

118TH CONGRESS
1ST SESSION

S. 1187

To establish the right to counsel, at Government expense for those who cannot afford counsel, for people facing removal.

IN THE SENATE OF THE UNITED STATES

APRIL 18, 2023

Mrs. GILLIBRAND (for herself, Mr. BOOKER, Mr. PADILLA, Mr. MARKEY, Mr. SANDERS, Ms. WARREN, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To establish the right to counsel, at Government expense for those who cannot afford counsel, for people facing removal.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Fairness to Freedom Act of 2023”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—GUARANTEEING THE RIGHT TO COUNSEL

Sec. 101. Guaranteeing and expanding the right to counsel.

Sec. 102. Public charge.

TITLE II—OFFICE OF IMMIGRATION REPRESENTATION

- Sec. 201. Definitions.
 Sec. 202. Establishment; purpose; independence.
 Sec. 203. Board of Directors.
 Sec. 204. Director.
 Sec. 205. Employees.
 Sec. 206. Local immigration representation boards.
 Sec. 207. Types of immigration defenders.
 Sec. 208. Compensation and reimbursement of counsel expenses.
 Sec. 209. Services other than counsel.
 Sec. 210. Immigration Representation Advisory Board.

TITLE III—AUTHORIZATION OF APPROPRIATIONS

- Sec. 301. Authorization of appropriations.
 Sec. 302. Minimum funding for the Office of Immigration Representation.

1 **TITLE I—GUARANTEEING THE** 2 **RIGHT TO COUNSEL**

3 **SEC. 101. GUARANTEEING AND EXPANDING THE RIGHT TO** 4 **COUNSEL.**

5 Section 292 of the Immigration and Nationality Act
 6 (8 U.S.C. 1362) is amended to read as follows:

7 **“SEC. 292. RIGHT TO COUNSEL.**

8 “(a) IN GENERAL.—Any individual in any removal,
 9 exclusion, deportation, bond, or expedited removal pro-
 10 ceeding under section 212(d)(5)(A), 235(b)(1)(B), 236,
 11 238, 240, or 241 or in any matter related to any such
 12 proceeding before U.S. Citizenship and Immigration Serv-
 13 ices, any State court, or any court created under article
 14 III of the Constitution of the United States, any individual
 15 who is financially unable to obtain representation subject
 16 to such proceeding shall be entitled to legal representation
 17 at Government expense in accordance with this section.

1 “(b) MATTERS INCLUDED.—Proceedings and mat-
2 ters referred to in subsection (a) shall include—

3 “(1) petitions for a writ of habeas corpus under
4 section 2241 of title 28, United States Code, or any
5 other similar proceeding;

6 “(2) administrative and judicial proceedings for
7 individuals who may be eligible for special immigrant
8 juvenile status under section 101(a)(27)(J)(ii);

9 “(3) applications before the U.S. Citizenship
10 and Immigration Services related to relief from re-
11 moval, and post-conviction relief in criminal pro-
12 ceedings;

13 “(4) post-conviction relief in criminal pro-
14 ceedings; and

15 “(5) any other legal proceeding involving an in-
16 dividual described in subsection (a) that is related to
17 such individual’s legal status in the United States.

18 “(c) SCOPE OF COUNSEL.—

19 “(1) ADVOCACY.—Consistent with Rule 1.3 of
20 the American Bar Association’s Model Rules of Pro-
21 fessional conduct, attorneys and other persons pro-
22 viding representation to individuals in proceedings or
23 matters described in subsection (a) shall—

24 “(A) act with reasonable diligence, prompt-
25 ness, commitment, and dedication to the inter-

1 ests of the client and with zeal in advocating on
2 the client’s behalf; and

3 “(B) hold the Government to its burden by
4 presenting the fullest defense possible in each
5 such proceeding or matter.

6 “(2) SCOPE OF REPRESENTATION.—Representen-
7 tation under this section shall include—

8 “(A) counsel and interpretation and trans-
9 lation services; and

10 “(B) any other services that are necessary
11 for effective representation, including the serv-
12 ices described in section 209 of the Fairness to
13 Freedom Act of 2023.

14 “(3) COMMENCEMENT OF REPRESENTATION.—

15 “(A) IN GENERAL.—The right to counsel
16 of a person detained in, or released from, the
17 custody of the Department of Homeland Secu-
18 rity or the Department of Health and Human
19 Services shall attach at the earlier of—

20 “(i) the placement of the person in
21 the custody of either department, regard-
22 less of whether the person has been for-
23 mally placed in a proceeding described in
24 subsection (a); or

1 “(ii) the issuance to the person of a
2 Notice to Appear or other document initi-
3 ating proceedings under section 235, 238,
4 240, or 241.

5 “(B) CLARIFICATION.—The appointment
6 of counsel based on the issuance of a Notice to
7 Appear shall occur regardless of whether the
8 Notice to Appear has been filed with the immi-
9 gration court. The appointment of counsel for a
10 detained person shall occur as soon as possible,
11 but in no event later than 24 hours after such
12 person is taken into the custody of the Depart-
13 ment of Homeland Security.

14 “(4) CONTINUOUS REPRESENTATION.—

15 “(A) IN GENERAL.—An individual for
16 whom counsel is appointed under this section
17 shall be represented continuously at every stage
18 of proceedings beginning with the initial ap-
19 pearance before any official with adjudicatory
20 authority and including any proceedings before
21 the Immigration Courts, the Board of Immigra-
22 tion Appeals, Federal district courts, Federal
23 courts of appeal, and the United States Su-
24 preme Court, including ancillary matters related
25 to the proceedings described in subsection (a),

1 and ending when all such proceedings have con-
2 cluded.

3 “(B) APPOINTMENT OF DIFFERENT COUN-
4 SEL.—If the nature of the representation need-
5 ed by a person in proceedings under this section
6 requires the appointment of different represent-
7 atives for different stages of such proceedings,
8 all such representatives shall comply with the
9 minimum standards of representation described
10 in paragraph (1).

11 “(C) APPOINTMENT OF NEW COUNSEL
12 AFTER RELOCATION.—The Office of Immigra-
13 tion Representation established under section
14 202 of the Fairness to Freedom Act of 2023
15 shall ensure that each individual who is released
16 from custody and moves to a State or municipi-
17 pality other than the State or municipality in
18 which he or she was in custody, or who is trans-
19 ferred to a detention facility in another State or
20 municipality is provided with counsel in the new
21 State or municipality in which the individual re-
22 sides or is detained.

23 “(5) CONSTRUCTION.—This subsection shall be
24 broadly construed to attach in any proceeding and
25 related matter, including any petition for review or

1 appellate process, request for re-interview, request
2 for reconsideration, and motion to reopen, arising
3 from a proceeding or matter described in subsection
4 (a).

5 “(d) ELIGIBILITY AND COMMENCEMENT OF IMMI-
6 GRATION PROCEEDINGS.—

7 “(1) NOTIFICATION.—A proceeding described in
8 subsection (a) shall not commence until counsel has
9 been appointed to represent the individual subject to
10 such proceeding. If such a proceeding has already
11 commenced without the appointment of counsel,
12 such proceeding shall be paused until such counsel
13 is appointed. Before commencing a proceeding de-
14 scribed in subsection (a), the adjudicatory official,
15 who may be an official of U.S. Immigration and
16 Customs Enforcement or of U.S. Customs and Bor-
17 der Protection, under a plan approved by the Office
18 of Immigration Representation, shall notify the indi-
19 vidual subject to such proceeding that—

20 “(A) such individual has the right to be
21 represented by counsel; and

22 “(B) counsel will be appointed to represent
23 such individual before the commencement of
24 such proceeding if the individual—

1 “(i) has not retained private counsel;

2 and

3 “(ii) is financially unable to obtain

4 counsel.

5 “(2) DETERMINATION OF FINANCIAL ABILITY

6 TO OBTAIN COUNSEL.—

7 “(A) IN GENERAL.—An individual shall be

8 deemed to be financially unable to obtain coun-

9 sel under paragraph (1)(B)(ii) if the individ-

10 ual’s net financial resources and income are in-

11 sufficient to obtain qualified counsel.

12 “(B) ELIGIBILITY FOR COUNSEL.—An in-

13 dividual who makes a sworn statement to the

14 adjudicatory official referred to in subsection

15 (a) that he or she is a member of a family

16 whose income is not more than 200 percent of

17 the poverty line (as defined in section 673(2) of

18 the Community Services Block Grant Act (42

19 U.S.C. 9902(2))) is eligible for Government-ap-

20 pointed counsel under this section.

