or 242, whichever is later.

24          “(C) SANCTION FOR FAILURE TO AP-  
25          PEAR.—In the case of an applicant for asylum

1           who fails without prior authorization or in the  
2           absence of exceptional circumstances to appear  
3           for an interview under paragraph (1)(B) or a  
4           hearing before the Immigration Court, includ-  
5           ing a hearing under section 236 or 242, the ap-  
6           plication may be dismissed or the applicant may  
7           be otherwise sanctioned for such failure.

8           “(4) ADDITIONAL REGULATORY CONDITIONS.—

9           The Attorney General and the Immigration Court  
10          may provide by regulation for any other conditions  
11          or limitations on the consideration of an application  
12          for asylum not inconsistent with this Act.

13          “(5) FRIVOLOUS APPLICATIONS.—If the Immi-

14          gration Court determines that an alien has know-  
15          ingly made a frivolous application for asylum and  
16          the alien has received the notice under paragraph  
17          (4)(A), the alien shall be permanently ineligible for  
18          any benefits under this Act, effective as of the date  
19          of a final determination on such application.

20          “(7) NO PRIVATE RIGHT OF ACTION.—Nothing

21          in this subsection shall be construed to create any  
22          substantive or procedural right or benefit that is le-  
23          gally enforceable by any party against the United  
24          States or its agencies or officers or any other per-  
25          son.”.

1 (b) CONFORMING AND CLERICAL AMENDMENTS.—

2 (1) The item in the table of contents relating  
3 to section 208 is amended to read as follows:

“SEC. 208. Asylum.”.

4 (2) Section 104(d)(1)(A) of the Immigration  
5 Act of 1990 (Public Law 101–649) is amended by  
6 striking “208(b)” and inserting “208”.

7 (c) EFFECTIVE DATE.—The amendment made by  
8 subsection (a) shall apply to applications for asylum filed  
9 on or after the first day of the first month beginning more  
10 than 180 days after the date of enactment of this Act.

11 **SEC. 5. CONFORMING AMENDMENTS.**

12 (a) SECTION 209.—Section 209(a)(2) (8 U.S.C.  
13 1159(a)(2)) is amended by striking “a special inquiry offi-  
14 cer” and inserting “an immigration trial judge”.

15 (b) SECTION 234.—Section 234 (8 U.S.C. 1224) is  
16 amended by striking “special inquiry officers” and insert-  
17 ing “Immigration Court”.

18 (c) SECTION 235.—(1) Subsection (a) of section 235  
19 (8 U.S.C. 1225) is amended—

20 (A) by striking “in regard to special inquiry of-  
21 ficers” in the first sentence;

22 (B) by striking “, including special inquiry offi-  
23 cers,” in the fourth sentence;

1 (C) by striking “, including special inquiry offi-  
2 cer,” and “and special inquiry officers” in the sixth  
3 sentence; and

4 (D) by striking “or special inquiry officer” each  
5 place it appears in the seventh sentence.

6 (2) Subsection (b) of such section is amended—

7 (A) by striking “for further inquiry to be con-  
8 ducted by a special inquiry officer” and inserting  
9 “for a hearing before the Immigration Court”, and

10 (B) by striking “before a special inquiry officer  
11 for further inquiry” and inserting “before the Immi-  
12 gration Court for a hearing”.

13 (3) Subsection (c) of such section is amended—

14 (A) by striking “the special inquiry officer” and  
15 inserting “the Immigration Court”,

16 (B) by striking “before either of such officers”  
17 and inserting “or hearing”,

18 (C) by striking “no further inquiry by a special  
19 inquiry officer” and inserting “no further proceed-  
20 ings by the Immigration Court”,

21 (D) by striking “such an inquiry or further in-  
22 quiry” and inserting “an inquiry”,

23 (E) by striking “any inquiry or further inquiry  
24 by a special inquiry officer” and inserting “any

1 hearing or further proceedings before the Immigra-  
2 tion Court”, and

3 (F) by striking “an inquiry before a special in-  
4 quiry officer” and inserting “any proceedings before  
5 the Immigration Court”.

6 (d) SECTION 236.—(1) Subsection (a) of section 236  
7 (8 U.S.C. 1226) is amended to read as follows:

8 “(a) An immigration trial judge shall conduct pro-  
9 ceedings under this section, administer oaths, present and  
10 receive evidence, and interrogate, examine, and cross-ex-  
11 amine the alien or witnesses. Such judge shall have au-  
12 thority in any case to determine whether an arriving alien  
13 who has been detained for a hearing under paragraph  
14 (1)(C)(ii), (2), or (3) of section 235(b) shall be allowed  
15 to enter or shall be excluded and deported. The decision  
16 of such judge shall be based only on the evidence produced  
17 at the hearing. No immigration trial judge shall conduct  
18 a proceeding in any case under this section in which such  
19 judge participated in prosecuting functions. Proceedings  
20 before an immigration trial judge under this section shall  
21 be conducted in accordance with this section and such  
22 rules as the Immigration Court shall promulgate, and  
23 shall be the sole and exclusive procedure for determining  
24 admissibility of a person to the United States under the  
25 provisions of this section. At such hearing, which shall be

1 kept separate and apart from the public, the alien may  
2 have one friend or relative present, under such conditions  
3 as may be prescribed by the Immigration Court. A com-  
4 plete record of the proceedings and of all testimony and  
5 evidence produced at such hearing shall be kept.”.

