

105TH CONGRESS
2D SESSION

H. R. 4107

To establish the United States Immigration Court.

IN THE HOUSE OF REPRESENTATIVES

JUNE 22, 1998

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

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 1998”.

8 (b) AMENDMENTS TO IMMIGRATION AND NATIONAL-
9 ITY ACT.—Whenever in this Act an amendment or repeal
10 is expressed as the amendment or repeal of a section or
11 other provision, the reference shall be considered to be

1 made to that section or provision in the Immigration and
2 Nationality Act.

3 (c) TABLE OF CONTENTS.—The table of contents of
4 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. Judicial review of Immigration Court decisions by Court of Appeals for
Federal Circuit.

Sec. 4. Conforming provisions.

Sec. 5. Effective date; transition.

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

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

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

10 “CHAPTER 1—DEFINITIONS AND POWERS” ;

11 and

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

14 “CHAPTER 2—UNITED STATES IMMIGRATION
15 COURT

16 “ESTABLISHMENT OF IMMIGRATION COURT

17 “SEC. 111. (a) IN GENERAL.—There is established,
18 under article I of the Constitution of the United States,
19 a court of record to be known as the United States Immi-
20 gration Court.

21 “(b) DIVISIONS.—The Immigration Court shall con-
22 sist of a trial division and an appellate division.

1 “APPELLATE DIVISION

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

3 JUDGES.—The appellate division of the Immigration

4 Court shall be composed of a chief immigration appeals

5 judge and 8 other immigration appeals judges, appointed

6 by the President by and with the advice and consent of

7 the Senate.

8 “(b) TERM OF OFFICE.—The term of office of each

9 immigration appeals judge shall be 15 years, except that—

10 “(1) of the judges first appointed under this

11 subsection, three shall each be appointed for terms

12 of 5, 10, and 15 years,

13 “(2) a judge appointed to fill a vacancy occur-

14 ring before the expiration of the term for which a

15 predecessor was appointed shall be appointed only

16 for the remainder of such term, and

17 “(3) a judge may serve after the expiration of

18 the judge’s term until reappointed or a successor has

19 taken office.

20 “(c) COMPENSATION.—Each judge of the appellate

21 division shall receive a salary at the rate equal to 93 per-

22 cent of the next to the highest rate of basic pay for the

23 Senior Executive Service, except that the chief immigra-

24 tion appeals judge shall receive a salary at the rate equal

1 to 94 percent of the next to the highest rate of basic pay
2 for the Senior Executive Service.

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

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

15 “(f) ACTING IN PANELS.—The appellate division
16 shall act in panels of 3 or more judges or in banc (as
17 designated by the chief immigration appeals judge in ac-
18 cordance with the rules of the appellate division). A final
19 decision of such a panel shall be considered to be a final
20 decision of the appellate division.

21 “(g) REMOVAL OF JUDGES FOR CAUSE.—(1) Re-
22 moval of an immigration appeals judge of the Immigration
23 Court during the term for which the judge is appointed
24 shall be only for incompetency, misconduct, neglect of
25 duty, engaging in the practice of law, or physical or mental

1 disability. Removal shall be by the United States Court
2 of Appeals for the Federal Circuit, but removal may not
3 occur unless a majority of all judges of such court of ap-
4 peals concur in the order of removal.

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

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

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

21 “(h) EXPENSES FOR TRAVEL AND SUBSISTENCE.—
22 Immigration appeals judges shall receive necessary travel-
23 ing expenses and expenses actually incurred for subsist-
24 ence while traveling on duty and away from their des-
25 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 immigration appeals judges may hold court at such times
7 and in such places as the appellate division may provide
8 by rule.

9 “TRIAL DIVISION

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

11 (1) The trial division of the Immigration Court shall be
12 composed of a chief immigration trial judge and other im-
13 migration trial judges, appointed by the Chief Immigra-
14 tion Appeals Judge.

15 “(2) Each individual who is who is serving as an im-
16 migration judge as of the date of the enactment of this
17 chapter shall be appointed by the Chief Immigration Ap-
18 peals Judge to serve initially as an immigration trial judge
19 pursuant to paragraph (1).

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

22 “(1) a judge appointed to fill a vacancy occur-
23 ring before the expiration of the term for which a
24 predecessor was appointed shall be appointed only
25 for the remainder of such term, and

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

4 “(c) COMPENSATION.—

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

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

“IJ–1	70% of the next to highest rate of basic pay for the Senior Executive Service
“IJ–2	80% of the next to highest rate of basic pay for the Senior Executive Service
“IJ–3	90% of the next to highest rate of basic pay for the Senior Executive Service
“IJ–4	92% of the next to highest rate of basic pay for the Senior Executive Service.