21 “(3) ACCESS TO PERTINENT DOCUMENTS AND

22 INFORMATION.—

23 “(A) IN GENERAL.—An individual de-

24 scribed in subsection (a) and his or her counsel

25 shall automatically receive a complete copy of

1 all documents and information pertaining to
2 such individual that are in the possession of the
3 Department of Homeland Security or the De-
4 partment of Health and Human Services, in-
5 cluding documents obtained from other Govern-
6 ment agencies, unless the disclosure of any such
7 document or information is barred by privilege
8 or otherwise prohibited by law.

9 “(B) RECORDS.—Not later than 7 days
10 after counsel is appointed to represent an indi-
11 vidual under this Act, the Director of U.S. Citi-
12 zenship and Immigration Services shall—

13 “(i) provide such individual and coun-
14 sel with a complete copy of the individual’s
15 immigration file (commonly known as the
16 ‘A-file’); and

17 “(ii) facilitate the provision to such
18 individual and counsel of a copy of any
19 Record of Proceeding that is in the posses-
20 sion of the Department of Homeland Secu-
21 rity, the Department of Health and
22 Human Services, or the Department of
23 Justice (other than documents protected
24 from disclosure under section 552(b) of
25 title 5, United States Code).

1 “(4) RESTRICTION.—A proceeding described in
2 subsection (a) may not commence before the date
3 that is 10 days after the date on which the indi-
4 vidual, or the individual’s counsel, has received all of
5 the documents described in paragraph (3), in order
6 to review and assess such documents, unless the in-
7 dividual or his or her counsel knowingly and volun-
8 tarily waives such restriction.

9 “(e) APPOINTMENT OF COUNSEL.—

10 “(1) NOTIFICATION REQUIREMENT.—If an indi-
11 vidual who is entitled to representation under this
12 section is not represented by counsel, the adjudica-
13 tory official shall—

14 “(A) notify the Local Administrator ap-
15 pointed pursuant to section 206(k)(3) of the
16 Fairness to Freedom Act of 2023 (or the des-
17 ignee of the Local Administrator) that such in-
18 dividual is not represented by counsel; and

19 “(B) advise such individual—

20 “(i) of his or her right to be rep-
21 resented by counsel; and

22 “(ii) that such counsel will be ap-
23 pointed if such person is financially unable
24 to obtain counsel.

1 “(2) WAIVER.—An individual’s right to be rep-
2 resented by appointed counsel may only be waived by
3 the individual—

4 “(A) in the physical presence of appointed
5 counsel;

6 “(B) if such waiver is knowing and vol-
7 untary; and

8 “(C) if the individual demonstrates that he
9 or she—

10 “(i) understands the nature of any
11 charges and the possible defenses and out-
12 comes; and

13 “(ii) possesses the knowledge and in-
14 telligence necessary to conduct his or her
15 own defense.

16 “(3) APPEAL OF WAIVER; RETROACTIVE AP-
17 POINTMENT.—Counsel may appeal any putative
18 waiver to the Office of Immigration Representation
19 established under section 202 of the Fairness to
20 Freedom Act of 2023 if counsel reasonably believes
21 that such waiver did not meet the requirements
22 under paragraph (2). If the Office of Immigration
23 Representation concurs with counsel’s assessment,
24 the Office may retroactively appoint counsel in order

1 to include any representation furnished pursuant to
2 the plan before such appointment.

3 “(4) APPOINTMENT OF COUNSEL.—Unless an
4 individual waives representation by counsel pursuant
5 to paragraph (2), the Local Administrator, upon no-
6 tification that an individual may meet the criteria
7 for appointed counsel, shall appoint counsel for such
8 individual in accordance with the Local Plan devel-
9 oped pursuant to section 206(k)(1) of the Fairness
10 to Freedom Act of 2023 if the Local Administrator
11 determines, after appropriate inquiry, that such indi-
12 vidual is financially unable to obtain counsel. An ap-
13 pointment under this paragraph may be made retro-
14 active to include any representation furnished to
15 such individual by such counsel before such appoint-
16 ment.

17 “(5) APPOINTMENT OF SEPARATE COUNSEL.—
18 The Local Administrator shall appoint separate
19 counsel for individuals who are subjected to the
20 same proceeding or related proceedings if—

21 “(A) the interests of such individuals can-
22 not, consistent with ethical responsibilities and
23 manageable workloads, be properly be rep-
24 resented by a single counsel; or

1 “(B) the Local Administrator dem-
2 onstrates another good cause for appointing
3 separate counsel.

4 “(6) CONSOLIDATED CASES.—

5 “(A) IN GENERAL.—Subject to paragraph
6 (5) and except as provided in subparagraph
7 (B), if the Attorney General consolidates the
8 case of an individual for whom counsel was ap-
9 pointed pursuant to subsection (a) with the case
10 of another individual without counsel, the coun-
11 sel appointed pursuant to subsection (a) shall
12 be appointed to represent such other individual
13 unless a conflict of interest would prevent joint
14 representation.

15 “(B) CONFLICT OF INTEREST.—If a con-
16 flict of interest prevents joint representation
17 under subparagraph (A), the Local Adminis-
18 trator shall appoint separate counsel for the in-
19 dividuals referred to in such subparagraph un-
20 less the Local Administrator demonstrates that
21 there is a good cause for not appointing sepa-
22 rate counsel.

23 “(7) CHANGE OF FINANCIAL CIRCUMSTANCES
24 DURING PROCEEDINGS.—If an individual who has
25 retained counsel becomes financially unable to pay

1 such counsel and is eligible for appointed counsel
2 under this section, the Local Administrator may ap-
3 point counsel for such individual in accordance with
4 this section.

5 “(8) SUBSTITUTION OF COUNSEL.—The Local
6 Administrator, in the interests of justice, upon a
7 showing of good cause, and consistent with ethical
8 requirements applicable to attorneys practicing in
9 the region, substitute an appointed counsel for an-
10 other appointed counsel at any stage of a proceeding
11 referred to in subsection (a).

12 “(f) ACCESS TO COUNSEL.—

13 “(1) IN GENERAL.—If an individual is subject
14 to proceedings described in subsection (a) or to de-
15 tention or inspection at a port of entry, U.S. Cus-
16 toms and Border Protection, U.S. Immigration and
17 Customs Enforcement, or the Office of Refugee Re-
18 settlement, as appropriate, shall—

19 “(A) facilitate access for such individual to
20 counsel; and

21 “(B) ensure that counsel appointed under
22 this section is permitted to meet in person with
23 such individual in a confidential, private setting
24 when requested during the first 12 hours the

1 individual is detained and as soon as practicable
2 after subsequent meeting requests.

3 “(2) ALTERNATIVE MEETING OPTIONS.—If
4 counsel appointed pursuant to this section cannot
5 personally meet with an individual described in para-
6 graph (1) to whom such counsel was appointed to
7 represent, U.S. Customs and Border Protection,
8 U.S. Immigration and Customs Enforcement, or the
9 Office of Refugee Resettlement, as appropriate, at
10 the request of such individual or the counsel of the
11 individual, shall provide alternative options through
12 which counsel may communicate with such indi-
13 vidual remotely in a confidential, private manner
14 during the first 12 hours such individual is detained
15 and as soon as practicable after subsequent meeting
16 requests.

17 “(3) EFFECT OF FAILURE TO PROVIDE TIMELY
18 ACCESS TO COUNSEL.—If U.S. Customs and Border
19 Protection, U.S. Immigration and Customs Enforce-
20 ment, or the Office of Refugee Resettlement, as ap-
21 plicable, fails to timely provide an individual with ac-
22 cess to counsel in accordance with paragraph (1) or
23 (2), no statement made by the individual before such
24 access has been made available may be introduced
25 into evidence against the respondent except on a mo-

1 tion by the appointed counsel, who shall be entitled
2 to a continuance in the proceedings giving rise to the
3 appointment of such counsel.

4 “(4) LIMITATION.—An individual held or de-
5 tained at a port of entry may not submit a valid
6 Record of Abandonment of Lawful Permanent Resi-
7 dent Status or Withdrawal of Application for Admis-
8 sion if U.S. Customs and Border Protection or U.S.
9 Immigration and Customs Enforcement has failed to
10 provide such individual with access to counsel in ac-
11 cordance with this section.