6 (2) Subsection (b) of such section is amended to read  
7 as follows:

8 “(b)(1) From a decision of an immigration trial judge  
9 excluding an alien, such alien may take a timely appeal  
10 to the appellate division of the Immigration Court in ac-  
11 cordance with chapter 2 of title I, and any such alien shall  
12 be advised of his right to take such appeal. No appeal may  
13 be taken from an exclusion under section 235(e), and ap-  
14 peals of exclusions under section 235(b)(1) are governed  
15 exclusively by section 106(e).

16 “(2) From a decision of the immigration trial judge  
17 to admit an alien, the immigration officer in charge at  
18 the port where the hearing held may take a timely appeal  
19 to the appellate division of the Immigration Court, in ac-  
20 cordance with chapter 2 of title I.

21 “(3) Review by the appellate division shall be based  
22 only on the evidence presented before the trial judge, and  
23 the findings of fact by the trial judge are conclusive unless  
24 any reasonable adjudicator would be compelled to conclude  
25 to the contrary.

1       “(4) During the pendency of an appeal from a deci-  
2 sion of an immigration trial judge the alien shall be  
3 deemed to be an applicant for admission to the United  
4 States regardless of whether the alien is in or outside the  
5 United States.

6       “(5) In exceptional cases, while a decision on an ap-  
7 peal is pending, an alien in the United States may, upon  
8 request to the Service, be granted permission to depart  
9 from and return to the United States within a period of  
10 time not to exceed sixty days. Such temporary departure  
11 and return shall not have any effect on the alien’s applica-  
12 tion and shall not relieve from liability the carrier that  
13 brought the alien to the United States at the time the  
14 alien was held for exclusion proceedings.”.

15       (3) Subsection (c) of such section is amended—

16           (A) by striking “a special inquiry officer” and  
17       inserting “an immigration trial judge”, and

18           (B) by striking “the Attorney General” and in-  
19       serting “the appellate division of the Immigration  
20       Court”.

21       (4) Subsection (d) of such section is amended—

22           (A) by striking “the special inquiry officer” and  
23       inserting “the immigration trial judge”, and

24           (B) by striking “a special inquiry officer” and  
25       inserting “an immigration trial judge”.

1 (e) SECTION 242.—(1) Subsection (a) of section 242  
2 (8 U.S.C. 1252) is amended—

3 (A) by amending the fourth sentence of para-  
4 graph (1) to read as follows: “Upon application by  
5 the alien, the trial division of the Immigration Court  
6 may review and revise a determination by the Attor-  
7 ney General regarding the detention or release of  
8 any alien or the grant, revocation, or denial of bond  
9 or parole upon a conclusive showing that the Attor-  
10 ney General is not proceeding with reasonable dis-  
11 patch to initiate a deportation proceeding or is oth-  
12 erwise unreasonably delaying a deportation proceed-  
13 ing. A decision by the trial division under this para-  
14 graph may be appealed to the appellate division by  
15 either the alien or the Attorney General, and the de-  
16 termination of the Attorney General shall remain ef-  
17 fective pending such an appeal. A decision by the ap-  
18 pellate division is not subject to further judicial re-  
19 view.”,

20 (B) by amending paragraph (2)(B) to read as  
21 follows:

22 “(B) The Immigration Court may order the Attorney  
23 General to release from custody any lawfully admitted  
24 alien who has been convicted of an aggravated felony, ei-  
25 ther before or after a determination of deportability, only

1 if the alien demonstrates to the satisfaction of the Court  
2 that such alien is not a threat to the community and that  
3 the alien is likely to appear before any scheduled hear-  
4 ings.”.

