

THE REAL COURTS, RULE OF LAW ACT of 2022

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

Sec. 1(a).—Short Title. Establishes the short title of the Act as the “Real Courts, Rule of Law Act of 2022”.

Sec. 2(b).—Table of Contents. Establishes the table of contents for the Act.

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

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

Title VI—United States Immigration Courts

Subtitle A—Organization and Jurisdiction

SEC. 601. ESTABLISHMENT AND STRUCTURE.

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

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

Appointment of Immigration Appeals Judges. Requires the President to appoint appeals judges with the advice and consent of the Senate. Appeals judges shall serve for a 15-year term and may be reappointed for additional 15-year terms. Provides for the appointment of a successor when an appeals judge is not reappointed or does not complete a full term.

Chief Judge. Requires the chief judge to be the most senior among appeals judges who (1) have served for 1 or more years; (2) have at least 5 years remaining in their term of office; and (3) have not previously served as chief judge. Provides for the appointment of an acting chief judge if no appeals judge is otherwise eligible to serve as chief judge. The chief judge shall serve for a term of 5 years but may serve longer if no other appeals judge is eligible to assume the role. The term of a chief judge ends if the chief judge leaves active service as an appeals judge; provides notice of resignation as chief judge; or is removed from service for cause.

En Banc Exercise of Appellate Division Authority in Non-Adjudicative Matters. Sets forth the situations in which the appellate division exercises its en banc authority in non-adjudicative matters as follows:

- Appointing and removing immigration trial judges;
- Appointing a chief administrative officer to the administrative council;
- Promulgating rules and court policies and procedures; and
- Addressing other non-adjudicative matters as determined by the chief judge.

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

Appointment of Immigration Trial Judges. Requires the appellate division to appoint trial judges. Trial judges shall serve for a 15-year term but may be reappointed for additional 15-year terms.

Chief Trial Judges. Requires the chief judge to appoint a chief trial judge to each geographical location in which the trial division operates. Chief trial judges shall serve for a 5-year term but may be reappointed for terms of 5 years (or less), as determined by the appellate division. Chief trial judges are responsible for overseeing the administrative operations of the trial division in the geographical location in which they are located and fulfilling other duties outlined in the Act or delegated by the chief judge.

Sec. 601(d).—Administrative Division. Establishes an administrative division of the Immigration Courts, consisting of an administrative office and an administrative council. The administrative office is managed by a chief administrative officer, who is responsible for:

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

The administrative council is comprised of the chief judge of the appellate division and the chief trial judge of each court of the trial division. The administrative council shall meet at least annually to discuss the needs of the Courts as well as any matters in which the administration of justice can be improved.

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

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

SEC. 602. IMMIGRATION APPEALS JUDGES AND TRIAL JUDGES.

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

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

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

- qualified candidates are identified without regard to protected factors under Federal law;

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

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

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

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

Sec. 602(f).—*Removal.* Provides that appeals judges may be removed from office by the President and trial judges may be removed from office by the appellate division only on grounds of incapacity, misconduct, neglect of duty, or having engaged in the practice of law. Requires notice to be given prior to removal. Requires the appellate division to establish procedures for receiving and responding to complaints against judges.

Sec. 602(g)-(n). —*Retirement.* Sets forth the retirement benefits for immigration judges including when immigration judges are eligible for retirement benefits and when such benefits can be revoked or forfeited.

SEC. 603. TEMPORARY JUDGES AND COURT FACILITIES.

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

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

Sec. 603(c).—*Reporting Requirements.* Requires the appellate division, prior to exercising its en banc authority under this section, to report to the Committees on the Judiciary of the House and Senate, details of the need for additional court resources, an assessment of required resources, and the estimated duration of the need. Requires the appellate division to provide the Committees an updated report every 30 days. Requires the appellate division to rescind temporary judge appointments and close temporary court facilities if they are no longer required to address the need. All temporary judge appointments shall be rescinded, and temporary court facilities closed upon the earliest of the date that the appellate division determines that normal court operations may resume; the date that Congress directs such actions be taken by concurrent resolution; or 210 days after the submission of the appellate division's initial report unless such 210-day period is extended by Congress.

SEC. 604. JURISDICTION.

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

Sec. 604(b).—Trial Division Jurisdiction. Sets forth the trial division’s jurisdiction over removal proceedings; review of rescissions of lawful permanent residence; review of credible fear and reasonable fear determinations; review of certain applications for asylum or relief under the U.N. Convention Against Torture; review of custody and bond determinations; determinations as to whether certain administrative actions filed on behalf of individuals in removal proceedings were unlawfully withheld or unreasonably delayed; disciplinary matters concerning attorneys and practitioners; and all matters over which immigration judges had authority on the day before the effective date of the Act.