12 “(5) INSTITUTIONAL HEARING PROGRAM.—In-
13 dividuals held in Federal, State, or local criminal
14 custody who are placed in any proceeding described
15 in subsection (a) shall be ensured access to counsel
16 consistent with the requirements of this section. No
17 statement made by the respondent before such ac-
18 cess has been made available may be introduced into
19 evidence against the respondent except on appointed
20 counsel’s own motion. Counsel shall be entitled to a
21 continuance in the proceedings giving rise to his or
22 her appointment.

23 “(6) TERMINATION OF PROCEEDINGS.—If the
24 Local Administrator fails to provide counsel to an
25 individual in accordance with this section, the Sec-

1 retary of Homeland Security or the Attorney Gen-
 2 eral, as appropriate, shall terminate any proceedings
 3 involving such individual with prejudice.”.

4 **SEC. 102. PUBLIC CHARGE.**

5 Seeking or receiving appointed counsel under section
 6 292 of the Immigration and Nationality Act, as amended
 7 by section 101, may not be serve as the basis for any de-
 8 termination that the individual seeking or receiving such
 9 services is likely to become a public charge for the pur-
 10 poses of determining the admissibility, removability, ex-
 11 cludability, or deportability of such individual under such
 12 Act, or in any other proceeding in which such individual’s
 13 likelihood of becoming a public charge is at issue for immi-
 14 gration purposes.

15 **TITLE II—OFFICE OF IMMIGRA-**
 16 **TION REPRESENTATION**

17 **SEC. 201. DEFINITIONS.**

18 In this title:

19 (1) **BOARD.**—The term “Board” means the
 20 Board of Directors of the Office.

21 (2) **DIRECTOR.**—The term “Director” means
 22 the Director of the Office of Immigration Represen-
 23 tation appointed pursuant to section 206(k)(1).

24 (3) **IMMIGRATION PUBLIC DEFENDER ORGANI-**
 25 **ZATION.**—The term “Immigration Public Defender

1 Organization” means an organization established by
2 a Local Board pursuant to section 207(a)(1).

3 (4) LOCAL BOARD.—The term “Local Board”
4 means a local immigration representation board es-
5 tablished within a region pursuant to section 206(a).

6 (5) OFFICE.—The term “Office” means the Of-
7 fice of Immigration Representation established
8 under section 202(a).

9 (6) PANEL ATTORNEY.—The term “Panel At-
10 torney” means a private attorney appointed by a
11 State or local Office of Public Defender to provide
12 legal services to an individual who cannot afford
13 legal representation.

14 **SEC. 202. ESTABLISHMENT; PURPOSE; INDEPENDENCE.**

15 (a) ESTABLISHMENT.—There is established in the
16 District of Columbia a private nonprofit corporation,
17 which shall be known as the Office of Immigration Rep-
18 resentation.

19 (b) PURPOSE.—The purpose of the Office shall be to
20 ensure high-quality legal representation and related serv-
21 ices to all individuals described in section 292(a) of the
22 Immigration and Nationality Act, as amended by section
23 101, who cannot afford representation.

24 (c) INDEPENDENCE.—Except as otherwise provided
25 in this Act, the Office shall exercise its authority inde-

1 pendently of any Government official, agency, or depart-
2 ment, including the Department of Justice, the Depart-
3 ment of Homeland Security, and the Department of
4 Health and Human Services.

5 **SEC. 203. BOARD OF DIRECTORS.**

6 (a) NUMBER AND APPOINTMENT.—

7 (1) IN GENERAL.—The Office shall be governed
8 by a Board of Directors, consisting of 24 members
9 who shall be appointed not later than 1 year after
10 the date of the enactment of this Act, in accordance
11 with paragraph (2).

12 (2) INITIAL JUDICIAL APPOINTMENTS.—

13 (A) IN GENERAL.—Subject to subpara-
14 graphs (B) and (C), the chief judge of each
15 United States Court of Appeals (except for the
16 chief judge for the Federal Circuit) shall ap-
17 point 2 individuals to the Board who meet the
18 requirements set forth in subsection (b).

19 (B) STAGGERED TERMS OF SERVICE.—The
20 terms of service of the members of the Board
21 appointed pursuant to subparagraph (A) shall
22 be staggered so that—

23 (i) 6 members serve an initial term of
24 1 year;

1 (ii) 6 members serve an initial term of
2 2 years;

3 (iii) 6 members serve an initial term
4 of 3 years; and

5 (iv) 6 members serve an initial term
6 of 4 years.

7 (C) CIRCUITS.—

8 (i) EASTERN CIRCUITS.—The chief
9 judge of the 1st, 2nd, 3rd, 4th, 11th, and
10 DC Circuit Courts of Appeals shall appoint
11 1 individual to serve an initial term of 1
12 year and 1 individual to serve an initial
13 term of 4 years.

14 (ii) REMAINING CIRCUITS.—The chief
15 judge of the 5th, 6th, 7th, 8th, 9th, and
16 10th Circuit Courts of Appeals shall ap-
17 point 1 individual to serve an initial term
18 of 2 years and 1 individual to serve an ini-
19 tial term of 3 years.

20 (3) IMMIGRATION REPRESENTATION ADVISORY
21 BOARD APPOINTMENTS.—

22 (A) INITIAL APPOINTMENTS.—Upon the
23 expiration of the initial term of the 6 members
24 of the Board who were appointed to 1-year
25 terms pursuant to paragraph (2)(B)(i), the Im-

1 migration Representation Advisory Board es-
2 tablished under section 210 shall appoint to 4-
3 year terms—

4 (i) 6 members of the Board;

5 (ii) an Immigration Public Defender,
6 who shall serve as a nonvoting, ex-officio
7 member of the Board; and

8 (iii) a Panel Attorney, who shall serve
9 as a nonvoting, ex-officio member of the
10 Board.

11 (B) SUBSEQUENT APPOINTMENTS.—Upon
12 the expiration of the initial term of the 6 mem-
13 bers of the Board who were appointed to 2-year
14 terms pursuant to paragraph (2)(B)(ii), the Im-
15 migration Representation Advisory Board es-
16 tablished under section 210 shall appoint 6
17 members of the Board to 4-year terms. The Im-
18 migration Representation Advisory Board shall
19 also appoint individuals to replace any member
20 of the Board who had been appointed by the
21 Advisory Board, upon the expiration of such
22 member's term.

23 (4) SUBSEQUENT JUDICIAL APPOINTMENTS.—

24 (A) IN GENERAL.—Upon the expiration of
25 the term of any member of the Board appointed

1 by a chief judge to a 3-year or 4-year term,
2 such chief judge shall appoint an individual to
3 the Board from a list of 5 qualified individuals
4 nominated, by majority vote, by a committee
5 consisting of—

6 (i) the head of each Immigration Pub-
7 lic Defender Organization that is
8 headquartered within the corresponding
9 circuit;

10 (ii) the head of each Community De-
11 fender Office that is headquartered within
12 the corresponding circuit; and

13 (iii) panel attorney representatives
14 within the corresponding circuit.

15 (B) FAILURE TO PRODUCE LIST.—If a
16 committee described in subparagraph (A) from
17 a circuit does not provide a list of 5 Board
18 nominees to the chief judge of the cor-
19 responding circuit before the date that is 30
20 days after the expiration of the term of service
21 of a member of the Board representing such
22 circuit, the chief judge of such circuit may ap-
23 point an individual to replace such member of
24 the Board without regard to nominations.

25 (b) RESTRICTIONS ON MEMBERSHIP.—

1 (1) QUALIFICATIONS.—Each individual ap-
2 pointed to the Board pursuant to subsection (a)—

3 (A) shall be nonpartisan;

4 (B) shall have significant experience rep-
5 resenting persons in proceedings described in
6 section 292(a) of the Immigration and Nation-
7 ality Act, as amended by section 101 of this
8 Act; and

9 (C) shall have demonstrated a strong com-
10 mitment to representation in indigent defense
11 matters.

12 (2) DIVERSITY.—In making appointments to
13 the Board under subsection (a), chief judges and the
14 Immigration Representation Advisory Board shall
15 seek to appoint individuals, in the aggregate, who re-
16 flect the characteristics of the population rep-
17 resented by counsel appointed pursuant section 292
18 of the Immigration and Nationality Act, including
19 the characteristics of race, gender identity, sexual
20 orientation, immigration experience, and socio-
21 economic background.

22 (3) DISQUALIFYING CHARACTERISTICS.—A
23 member of the Board, while serving in such capac-
24 ity, may not be—

1 (A) an employee of the Office, a member
2 of a Local Board, an Immigration Public De-
3 fender Organization, or a community defender
4 office. or a Panel Attorney, unless he or she is
5 serving as an ex-officio member of the Board;

6 (B) a judge or employee of any Federal or
7 State court, any immigration court, or the
8 Board of Immigration Appeals; or

9 (C) a prosecutor or law enforcement offi-
10 cer, an employee of a prosecutor's office or law
11 enforcement agency, or any person who has
12 held any such position during the 3-year period
13 immediately preceding his or her appointment
14 to the Board.