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

17 “(3) APPOINTMENT.—(A) Upon appointment,
18 an immigration trial judge shall be paid at IJ–1,
19 and shall be advanced to IJ–2 upon completion of
20 104 weeks of service, to IJ–3 upon completion of

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

4 “(B) Notwithstanding subparagraph (A), the
5 Chief Immigration Appeals Judge may provide for a
6 newly-appointed immigration trial judge to be paid
7 at an advanced rate under such circumstances as the
8 Chief Immigration Appeals Judge may determine
9 appropriate.

10 “(4) TRANSITION.—Immigration trial judges
11 serving as immigration judges as of the effective
12 date of this chapter shall be paid at the rate that
13 corresponds to the amount of time, as provided
14 under paragraph (3)(A), that they have served as an
15 immigration judge, and in no case shall such an im-
16 migration trial judge be paid less than such judge
17 was paid prior to the effective date.

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

22 “(1) shall have responsibility for the adminis-
23 trative activities affecting immigration trial judges
24 and shall have the power to appoint such adminis-

1 trative assistants, attorneys, clerks, and other per-
2 sonnel as may be needed for this purpose, and

3 “(2) may designate any immigration trial judge
4 in active service to hear and decide any cases de-
5 scribed in section 115.

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

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

22 “(g) WITNESS FEES.—Witnesses (whether appearing
23 voluntarily or under subpoena) before the Immigration
24 Court shall be paid the same fee and mileage allowance

1 as are paid subpoenaed witnesses in any other court in
2 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 any of the following:

15 “(A) A final decision of an immigration
16 trial judge under this Act, other than a deter-
17 mination granting voluntary departure under
18 section 240B within a period of at least 30 days
19 if the sole ground of appeal is that a greater
20 period of departure time should have been
21 fixed.

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

25 “(C)(i) A decision on a petition filed in ac-
26 cordance with section 204, other than petitions

1 to accord preference status under section
2 203(b) or petitions on behalf of a child describe
3 in section 101(b)(1)(F).

4 “(ii) A decision on a request for revalida-
5 tion and a decision revoking approval of such a
6 petition under section 205.

7 “(2) REVIEW OF DECISIONS.—(A) Either party
8 to a case described in paragraph (1) may appeal an
9 immigration trial judge’s decision to the appellate di-
10 vision.

11 “(B) Appeals to the appellate division from a
12 final order of removal (including an order respecting
13 asylum contained in such an order) shall be filed not
14 later than 20 days after the date of the final order.

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

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

1 wise modified or reversed by the Court of Appeals
2 for the Federal Circuit or by the United States Su-
3 preme Court.

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

10 “(b) JURISDICTION OF TRIAL DIVISION.—

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

13 “(A) Removal proceedings under sections
14 238, 240, proceedings under section 360(c),
15 and discretionary relief under section 240A(a).

16 “(B) Rescission of adjustment of status
17 cases under section 246.

18 “(C) Applications for asylum referred to
19 the Immigration Court for adjudication.

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

22 “(E) Determinations relating to bond, pa-
23 role, or detention of an alien under this Act.

1 “(F) Such other cases arising under this
2 Act as the appellate division may provide by
3 regulation.

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

14 “RULES OF COURT

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

24 “(b) REPRESENTATION.—(1) In any proceeding be-
25 fore the Immigration Court, each nongovernmental party
26 shall have the privilege of being represented (at no expense

1 to the Government) by such counsel, authorized to practice
2 in such proceedings, as the party shall choose.

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

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

10 “(1) misbehavior of any person in its presence
11 or so near thereto as to obstruct the administration
12 of justice,

13 “(2) misbehavior of any of its officers in their
14 official transactions, or

15 (3) disobedience or resistance to its lawful writ,
16 process, order, rule, decree, or command.

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

20 “(d) FEES.—The Immigration Court may impose
21 fees for the adjudication of asylum applications and for
22 judicial review and such other fees as it may provide for
23 under its rules and procedures.

1 “RETIREMENT OF JUDGES AND SENIOR JUDGES

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

5 “(2) A judge of the Immigration Court who has at-
6 tained the age of 65 may retire at any time after serving
7 as a judge for fifteen years or more.