Subtitle B—Procedure and Appellate Review

SEC. 621. PROCEEDINGS.

Sec. 621(a).—Appellate Division Proceedings. Provides that appellate proceedings shall be heard by 3-judge panels or en banc, with decisions made by majority vote, unless otherwise determined by the appellate division. Panel decisions may be reconsidered en banc. The chief judge has precedence and will preside at any session of the appellate division that such judge attends. Other appeals judges have precedence according to seniority in their original commissions and then seniority in age.

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

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

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

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

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

SEC. 622. IMMIGRATION COURT RULES OF PRACTICE AND PROCEDURE.

Sec. 622(a).—In General. Establishes the en banc authority of the appellate division to promulgate certain rules of practice and procedure and articulates specific rules that must be promulgated, including rules regarding:

- representation of parties;
- the exercise of the appellate division’s en banc authority over adjudicative matters;
- the types of matters that are appropriate for review by a single appellate judge;
- the issuance of opinions, written orders, and precedent decisions;

- the use of video teleconferencing or similar technologies; and
- the receipt and investigation of complaints against immigration judges.

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

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

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

SEC. 623. REPRESENTATION OF PARTIES AND OTHER ASSISTANCE.

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

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

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

SEC. 624. AVAILABILITY OF INFORMATION.

Sec. 624(a).—Publication of Precedent Decisions. Requires that precedent decisions be published in the form best adapted for public information and use.

Sec. 624(b).—Publication of Non-Precedent Decisions and Records. Requires all non-precedent decisions, pleadings, and other documents be made available to the public, except that confidential and sensitive information shall be protected.

SEC. 625. SCOPE OF REVIEW AND APPEALS.

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

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

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

Sec. 625(d).—Review by the United States Court of Appeals. Provides for judicial review of an appellate division decision in accordance with section 242 of the INA.

SEC. 3. EMPLOYEES.

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

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

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

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

Sec. 3(e).—Preference Eligibles. Requires that preference be given to applicants who are preference eligible.

Sec. 3(f).—Experts and Consultants. Allows the Immigration Courts to use the services of experts and consultants.

SEC. 4. BUDGET AND EXPENDITURES.

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

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

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

SEC. 5. ANNUAL REPORT.

Sec. 5(a).—In General. Requires the chief judge to submit a report to the Committees on the Judiciary in the House and Senate by April 1 of each year, summarizing the workload of the Immigration Courts in the previous fiscal year.

Sec. 5(b).—Contents. Such report shall contain: demographic information of respondents and rates of representation; results of removal proceedings and bond hearings; the number of cases currently pending before the trial and appellate divisions and the change in this number from the prior fiscal year; the average number of days a respondent must wait to have their case heard; and any other information requested by the Committees that is timely and reasonable.

SEC. 6. EFFECTIVE DATE; TRANSITIONAL PROVISIONS.

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

- If there are 180 days or more between the date of enactment and the first day of the first full fiscal year after enactment, the effective date is the first day of the first full fiscal year after enactment.
- If there are less than 180 days between the date of enactment and the first day of the first full fiscal year after enactment, the effective date is the first day of the second full fiscal year after enactment.

Sec. 6(b).—Transition Period and Appointment of Interim Immigration Judges. Establishes a four-year transition period starting on the effective date of the Act. Requires the President to designate

interim immigration judges to serve during the transition period. BIA members and immigration judges serving on the day before the effective date of the Act are eligible to for designation as interim immigration judges. If there are more than 21 eligible BIA members, the 21 most senior members will be eligible for such designation. Interim judges serve until the earlier of the date that the transition period ends, and a successor is appointed, or 5 years.

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

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

- 7 appeals judges will each serve for an initial 5-year term;
- 7 appeals judges will each serve for an initial 10-year term; and
- 7 appeals judges will each serve for an initial 15-year term.

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

SEC. 7. INSTITUTIONAL TRANSFER; CONTINUITY OF PROCEEDINGS.

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

Sec. 7(b).—Institutional Transfer. Provides for the transfer of all functions of the Executive Office for Immigration Review to the Immigration Courts on the effective date of the Act, except for the functions of the Office of the Chief Administrative Hearing Officer, and functions that are not necessary or appropriate for transfer to the Immigration Courts. Cases before an immigration judge or the BIA will transfer to the appropriate division.

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

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

SEC. 9. TECHNICAL AND CONFORMING PROVISIONS. Amends the INA to conform with the provisions of the Act. Amends Section 109 of the Ethics in Government Act of 1978 to add “United States Immigration Courts.”