15 (c) TERM OF MEMBERSHIP.—

16 (1) MAXIMUM LENGTH OF SERVICE.—No mem-
17 ber of the Board may serve more than 2 terms, ex-
18 cept that a person who was appointed to serve a 1-
19 year term may be appointed to 2 additional 4-year
20 terms.

21 (2) REPLACEMENT MEMBERS.—A person who
22 is appointed to replace a member who resigned or
23 was removed—

24 (A) shall serve the remainder of the term
25 of such member; and

1 (B) may be appointed to serve up to 2 ad-
2 ditional 4-year terms.

3 (d) VACANCIES.—

4 (1) MEMBERS SELECTED BY A CHIEF JUDGE.—

5 Not later than 90 days after the creation of a va-
6 cancy arising from a Board member position selected
7 by a chief judge, the committee described in sub-
8 section (a)(2)(A) from the corresponding circuit
9 shall submit a list of 5 qualified nominees to such
10 chief judge, who shall appoint 1 of such nominees as
11 the new member of the Board.

12 (2) FAILURE TO PRODUCE LIST.—If the com-
13 mittee fails to submit the list required under para-
14 graph (1) before the deadline, the chief judge may
15 make a selection without regard to nominations.

16 (3) MEMBERS SELECTED BY THE IMMIGRATION

17 REPRESENTATION ADVISORY BOARD.—Not later

18 than 90 days after the creation of a vacancy arising

19 from a Board member position selected by the Immi-

20 gration Representation Advisory Board, the Immi-

21 gration Representation Advisory Board shall appoint

22 a new member of the Board to fill such vacancy.

23 (e) RATES OF PAY; TRAVEL EXPENSES.—

24 (1) RATES OF PAY.—Members shall be paid for

25 their services on the Board at a rate not to exceed

1 the daily rate at which judges of the United States
2 courts of appeals are compensated. No member may
3 be paid for more than 90 days in any calendar year.

4 (2) TRAVEL EXPENSES.—Each member shall
5 receive travel expenses, including per diem in lieu of
6 subsistence, in accordance with applicable provisions
7 under subchapter I of chapter 57 of title 5, United
8 States Code.

9 (f) CHAIRPERSON.—The Chairperson of the Board
10 shall be elected by the members and shall serve for a 2-
11 year term, which may be renewed once by the Board for
12 an additional 2-year term.

13 (g) REMOVAL OF MEMBERS.—The members of the
14 Board, by a vote of 13 members, may remove a member
15 from the Board for—

16 (1) malfeasance in office;

17 (2) persistent neglect of, or inability to dis-
18 charge, Board duties; or

19 (3) conduct unbecoming of a member of the
20 Board.

21 (h) QUORUM.—A quorum for purposes of conducting
22 Board business shall be a majority of the members of the
23 Board presently serving.

24 (i) VOTING.—All members of the Board are entitled
25 to vote on any matters coming before the Board unless

1 otherwise provided by rules adopted by the Board con-
2 cerning voting on matters in which a member has, or ap-
3 pears to have, a financial or other personal interest.

4 (j) BYLAWS.—The Board shall adopt bylaws gov-
5 erning the operation of the Board, which may include pro-
6 visions authorizing other officers of the Board and gov-
7 erning proxy voting, telephonic and video meetings, and
8 the appointment of committees.

9 (k) DUTIES OF THE BOARD.—The Board shall—

10 (1) appoint a Director of the Office not later
11 than 2 months after the establishment of the
12 Board—

13 (A) who shall be selected on the basis of
14 training, experience, and other relevant quali-
15 fications; and

16 (B) who shall serve at the pleasure of the
17 Board;

18 (2) convene a meeting not later than 4 months
19 after the establishment of the Board, and not less
20 frequently than quarterly thereafter;

21 (3) submit appropriations requests to Congress
22 for the provision of legal services to individuals rep-
23 resented by counsel in proceedings described in sec-
24 tion 292(a) of the Immigration and Nationality Act,
25 as amended by section 101(a);

1 (4) submit an annual report to Congress and
2 the President that—

3 (A) describes the operation of the Office
4 and the delivery of services required under sec-
5 tion 292 of the Immigration and Nationality
6 Act; and

7 (B) includes—

8 (i) the number of people who were
9 provided legal services during the reporting
10 period pursuant to such section 292 and
11 the types of proceedings in which such peo-
12 ple were represented;

13 (ii) the custodial status of the people
14 who were represented;

15 (iii) aggregate case outcomes for the
16 people who were represented; and

17 (iv) the status of appointments and
18 vacancies on the Board and Local Boards;

19 (5) complete and submit to Congress and to the
20 President every 7 years a comprehensive review and
21 evaluation of the implementation of this Act, includ-
22 ing the identification of the resources needed to
23 carry out the requirements under this Act and the
24 amendments made by this Act for the foreseeable fu-
25 ture;

1 (6) make the reports described in paragraphs
2 (4) and (5) publicly available at the time they are
3 submitted to Congress and to the President;

4 (7) establish and maintain standards for the
5 provision of representation that are consistent with
6 appointed counsel's duty to provide representation
7 under section 292 of the Immigration and Nation-
8 ality Act, including—

9 (A) the minimum experience, skill, per-
10 formance, and other qualifications for participa-
11 tion as appointed counsel;

12 (B) ongoing training, professional develop-
13 ment, and mentorship and supervision required
14 to remain eligible to serve as appointed counsel
15 under such section 292;

16 (C) reasonable, manageable, and sustain-
17 able appointed counsel caseloads that are con-
18 sistent with appointed counsel's primary duty to
19 provide representation to individuals described
20 in such section 292;

21 (D) the elements to be evaluated during
22 performance reviews of appointed counsel to de-
23 termine whether they complied with their duty
24 to provide representation under such section
25 292;

1 (E) how to provide adequate representation
2 of clients whose cases present conflicts of inter-
3 est; and

4 (F) ensuring continued representation in
5 circumstances in which clients move or are
6 transferred, or where cases are transferred or
7 change venue;

8 (8) evaluate plans submitted by Local Boards
9 for the provision of representation of individuals be-
10 fore U.S. Citizenship and Immigration Services in
11 matters described in section 292 of the Immigration
12 and Nationality Act, after taking into account the
13 ability of such plans to provide such representation,
14 and approve such plans if they meet applicable legal
15 requirements of law and are consistent with the poli-
16 cies of the Office;

17 (9) review the implementation of plans ap-
18 proved by the Board not less frequently than once
19 every 4 years to ensure that each Local Board com-
20 plies with the plan approved by the Board;

21 (10) establish policies and procedures with re-
22 spect to compensation rates and reimbursement of
23 reasonable expenses for appointed counsel under
24 such section 292 and others providing services re-
25 lated to such representation;

1 (11) establish procedures to obtain investiga-
2 tors, experts, interpreters, and other providers of de-
3 fense services necessary for effective representation
4 of individuals who are entitled to counsel under sec-
5 tion 292 of the Immigration and Nationality Act;

6 (12) establish procedures for the reimbursement
7 of reasonable expenses of attorneys, investigators,
8 experts, interpreters, and other persons providing
9 representation and related services under such sec-
10 tion 292;

11 (13) approve staffing levels and budgets for Im-
12 migration Public Defender Organizations;

13 (14) approve staffing levels and budgets for the
14 Office; and

15 (15) establish a mechanism for the submission,
16 review, resolution, and reporting of complaints from
17 individuals entitled to counsel under section 292 of
18 the Immigration and Nationality Act regarding such
19 representation.

20 (l) POWERS OF THE BOARD.—The Board is author-
21 ized—

22 (1) to delegate any of its duties, in whole or in
23 part, to the Director, except for the duties described
24 in paragraphs (1), (7), (13) and (14) of subsection
25 (k);

1 (2) to alter or revoke any such delegation to the
2 Director;

3 (3) to provide to Congress information regard-
4 ing the immigration system that the Board considers
5 relevant to the purpose of the Office;

6 (4) to authorize studies or reports that relate to
7 the purpose of the Office;

8 (5) to combine Local Boards or divide an area
9 served by a Local Board if the Board determines
10 that such action is necessary to carry out the pur-
11 poses of this section;

12 (6) to remove, by a vote of at least 13 mem-
13 bers, a member or members of a Local Board for
14 malfeasance in office, persistent neglect of or inabil-
15 ity to discharge duties, or conduct unbecoming of a
16 member of the Local Board;

17 (7) to seek, accept, and use public grants, pri-
18 vate contributions, and voluntary and uncompen-
19 sated (gratuitous services) to assist the Board in
20 carrying out the purposes of this Act and other serv-
21 ices related to such purposes; and

22 (8) to take any other action that is reasonably
23 necessary and not inconsistent with the Act to carry
24 out the purposes of this Act.