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

11 “(A) the judge has served as a judge of the Im-
12 migration Court for 15 years or more; and

13 “(B) not earlier than nine months preceding
14 the date of the expiration of such term of office and
15 not later than 6 months preceding such date, the
16 judge advised the President, in the case of an immi-
17 gration appeals judge, or the Chief Immigration Ap-
18 peals Judge, in the case of an immigration trial
19 judge, that the judge was willing to accept re-
20 appointment to the court.

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

24 “(B) A judge of the Immigration Court who becomes
25 permanently disabled from performing judicial duties

1 under this chapter shall certify to the President, or in the
2 case of an immigration trial judge to the Chief Immigra-
3 tion Appeals Judge, such disability in writing, and such
4 certificate of disability shall be signed by the chief judge
5 of the division. If the Chief Immigration Appeals Judge
6 retires for disability, such retirement shall not take effect
7 until concurred in by the President.

8 “(5) The provisions of subsection (d) (relating to
9 computation and payment of retired pay, subsection (e)
10 (relating to election to receive retired pay), subsection (g)
11 (relating to coordination with civil service retirement), and
12 subsection (i) (relating to revocation of an election to re-
13 ceive retired pay) of section 7447 of the Internal Revenue
14 Code of 1986 shall apply to judges within a division of
15 the Immigration Court in the same manner as such provi-
16 sions apply to judges of the United States Tax Court.

17 “(6) A person who has elected to receive retired pay
18 under the application of section 7447(e) of the Internal
19 Revenue Code of 1986 to judges of the Immigration Court
20 in accordance with paragraph (5) who thereafter—

21 “(A) accepts any civil office or employment
22 under the Government of the United States (other
23 than the performance of judicial duties pursuant to
24 subsection (c)); or

1 “(B) provides legal services to a client in a case
2 arising under this chapter;
3 shall forfeit all rights to retired pay under the application
4 of such section of the Internal Revenue Code of 1986 for
5 periods during which such person accepts such office or
6 employment or provides such legal services.

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

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

19 “(2) Amounts deducted and withheld from the sala-
20 ries of judges of the Immigration Court in the application
21 of section 7448(c) of the Internal Revenue Code of 1986
22 to such judges in accordance with paragraph (1) shall be
23 deposited in the Treasury of the United States to the cred-
24 it of a fund to be known as the ‘Immigration Court Judges
25 Survivors Annuity Fund’.

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

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

13 “(3) Any senior immigration appeals or trial judge
14 performing duties pursuant to this section shall not be
15 counted as an immigration judge for purposes of the num-
16 ber of judgeships authorized by subsection (a).

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

1 or periods of time. Such supplemental pay shall be paid
 2 in the same manner as the salary of an immigration ap-
 3 peals or trial judge.”.

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

6 (1) by inserting before the item relating to sec-
 7 tion 101 the following:

“CHAPTER 1—DEFINITIONS AND POWERS”;

8 and

9 (2) by inserting after the item relating to sec-
 10 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 and senior judges.”.

11 **SEC. 3. JUDICIAL REVIEW OF IMMIGRATION COURT DECI-**
 12 **SIONS THROUGH COURT OF APPEALS FOR**
 13 **THE FEDERAL CIRCUIT.**

14 (a) IN GENERAL.—Section 242(b)(2) (8 U.S.C.
 15 1252(b)(2)) is amended by striking “court of appeals for
 16 the judicial circuit in which the immigration judge com-
 17 pleted the proceedings” and inserting “Court of Appeals
 18 for the Federal Circuit”.

1 (b) ASYLUM.—Section 208 (8 U.S.C. 1158) is
2 amended by adding at the end the following new sub-
3 section:

4 “(e) JUDICIAL REVIEW THROUGH FEDERAL CIR-
5 CUIT.—No court shall have jurisdiction to entertain a peti-
6 tion relating to a determination concerning asylum under
7 this section except the United States Court of Appeals for
8 the Federal Circuit.”.

9 (c) CONFORMING EXPANSION OF JURISDICTION OF
10 THE U.S. COURT OF APPEALS FOR THE FEDERAL CIR-
11 CUIT.—(1) Section 1295(a) of title 28, United States
12 Code, is amended—

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

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

18 (C) by adding at the end the following new
19 paragraph:

20 “(11) by writ of certiorari of an appeal under
21 section 242 or 208(e) of the Immigration and Na-
22 tionality Act and to entertain and grant applications
23 for writs of habeas corpus and petitions for relief re-
24 specting immigration matters pursuant to such sec-
25 tions.”.