5 (2) Subsection (b) of such section is amended—

6 (A) by striking “a special inquiry officer and in-  
7 serting “an immigration trial judge” each place it  
8 appears in the first, second, and seventh sentences,

9 (B) by striking “as authorized by the Attorney  
10 General,”,

11 (C) by striking “in which case the Attorney  
12 General shall prescribe necessary and proper safe-  
13 guards for the rights and privileges of such alien”  
14 and inserting “in which case necessary and proper  
15 safeguards for the rights and privileges of the alien  
16 shall be extended in accordance with rules promul-  
17 gated by the appellate division of the Immigration  
18 Court”,

19 (D) by striking “the special inquiry officer” and  
20 inserting “the immigration trial judge” in the third  
21 sentence,

22 (E) by striking “In any case” and all that fol-  
23 lows through “additional immigration officer” and  
24 inserting “An immigration officer” and by striking

1 “such additional immigration officer” and inserting  
2 “such immigration officer” in the fourth sentence,

3 (F) by striking the fifth sentence,

4 (G) by striking “No special inquiry officer” and  
5 inserting “No immigration trial judge” and by strik-  
6 ing “(except as provided in this subsection)” in the  
7 sixth sentence,

8 (H) by striking “such regulations,” and all that  
9 follows through “Attorney General” and inserting  
10 “such rules, not inconsistent with this Act, as the  
11 appellate division of the Immigration Court” in the  
12 seventh sentence,

13 (I) by striking “Such regulations” and inserting  
14 “Such rules” in the eighth sentence, and

15 (J) by striking “the Attorney General” and in-  
16 serting “the Immigration Court” in the tenth sen-  
17 tence.

18 (3) Subsection (c) of such section is amended—

19 (A) by striking “under administrative processes  
20 is made” and inserting “is issued by the Immigra-  
21 tion Court”,

22 (B) by striking “judicial review is had” and  
23 “court” and inserting “an appeal is taken to the  
24 Court of Appeals for the Federal Circuit” and

1 “Court of Appeals”, respectively, in the first sen-  
2 tence, and

3 (C) by amending the second sentence to read as  
4 follows: “Upon application by the alien, the trial di-  
5 vision of the Immigration Court may review and re-  
6 vise a determination by the Attorney General re-  
7 garding the detention or release of any alien or the  
8 grant, revocation, or denial of bond or parole during  
9 such six-month period upon a conclusive showing  
10 that the Attorney General is not proceeding with  
11 reasonable dispatch to effect such alien’s departure  
12 from the United States within such six-month pe-  
13 riod. A decision by the trial division under this para-  
14 graph may be appealed to the appellate division by  
15 either the alien or the Attorney General, and the de-  
16 termination of the Attorney General shall remain ef-  
17 fective pending such an appeal. A decision by the ap-  
18 pellate division is not subject to further judicial re-  
19 view.”.

20 (4) Subsection (e) of such section is amended—

21 (A) by striking “under administrative proc-  
22 esses” and all that follows through “of the court”  
23 and inserting “is issued by the Immigration Court,  
24 or, if an appeal is taken to the Court of Appeals for

1 the Federal Circuit, then from the date of the final  
2 order of the Court of Appeals”, and

3 (B) by striking “: *Provided further,*” and all  
4 that follows through “under the immigration laws.”

5 (5) Subsection (f) of such section is amended—

6 (A) by striking “Attorney General” and insert-  
7 ing “Immigration Court”, and

8 (B) by striking “on any ground” and all that  
9 follows through “in subsection (e),”.

10 (6) Subsection (i) of such section is amended by strik-  
11 ing “shall begin” and inserting “shall initiate and the Im-  
12 migration Court shall conduct”.

13 (f) SECTION 242A.—(1) Subsection (a) of section  
14 242A (8 U.S.C. 1252a) is amended—

15 (A) in paragraph (1) by striking “Attorney  
16 General” and inserting “Immigration Court”,

17 (B) in paragraph (3)(A) by striking “shall pro-  
18 vide for” and all that follows through “appeals  
19 thereof,” and inserting “shall initiate and the Immi-  
20 migration Court shall, to the extent possible, complete  
21 deportation proceedings and appeals”, and

22 (C) in paragraph (4) by striking subparagraph  
23 (A) and striking “(B)”.

24 (2) Subsection (b) of such section is amended—

1 (A) in paragraph (1) by striking “Attorney  
2 General” and inserting “Immigration Court”,

3 (B) in paragraph (3) by striking “106” and in-  
4 serting “106(d)”, and

5 (C) in paragraph (4) by striking “Attorney  
6 General” and inserting “Immigration Court”  
7 each place it appears.

8 (3) Subsection (d) is redesignated as subsection (e)  
9 and newly designated subsection (c)(3)(A)(i) is amended  
10 by striking “court of appeals” and all that follows through  
11 “is located” and inserting “Court of Appeals for the Fed-  
12 eral Circuit”.

13 (g) SECTION 242B.—(1) Subsection (e) of section  
14 242B (8 U.S.C. 1252b(d)) is amended by striking “, not-  
15 withstanding” and all that follows through “deportation  
16 and”.

17 (2) Subsection (d) of such section is amended—

18 (A) by striking “Attorney General” and insert-  
19 ing “Immigration Court” each place it appears,

20 (B) in paragraph (1) by striking “a special in-  
21 quiry officer or before an appellate administrative  
22 body” and inserting “a judge or judges of a division  
23 of the Court”, and

1 (C) in paragraph (2) by striking “administra-  
2 tive appeal of a” and inserting “appeal of an immi-  
3 gration trial judge’s”.