1 **SEC. 204. DIRECTOR.**

2 (a) REQUIREMENTS.—The Director of the Office—

3 (1) shall be a licensed attorney in good standing
4 in any United States jurisdiction at the time of his
5 or her appointment and at all times during his or
6 her service as the Director;

7 (2) shall be experienced in representing people
8 in proceedings described in section 292 of the Immi-
9 gration and Nationality Act, as amended by section
10 101 of this Act; and

11 (3) may not be a member of the Board.

12 (b) DUTIES.—The Director shall—

13 (1) appoint and fix the compensation of employ-
14 ees of the Office;

15 (2) establish a personnel management system
16 for the Office that provides for the appointment,
17 pay, promotion, and assignment of all employees on
18 the basis of merit, but without regard to the provi-
19 sions of subchapter I of chapter 33 of title 5, United
20 States, Code (relating to appointments in the com-
21 petitive service) or the provisions of chapter 51 and
22 subchapter III of chapter 53 of such title (relating
23 to classification and General Schedule pay rates);

24 (3) employ such personnel as may be necessary
25 to advance the purposes of the Office, subject to
26 staffing and budget approval of the Board;

1 (4) provide an annual report to the Board re-
2 garding the activities of the Office;

3 (5) provide such periodic reports and work
4 product to the Board sufficient for the Board to ful-
5 fill its duties under section 203(k);

6 (6) allocate and disburse funds appropriated for
7 legal representation and related services in cases
8 subject to this Act pursuant to rules and procedures
9 established by the Board;

10 (7) enter into contracts to provide or receive
11 services with any public or private agency, group, or
12 individual;

13 (8) appoint a Local Administrator for each re-
14 gion to administer and approve, subject to the poli-
15 cies established by the Board, the payment of funds
16 necessary for Panel Attorney representation, includ-
17 ing Panel Attorney compensation, investigators, ex-
18 perts, and other providers of representation services,
19 and any other necessary expenses for effective rep-
20 resentation;

21 (9) assist the Board in developing rules and
22 standards for the delivery of services under this Act;

23 (10) coordinate the services funded by the Of-
24 fice with any Federal, state, county, local, or private
25 programs established to provide legal assistance to

1 persons in cases subject to this Act who are unable
2 to afford representation;

3 (11) consult with professional bodies concerning
4 improving the administration of legal representation
5 for persons in proceedings described in section 292
6 of the Immigration and Nationality Act, as amended
7 by section 101 of this Act; and

8 (12) perform such other duties as may be as-
9 signed by the Board.

10 **SEC. 205. EMPLOYEES.**

11 (a) IN GENERAL.—Employees of the Office shall be
12 treated as employees of the Federal Government solely for
13 purposes of—

14 (1) subchapter 1 of chapter 81 of title 5,
15 United States Code (relating to compensation for
16 work injuries);

17 (2) chapter 83 of such title 5 (relating to retire-
18 ment);

19 (3) chapter 84 of such title 5 (relating to the
20 Federal Employees' Retirement System);

21 (4) chapter 87 of such title 5 (relating to life
22 insurance); and

23 (5) chapter 89 of such title 5 (relating to health
24 insurance).

1 (b) EMPLOYER CONTRIBUTIONS.—The Office shall
2 make contributions on behalf of employees of the Office
3 under the provisions referred to in subsection (a) at the
4 same rates applicable to employees of agencies of the Fed-
5 eral Government.

6 (c) THRIFT SAVINGS PLAN.—Employees of the Office
7 may make an election under section 8351 or 8432 of title
8 5, United States Code, to participate in the Thrift Savings
9 Plan for Federal employees.

10 **SEC. 206. LOCAL IMMIGRATION REPRESENTATION BOARDS.**

11 (a) ESTABLISHMENT.—Not later than 6 months after
12 the date on which the Board is established pursuant to
13 section 203(a), the Office shall delineate administrative re-
14 gions throughout the United States and establish a local
15 immigration representation board for each region.

16 (b) COMPOSITION OF LOCAL BOARDS.—

17 (1) IN GENERAL.—Subject to subsection (c),
18 each Local Board shall consist of not fewer than 5
19 member and not greater than 15 members, who
20 shall initially be selected by the Board after con-
21 sultation with stakeholders in the Local Board’s re-
22 gion, including immigration legal service providers,
23 community-based organizations, and people who are
24 or have been subject to proceedings described in sec-

1 tion 292 of the Immigration and Nationality Act, as
2 amended by section 101.

3 (2) ATTORNEYS.—Not fewer than 50 percent of
4 the members of a Local Board selected pursuant to
5 paragraph (1) shall be—

6 (A) licensed attorneys with experience in
7 the practice of removal defense; or

8 (B) employees of community-based organi-
9 zations providing services to immigrants.

10 (3) SUBSEQUENT MEMBERS.—After the initial
11 members are selected pursuant to paragraph (1),
12 each Local Board shall select its own members in
13 accordance with bylaws that have been approved by
14 the Office.

15 (c) QUALIFICATION OF MEMBERS.—

16 (1) EXPERIENCE; COMMITMENT.—Members of
17 a Local Board shall have—

18 (A) significant experience defending cases
19 described in section 292 of the Immigration and
20 Nationality Act, as amended by section 101;
21 and

22 (B) demonstrated a strong commitment to
23 representation in indigent defense matters.

24 (2) DIVERSITY.—The composition of each Local
25 Boards shall reflect the diversity of the population

1 that counsel appointed pursuant to such section 292
2 are responsible for representing, including diversity
3 of race, gender identity, sexual orientation, immigra-
4 tion experience, and socioeconomic background.

5 (3) RESTRICTIONS.—A member of a Local
6 Board may not—

7 (A) be an employee of an Immigration
8 Public Defender Organization or Community
9 Defender Organization with a contract to pro-
10 vide representation under such section 292;

11 (B) be a member of an Attorney Panel re-
12 ferred to in section 207(d);

13 (C) be a judicial officer of the United
14 States or of a State, territory, district, posses-
15 sion, or commonwealth of the United States;

16 (D) be employed as a prosecutor, a law en-
17 forcement official, or a judicial official, or by a
18 prosecutorial or law enforcement agency; or

19 (E) have held a position described in sub-
20 paragraph (D) during the 3-year period imme-
21 diately preceding his or her appointment to the
22 Board.

23 (d) TERM OF MEMBERS OF A LOCAL BOARD.—

24 (1) IN GENERAL.—Members of a Local Board
25 shall serve 4-year terms, except that the terms of

1 the initial members shall be staggered so that the
2 term of not more than 50 percent of the members
3 expire during any calendar year.

4 (2) MAXIMUM LENGTH OF SERVICE.—A person
5 may not serve for more than 9 years on a Local
6 Board.

7 (3) REPLACEMENT MEMBERS.—A person who
8 is appointed to replace a member who has resigned
9 or was removed shall serve the remainder of the
10 term of such departing person.

11 (e) COMPENSATION OF MEMBERS OF A LOCAL
12 BOARD.—

13 (1) IN GENERAL.—Members of any Local
14 Board shall be paid for their service at the daily rate
15 at which judges of the United States courts of ap-
16 peals are compensated, but may not be paid for
17 more than 90 days of such service in any calendar
18 year.

19 (2) TRAVEL EXPENSES.—Members of any Local
20 Board shall receive travel expenses, including per
21 diem in lieu of subsistence, in accordance with appli-
22 cable provisions under subchapter I of chapter 57 of
23 title 5, United States Code.

24 (f) CHAIR OF LOCAL BOARD.—Each Local Board
25 shall elect a member of the Local Board to serve as chair

1 for 2 years, which term shall begin on the date of election.
2 Such chair may be reelected to extend such service for an
3 additional 2-year term.

4 (g) REMOVAL OF MEMBER OF LOCAL BOARD.—Each
5 Local Board, by a majority vote of the full membership,
6 may remove a member from the Local Board for—

7 (1) malfeasance in office;

8 (2) persistent neglect of, or inability to dis-
9 charge, Local Board duties; or

10 (3) conduct unbecoming of a member of the
11 Local Board.