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

4 **SEC. 4. CONFORMING PROVISIONS.**

5 (a) REFERENCES.—Notwithstanding any other provi-
6 sion of law, except as may be provided under subsection
7 (c), any reference in law or regulation in relation to the
8 Immigration and Nationality Act and related immigration
9 laws to an immigration or administrative law judge or to
10 an administrative appeals process is deemed a reference
11 to an immigration trial judge and to an appeals process
12 through the Immigration Court, respectively, and the Im-
13 migration Court, in exercising authority under such Act
14 for activities previously under the authority of the Attor-
15 ney General, shall have the same ancillary authorities as
16 the Attorney General previously had under Act or laws.

17 (b) SUPERSEDING OTHER PROVISIONS OF LAW.—

18 (1) IN GENERAL.—Chapter 2 of title I, as
19 added by section 2(a)(2), is amended by adding at
20 the end the following:

21 “RELATIONSHIP TO OTHER PROVISIONS

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

25 (2) CLERICAL AMENDMENT.—The table of con-
26 tents is amended by inserting after the item relating

1 to section 116, as inserted by section 2(b)(2), the
2 following new item:

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

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

12 **SEC. 5. EFFECTIVE DATES AND TRANSITION.**

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

16 (2) Section 113(c) of the Immigration and National-
17 ity Act, as added by section 2, takes effect 90 days after
18 the date of the enactment of this Act.

19 (b) TIMETABLE FOR ESTABLISHMENT OF COURT.—

20 (1) The President shall nominate the chief immigration
21 appeals judge and other immigration appeals judges of the
22 appellate division of the United States Immigration Court
23 (in this section referred to as the “Court”) not later than
24 14 days after the date of the enactment of this Act.

1 (2) The chief immigration appeals judge, in consulta-
2 tion with the Attorney General, shall designate a date, not
3 later than 30 days after the chief immigration appeals
4 judge and a majority of the immigration appeals judges
5 are appointed, on which the appellate division shall as-
6 sume the present functions of the Board of Immigration
7 Appeals (under existing rules and regulations).

8 (3) The appellate division of the Court shall provide
9 promptly for establishment of interim final rules of prac-
10 tice and procedure which will apply to the Court and immi-
11 gration trial judges under the Immigration and National-
12 ity Act after the transition date designated under sub-
13 section (c).

14 (c) HEARING TRANSITION DATE.—(1) In order to
15 provide for the orderly transfer of proceedings from the
16 existing system to the Court, the chief immigration ap-
17 peals judge, in consultation with the Attorney General,
18 shall designate a transition date, to be not later than 45
19 days after the date interim final rules of practice and pro-
20 cedure are established under subsection (b)(3).

21 (2) During the period before the transition date, any
22 proceeding or hearing under the Immigration and Nation-
23 ality Act which may be conducted by an immigration judge
24 may be conducted by an individual appointed and qualified
25 as an immigration trial judge in accordance with all the

1 rules and procedures otherwise applicable to the conduct
2 of such proceeding or hearing.

3 (d) CONTINUATION OF AUTHORITY.—Individuals act-
4 ing as immigration judges on the date of the enactment
5 of this Act and on the transition date may (without regard
6 to other provisions of law) continue to conduct proceedings
7 or hearings under the Immigration and Nationality Act
8 after such transition date during the period ending two
9 years after the date of the enactment of this Act.

10 (e) CONTINUATION OF RIGHTS.—(1) The enactment
11 of this Act shall not result in any loss of rights or powers,
12 interruption of jurisdiction, or prejudice to matters pend-
13 ing in the Board of Immigration Appeals or before immi-
14 gration judges on the day before this Act takes effect.

15 (2) Under rules established by the appellate division
16 of the United States Immigration Court, with respect to
17 removal cases and asylum applications pending as of the
18 transition date, the appellate division shall be deemed to
19 be a continuation of the Board of Immigration Appeals
20 and immigration trial judges shall be deemed a continu-
21 ation of immigration judges for the purposes of effectuat-
22 ing the continuation of all existing powers, rights, and ju-
23 risdiction.

24 (f) SEVERABILITY.—If any provision or amendment
25 made by this Act or the application of such provision or

1 amendment to any person or circumstance is held to be
2 invalid, the remainder of this Act and its amendments and
3 the application of such provisions or amendments to any
4 person or circumstance shall not be affected thereby.