4 (3) Subsection (e) of such subsection is amended—

5 (A) by striking “Attorney General” and insert-  
6 ing “Immigration Court”, and

7 (B) by inserting “, notice” after “under this  
8 section”.

9 (h) SECTION 243.—Section 243(h) (8 U.S.C.  
10 1253(h)) is amended—

11 (1) in paragraph (1) by striking “the Attorney  
12 General determines” and inserting “the Immigration  
13 Court determines”, and

14 (2) in paragraph (2) by striking “the Attorney  
15 General” and inserting “the Immigration Court”.

16 (i) SECTION 244.—(1) Subsection (a) of section 244  
17 (8 U.S.C. 1254) is amended—

18 (A) by striking “the Attorney General may”  
19 and inserting “the presiding immigration trial judge  
20 may”,

21 (B) by striking “applies to the Attorney Gen-  
22 eral” and inserting “applies to the Immigration  
23 Court”,

1           (C) in paragraph (1) by striking “the Attorney  
2           General” and inserting “the immigration trial  
3           judge”, and

4           (D) in paragraphs (2) and (3) by striking “the  
5           Attorney General” and inserting “the immigration  
6           trial judge” each place it appears.

7           (2) Subsection (c) of such section is amended to read:  
8           “(c) Either party in a deportation proceeding may ap-  
9           peal a decision to suspend deportation under subsection  
10          (a).”.

11          (3) Subsection (d) of such section is amended by  
12          striking “cancellation” and inserting “suspension”.

13          (4) Subsection (e) of such section is amended—

14                 (A) by striking “Attorney General” each place  
15                 it appears and inserting “Immigration Court”, and

16                 (B) by striking “in his discretion” and inserting  
17                 “in its discretion”.

18          (j) SECTION 246.—Section 246(a) (8 U.S.C.  
19          1256(a)) is amended by striking “Attorney General” and  
20          inserting “Immigration Court” each place it appears.

21          (k) SECTION 243.—Section 273(d) (8 U.S.C.  
22          1323(d)) is amended by striking “special inquiry officers”  
23          and inserting “immigration trial judges”.

24          (l) SECTION 279.—Section 279 (8 U.S.C. 1329) is  
25          amended—

1           (1) by striking out “The district courts” in the  
2 first sentence and inserting “Except as otherwise  
3 provided in this Act and except in such cases as ju-  
4 risdiction is conferred by law in the Immigration  
5 Court (regardless of whether the cause is brought by  
6 or against the United States), the district courts”,  
7 and

8           (2) by striking “such suit when brought by the  
9 United States” and inserting “suit brought by the  
10 United States under this title”.

11       (m) SECTION 291.—Section 291 (8 U.S.C. 1361) is  
12 amended by inserting “or the Immigration Court” after  
13 “satisfaction of the Attorney General”.

14       (n) SECTION 292.—Section 292 (8 U.S.C. 1362) is  
15 amended by striking “a special inquiry officer” and all  
16 that follows through “such exclusion or deportation pro-  
17 ceedings” and inserting “the Immigration Court”.

18       (o) SECTION 360.—The second sentence of section  
19 360(c) (8 U.S.C. 1503(c)) is amended—

20           (1) by striking “by the Attorney General” and  
21 inserting “by the Immigration Court”, and

22           (2) by striking “by any court of competent ju-  
23 risdiction” and inserting “by the Court of Appeals  
24 of the Federal Circuit”.

1 (p) SECTION 235.—Section 235(b) as amended by  
2 section 422 of the Antiterrorism and Effective Death Pen-  
3 alty Act of 1996 (Public Law 104–132) is amended—

4 (1) in paragraph (1)(C)(ii) by striking “an asy-  
5 lum hearing before an asylum officer under section  
6 208” and inserting “further consideration of the ap-  
7 plication for asylum”,

8 (2) in paragraph (1)(E)(i)—

9 (A) by striking “administrative appeal”  
10 and inserting “appeal to the Immigration  
11 Court”,

12 (B) striking “review” and inserting “refer-  
13 ral to the Immigration Court”, and

14 (C) adding at the end the following new  
15 sentence: “The Immigration Court shall expe-  
16 dited review of claims referred to it under this  
17 clause.”,

18 (3) in paragraphs (2)(A) and (3) by striking “a  
19 special inquiry officer” and inserting “the Immigra-  
20 tion Court” each place it appears.

21 **SEC. 6. EFFECTIVE DATE; SEVERABILITY.**

22 (a) EFFECTIVE DATE.—The amendments made by  
23 section 5 shall take effect on the hearing transition date  
24 designated pursuant to section 2(c)(3) of this Act.

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

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