12 (h) QUORUM OF LOCAL BOARD.—A majority of the
13 full membership of the Local Board shall constitute a
14 quorum for the purpose of conducting business.

15 (i) LOCAL BOARD GOVERNANCE.—Each Local Board
16 shall adopt bylaws governing the operation of the Local
17 Board, which may include provisions authorizing other of-
18 ficers of the Local Board and proxy voting.

19 (j) DISSOLUTION OF LOCAL BOARDS.—The Board,
20 upon a $\frac{2}{3}$ vote, may dissolve a Local Board for good
21 cause. Upon dissolution, the Office shall ensure that a new
22 Local Board is established not later than 90 days of dis-
23 solution. The new members of the Local Board shall be
24 selected by the majority votes of the Immigration Public

1 Defenders and the Panel Attorney representatives of the
2 district or districts to be served and the Director.

3 (k) DUTIES OF LOCAL BOARDS.—

4 (1) LOCAL PLANS.—

5 (A) IN GENERAL.—Each Local Board—

6 (i) not later than 120 days after the
7 Local Board is established, shall develop
8 and submit to the Office for approval a
9 Local Plan for the provision of representa-
10 tion services for the region served by the
11 Local Board;

12 (ii) shall implement the Local Plan
13 after it has been approved by the Office;

14 (iii) may modify the Local Plan at
15 any time, subject to the approval of the
16 Office; and

17 (iv) shall modify the Local Plan if so
18 directed by the Office.

19 (B) COMPONENTS; DEVELOPMENT.—Each
20 Local Plan developed pursuant to subparagraph

21 (A)—

22 (i) shall provide for the appointment
23 of counsel in a timely manner in accord-
24 ance with this Act;

1 (ii) shall be developed in consultation
2 with U.S. Citizenship and Immigration
3 Services to ensure that it adequately en-
4 compasses proceedings described in section
5 292 of the Immigration and Nationality
6 Act that are within the jurisdiction of U.S.
7 Citizenship and Immigration Services;

8 (iii) shall consider the existence of any
9 State, county, or locally funded programs
10 providing representation to people in pro-
11 ceedings described in such section 292;

12 (iv) may provide grants or reimburse-
13 ments to jurisdictions with programs de-
14 scribed in clause (iii) that provide rep-
15 resentation that furthers the purposes of
16 this Act;

17 (v) shall prioritize such grants or re-
18 imbursements for State, county, and lo-
19 cally funded programs that provide rep-
20 resentation to people involved in a pro-
21 ceeding described in such section 292 with-
22 out regard to any past interaction with the
23 immigration or criminal legal systems;

24 (vi) may, in accordance with section
25 207—

1 (I) establish 1 or more Immigra-
2 tion Public Defender Organizations;
3 and

4 (II) contract with 1 or more
5 Community Defender Organizations;

6 (vii) shall provide for the establish-
7 ment of a panel of private attorneys to
8 provide representation under such section
9 292, in accordance with section 207 of this
10 Act; and

11 (viii) shall provide a plan for holding
12 community engagement meetings that are
13 open to the public not less frequently than
14 twice during each fiscal year.

15 (C) LOCAL PLANS WITH BORDER-BASED
16 COMPONENTS.—

17 (i) IN GENERAL.—The Local Plan for
18 each region that is adjacent to the inter-
19 national border between the United States
20 and Mexico border shall provide for rep-
21 resentation to all people subject to a pro-
22 ceeding described in section 292 of the Im-
23 migration and Nationality Act, as amended
24 by section 101 of this Act.

1 (ii) IDENTIFYING COUNSEL.—The
2 Local Board of each region described in
3 clause (i) may utilize the entities specified
4 in section 207 and Attorney of the Day,
5 attorney fellowship, and other models—

6 (I) to provide limited representa-
7 tion to people in proceedings at the
8 border; and

9 (II) to coordinate case transfers
10 and referrals for legal representation
11 for people who are subsequently re-
12 leased from, or transferred within, the
13 custody of the Department of Home-
14 land Security or the Office of Refugee
15 Resettlement.

16 (2) APPOINTMENTS TO IMMIGRATION REP-
17 RESENTATION ADVISORY BOARD.—If a Local Plan
18 does not provide for the establishment of an Immi-
19 gration Public Defender Organization or contracting
20 with a Community Defender Organization in the re-
21 gion, the Local Board shall appoint representatives
22 to the Immigration Representation Advisory Board
23 established under section 210(a).

24 (3) LOCAL ADMINISTRATOR.—Each Local
25 Board shall appoint, subject to the approval of the

1 Office, a Local Administrator and such staff as may
2 be necessary to assist the Local Board in admin-
3 istering the selection and appointment of Panel At-
4 torneys.

5 (4) IMMIGRATION PUBLIC DEFENDER.—If a
6 Local Plan includes the establishment of 1 or more
7 Immigration Public Defender Organizations, the
8 Local Board shall—

9 (A) select 1 or more Immigration Public
10 Defenders, who shall serve in accordance with
11 section 207(b), for the region or a portion of
12 the region that will be served by the Local
13 Board;

14 (B) periodically evaluate the performance
15 of the Immigration Public Defender; and

16 (C) submit the results of the evaluations
17 required under subparagraph (B), as directed
18 by the Office.

19 (5) DUTIES OF LOCAL ADMINISTRATOR.—Each
20 Local Administrator shall—

21 (A) review, and certify for payment, all
22 vouchers received from Panel Attorneys to com-
23 pensate them for—

24 (i) their time spent representing cli-
25 ents appointed to them pursuant to section

1 292 of the Immigration and Nationality
2 Act, as amended by section 101 of this
3 Act; and

4 (ii) the costs of investigators, experts,
5 interpreters, and other providers of defense
6 services for work performed on behalf of
7 the Panel Attorneys and their clients;

8 (B) authorize reasonable expenditures for
9 transcripts and the services of paralegals and
10 other legal support personnel, to the extent nec-
11 essary;

12 (C) prepare, at the direction of the Office,
13 an annual budget for the provision of represen-
14 tation services under such section 292, except
15 for representation services provided by an Im-
16 migration Public Defender Office;

17 (D) implement procedures established by
18 the Office, permitting a Panel Attorney or other
19 representative appointed under such section
20 292 to appeal a decision of the Local Adminis-
21 trator concerning compensation or reimburse-
22 ment; and

23 (E) perform other duties related to the au-
24 thorization, payment, and budgeting of ex-

1 penses related to Panel Attorneys, as assigned
2 by the Director.

3 (6) REPRESENTATION OF FINANCIALLY ELIGI-
4 BLE PERSONS.—The Local Board shall establish
5 procedures for the appointment of counsel for any
6 person who—

7 (A) is subject to a proceeding described in
8 section 292 of the Immigration and Nationality
9 Act, as amended by section 101; and

10 (B) is financially unable to obtain high-
11 quality representation.

12 **SEC. 207. TYPES OF IMMIGRATION DEFENDERS.**

13 (a) IN GENERAL.—To ensure representation of all el-
14 igible persons in proceedings described in section 292 of
15 the Immigration and Nationality Act, as amended by sec-
16 tion 101, the Local Board may—

17 (1) establish 1 or more Immigration Public De-
18 fender Organizations in the region comprising the
19 Local Board’s jurisdiction;

20 (2) contract with existing Community Defender
21 Organizations; and

22 (3) establish a Panel Attorney system.

23 (b) IMMIGRATION PUBLIC DEFENDER.—

24 (1) IN GENERAL.—An Immigration Public De-
25 fender Organization shall consist of 1 or more full-

1 time salaried attorneys. Each Immigration Public
2 Defender Organization shall be supervised by an Im-
3 migration Public Defender appointed by the Local
4 Board that established the organization, subject to
5 the approval of the Office and without regard to the
6 provisions of title 5, United States Code, governing
7 appointments in the competitive service.

8 (2) REMOVAL.—

9 (A) IN GENERAL.—The Immigration Pub-
10 lic Defender shall serve at the pleasure of the
11 Local Board, but may be removed by the Direc-
12 tor for—

13 (i) malfeasance in office;

14 (ii) persistent neglect or inability to
15 discharge the duties of an Immigration
16 Public Defender; or

17 (iii) conduct unbecoming of a rep-
18 resentative of the Office.

19 (B) NONFACTORS FOR JUSTIFYING RE-
20 MOVAL.—The efforts and advocacy of an Immi-
21 gration Public Defender to ensure that the Of-
22 fice carries out its responsibilities under this
23 Act, including ensuring parity of resources, pro-
24 tecting counsel's duty to provide representation,
25 and ensuring manageable caseloads consistent

1 with that duty, may not serve as a basis for re-
2 moval or for initiating proceedings for removal
3 against the Immigration Public Defender.

4 (3) CONTINUED SERVICE UNTIL APPOINTMENT
5 OF SUCCESSOR.—Upon the expiration of the term of
6 service for which he or she was appointed, an Immi-
7 gration Public Defender may continue to perform
8 the duties of such office, in accordance with rules es-
9 tablished by the Local Board, until the earlier of—

10 (A) the date on which a successor is ap-
11 pointed; or

12 (B) the date that is 1 year after the expi-
13 ration of such term.

14 (4) COMPENSATION.—The compensation of
15 each Immigration Public Defender shall be fixed by
16 the Local Board at a rate that is comparable to—

17 (A) the rate of compensation received by
18 the Principal Legal Advisor of U.S. Immigra-
19 tion and Customs Enforcement who is prac-
20 ticing in the nearest court where representation
21 is furnished; or

22 (B) if more than 1 court is involved, the
23 rate of compensation that is paid to the higher
24 paid Principal Legal Advisor in such courts.

25 (5) ADDITIONAL PERSONNEL.—

1 (A) APPOINTMENTS.—The Immigration
2 Public Defender may appoint, without regard to
3 the provisions of title 5, United States Code,
4 governing appointments in the competitive serv-
5 ice, full-time attorneys in such number as may
6 be approved by the Office and other personnel
7 in such number as may be approved.

8 (B) COMPENSATION.—Compensation paid
9 to the attorneys and other personnel approved
10 by the Office pursuant to subparagraph (A)
11 shall be fixed by the Immigration Public De-
12 fender at a rate that is comparable to—

13 (i) the rate of compensation that is
14 paid to attorneys and other personnel of
15 similar qualifications and experience in the
16 Office of the Principal Legal Advisor in
17 the nearest court where representation is
18 furnished; or

19 (ii) if more than 1 court is involved,
20 the rate of compensation that is paid to
21 the higher paid person of similar qualifica-
22 tions and experience in such courts.

23 (6) TREATMENT AS FEDERAL GOVERNMENT
24 EMPLOYEES.—Employees of an Immigration Public

1 Defender Organization shall be treated as employees
2 of the Federal Government solely for purposes of—

3 (A) subchapter 1 of chapter 81 of title 5,
4 United States Code (relating to compensation
5 for work injuries);

6 (B) chapter 83 of such title 5 (relating to
7 retirement);

8 (C) chapter 84 of such title 5 (relating to
9 the Federal Employees' Retirement System);

10 (D) chapter 87 of such title 5 (relating to
11 life insurance); and

12 (E) chapter 89 of such title 5 (relating to
13 health insurance).

14 (7) RESTRICTION.—An Immigration Public De-
15 fender and any attorney appointed to serve in an
16 Immigration Public Defender Organization is pro-
17 hibited from engaging in the private practice of law.

18 (8) LIMITED LIABILITY.—The Office, to the ex-
19 tent the Director considers appropriate, shall provide
20 representation for and hold harmless, or provide li-
21 ability insurance for, any person who is an officer or
22 employee of an Immigration Public Defender Orga-
23 nization.

24 (9) REPORTS.—Each Immigration Public De-
25 fender Organization shall submit periodic reports of

1 its activities and financial positions and its proposed
2 budget to the Local Board at the times and in the
3 form prescribed by the Local Board.

4 (c) COMMUNITY DEFENDER ORGANIZATIONS.—

5 (1) IN GENERAL.—A Community Defender Or-
6 ganization shall be a nonprofit legal representation
7 service established and administered by any group
8 authorized by the Local Plan to provide representa-
9 tion to individuals subject to proceedings described
10 in section 292 of the Immigration and Nationality
11 Act, as amended by section 101.

12 (2) ANNUAL REPORT.—Each Community De-
13 fender Organization shall submit an annual report
14 to the Local Board that sets forth its activities dur-
15 ing the previous fiscal year and the anticipated case-
16 load and expenses for the upcoming fiscal year.

17 (d) ATTORNEY PANEL.—Each Local Plan developed
18 pursuant to section 206(k)(1) shall provide for—

19 (1) the appointment of qualified private attor-
20 neys from an Attorney Panel within the region;

21 (2) the implementation of standards established
22 by the Office setting forth the minimum qualifica-
23 tions for Panel Attorneys; and

24 (3) the establishment of a system to ensure
25 that—

1 (A) the number of attorneys on each Attor-
2 ney Panel is limited to provide each attorney
3 with sufficient appointments to maintain con-
4 tinuing familiarity with immigration law and
5 procedure;

6 (B) there is early entry of counsel, includ-
7 ing representation as soon as possible in all
8 proceedings described in section 292 of the Im-
9 migration and Nationality Act, as amended by
10 section 101;

11 (C) there are adequate support services,
12 including training and technical support, for
13 members of each Attorney Panel for every area
14 in the region;

15 (D) conflicts of interests are avoided; and

16 (E) there is equal employment opportunity
17 for the employees of Immigration Public De-
18 fender Organizations and Panel Attorneys.

19 **SEC. 208. COMPENSATION AND REIMBURSEMENT OF COUN-**
20 **SEL EXPENSES.**

21 (a) IN GENERAL.—The Office shall establish the ap-
22 propriate hourly rates and salaries to be paid to counsel
23 appointed under each Local Plan, which—

24 (1) shall be established at levels that will ensure
25 the provision of high-quality legal representation for

1 all people represented in proceedings described in
2 section 292 of the Immigration and Nationality Act,
3 as amended by section 101; and

4 (2) shall be calculated to provide appointed
5 counsel with compensation that is comparable to the
6 compensation paid to—

7 (A) attorneys who are employed by the Of-
8 fice of the Principal Legal Advisor of U.S. Im-
9 migration and Customs Enforcement nearest to
10 the forum in which such counsel is providing
11 representation;

12 (B) attorneys employed by the cor-
13 responding Federal prosecutor's office; or

14 (C) any other attorney representing the
15 Government in connection with proceedings that
16 are comparable to proceedings described in such
17 section 292.

18 (b) USE OF BILLING CAPS.—If the Office places caps
19 on total billing for legal representation, the Office shall
20 establish policies and procedures for counsel to request au-
21 thorization to exceed such caps to the extent required to
22 ensure effective representation.

23 (c) FEES; ADDITIONAL COMPENSATION.—The Office
24 shall establish—

1 (1) distinct fees to apply to counsel providing
2 services in proceedings that fall within the geo-
3 graphic jurisdiction of each of the United States
4 courts of appeal within each region delineated by the
5 Office pursuant to section 206(a), after taking into
6 account the prevailing wage rates for qualified attor-
7 neys within the geographic area in which representa-
8 tion will be provided under section 292 of the Immi-
9 gration and Nationality Act, as amended by section
10 101; and

11 (2) additional compensation to be paid to coun-
12 sel who provide representation under such section
13 292 to individuals in remote and underserved areas,
14 after taking into account the distance from the place
15 of business of such counsel to—

16 (A) the immigration courts;

17 (B) Department of Homeland Security and
18 Department of Health and Human Services fa-
19 cilities; and

20 (C) other relevant sites where such rep-
21 resentation is expected to be provided.

22 (d) REIMBURSEMENT FOR EXPENSES; SALARY IN-
23 CREASES.—

24 (1) REIMBURSEMENTS.—Counsel providing rep-
25 resentation under section 292 of the Immigration

1 and Nationality Act, as amended by section 101,
2 shall be reimbursed by the Department of Homeland
3 Security for expenses reasonably incurred in the
4 course of such representation, including the costs of
5 transcripts, but may not be reimbursed by the Fed-
6 eral Government for expenses related to defending
7 against malpractice claims.

8 (2) SALARY INCREASES.—The Office shall es-
9 tablish policies and procedures governing increases
10 in hourly rates, salaries, and fees initially deter-
11 mined under subsection (a) or (c).

12 (e) PAYMENTS IN EXCESS OF ESTABLISHED FEES.—
13 The Office shall establish policies and procedures for re-
14 questing and approving payments in excess of the fees es-
15 tablished under subsection (c) for extended or complex
16 representation if such excess payments are necessary to
17 provide fair compensation for the counsel providing such
18 representation.

19 **SEC. 209. SERVICES OTHER THAN COUNSEL.**

20 (a) SERVICES TO BE PREAPPROVED BY THE LOCAL
21 BOARD.—

22 (1) IN GENERAL.—Counsel appointed to rep-
23 resent individuals in proceedings described in section
24 292 of the Immigration and Nationality Act, as
25 amended by section 101, may request approval from

1 the Local Board for investigative, expert, or other
2 services necessary for such representation pursuant
3 to procedures established by the Board, including
4 services necessary to develop release plans and pro-
5 vide post-release services for people in the custody of
6 the Department of Homeland Security or the Office
7 of Refugee Resettlement.

8 (2) EXAMPLES OF SERVICES.—Services subject
9 to preapproval under paragraph (1) may include—

10 (A) the retention of specialized counsel in
11 connection with ancillary matters appropriate to
12 such proceedings;

13 (B) services and support related to mental
14 health, housing, addiction, food, travel, and ac-
15 companiment to immigration court proceedings;

16 (C) copying or obtaining discovery mate-
17 rials that are in the possession, custody, or con-
18 trol of the Government; or

19 (D) any other services required to ensure
20 effective representation or the interests of jus-
21 tice.

22 (b) SERVICES TO BE APPROVED BY THE LOCAL
23 BOARD AFTER THE FACT.—

24 (1) IN GENERAL.—Counsel appointed to rep-
25 resent individuals in proceedings described in section

1 292 of the Immigration and Nationality Act, as
2 amended by section 101, may obtain, without prior
3 authorization, but subject to later review by the
4 Local Board, investigative, expert, and other services
5 if necessary for representation.

6 (2) PAYMENT.—In the interests of justice and
7 upon a determination by the Local Board that time-
8 ly procurement of certain necessary services could
9 not await prior authorization, payment for such
10 services may be approved by the Local Board after
11 they have been obtained.

12 (c) AMOUNT OF COMPENSATION.—In determining
13 the appropriate compensation for services other than
14 counsel, the Office shall ensure that such compensation
15 is comparable to the compensation paid to the Government
16 for substantially similar services.

17 (d) POLICIES AND PROCEDURES.—The Office shall
18 establish policies and procedures that—

19 (1) identify the circumstances under which—

20 (A) payment shall be made for services
21 other than counsel; and

22 (B) prior authorization for certain nec-
23 essary services is not required; and

24 (2) permit counsel appointed to represent indi-
25 viduals in proceedings described in section 292 of

1 the Immigration and Nationality Act, as amended by
2 section 101, to seek increases in funding for such
3 services if counsel reasonably believes that the com-
4 pensation established by the Office pursuant to sub-
5 section (c) does not meet the parity requirement
6 under such subsection.

7 (e) FINANCIAL ELIGIBILITY DETERMINATIONS.—

8 (1) IN GENERAL.—Private counsel for any per-
9 son who is financially unable to obtain services other
10 than counsel necessary for representation, including
11 services described in subsections (a) and (b), may re-
12 quest that the Local Administrator make a deter-
13 mination of the financial eligibility for such person
14 to receive Government funding for such services.

15 (2) PAYMENT.—If the Local Administrator de-
16 termines that a person described in paragraph (1) is
17 financially unable to obtain necessary services other
18 than counsel, the Local Administrator shall author-
19 ize payment for such services pursuant to procedures
20 established by the Office.

21 **SEC. 210. IMMIGRATION REPRESENTATION ADVISORY**
22 **BOARD.**

23 (a) ESTABLISHMENT.—

1 (1) IN GENERAL.—Subject to paragraph (2),
2 there is established the Immigration Representation
3 Advisory Board, which shall consist of—

4 (A) 1 Immigration Public Defender rep-
5 resentative from each region delineated pursu-
6 ant to section 206(a), who shall be selected by
7 the Immigration Public Defenders within each
8 such region;

9 (B) 1 Community Defender Organization
10 representative from each region delineated pur-
11 suant to section 206(a), who shall be selected
12 by the Community Defender Organizations
13 within each such region; and

14 (C) 1 Panel Attorney representative from
15 within the jurisdiction of each Federal circuit
16 court of appeals, who shall be selected by the
17 Panel Attorneys within each such circuit.

18 (2) ALTERNATIVE SELECTION PROCESS.—

19 (A) NO IMMIGRATION PUBLIC DEFENDER
20 OFFICE.—If a Local Plan does not provide for
21 the establishment of an Immigration Public De-
22 fender Office, the relevant Local Board shall
23 appoint 2 Community Defender Organization
24 representatives to serve on the Immigration
25 Representation Advisory Board.

1 (B) NO COMMUNITY DEFENDER ORGANIZA-
2 TION.—If a Local Plan does not provide for a
3 contract with a Community Defender Organiza-
4 tion, the relevant Local Board shall appoint 2
5 Immigration Public Defender Representatives
6 to serve on the Immigration Representation Ad-
7 visory Board.

8 (b) TERM OF SERVICE.—

9 (1) IN GENERAL.—Members of the Immigration
10 Representation Advisory Board shall serve 2-year
11 terms, except that the terms of 50 percent of the ini-
12 tial members appointed pursuant to subsection (a)
13 shall be 1 year.

14 (2) MAXIMUM CONSECUTIVE SERVICE.—No
15 member may serve on the Immigration Representa-
16 tion Advisory Board for more than 6 consecutive
17 years.

18 (3) PARTIAL TERM APPOINTMENTS.—If a mem-
19 ber of the Immigration Representation Advisory
20 Board does not serve until the end of his or her
21 term due to resignation or removal, the person ap-
22 pointed to replace such member shall serve for the
23 remainder of such term.

24 (c) COMPENSATION.—Members of the Immigration
25 Representation Advisory Board shall serve without com-

1 pensation, but shall be reimbursed for all actual and nec-
2 essary expenses reasonably incurred in the performance of
3 their duties as members of the Immigration Representa-
4 tion Advisory Board.

5 (d) GOVERNANCE; MEETINGS.—The Immigration
6 Representation Advisory Board shall—

7 (1) establish bylaws;

8 (2) select a chairperson from among its mem-
9 bers;

10 (3) appoint other such officers as it deems nec-
11 essary; and

12 (4) meet not less frequently than once each
13 year.

14 **TITLE III—AUTHORIZATION OF** 15 **APPROPRIATIONS**

16 **SEC. 301. AUTHORIZATION OF APPROPRIATIONS.**

17 (a) IN GENERAL.—There are authorized to be appro-
18 priated to the Office of Immigration Representation, out
19 of any money in the Treasury that is not otherwise appro-
20 priated, such sums as may be necessary to carry out this
21 Act, and the amendments made by this Act, including—

22 (1) establishing and operating the Office; and

23 (2) providing continuing education and training
24 of counsel providing representation under section

1 292 of the Immigration and Nationality Act, as
 2 amended by section 101.

3 (b) AVAILABILITY OF FUNDS.—If so specified in ap-
 4 propriation Acts, amounts appropriated pursuant to sub-
 5 section (a) shall remain available until expended. Pay-
 6 ments from such appropriations shall be made under the
 7 supervision of the Director of the Office of Immigration
 8 Representation.

9 **SEC. 302. MINIMUM FUNDING FOR THE OFFICE OF IMMI-
 10 GRATION REPRESENTATION.**

11 (a) IN GENERAL.—The amount appropriated to the
 12 Office of Immigration Representation for each fiscal year
 13 shall be not less than the amount equal to the sum of
 14 the combined amount appropriated for Federal immigra-
 15 tion enforcement and prosecution agencies and the Office,
 16 multiplied by the “prosecution-defense” ratio calculated
 17 pursuant to subsection (b).

18 (b) CALCULATION OF PROSECUTION-DEFENSE
 19 RATIO.—

20 (1) IN GENERAL.—Except as provided in para-
 21 graph (2), the Office of Management and Budget
 22 shall calculate the prosecution-defense ratio, for pur-
 23 poses of subsection (a), by dividing the sum appro-
 24 priated to the Office of Immigration Representation
 25 account for the most recently concluded fiscal year

1 by the combined amount appropriated for such fiscal
2 year for Federal immigration enforcement and pros-
3 ecution agencies, including amounts appropriated
4 for—

5 (A) U.S. Immigration and Customs En-
6 forcement;

7 (B) U.S. Customs and Border Protection;
8 and

9 (C) the Office of Immigration Litigation of
10 the Department of Justice.

11 (2) EFFECT OF SHIFTING PROSECUTORIAL
12 FUNCTIONS.—If the law enforcement or prosecu-
13 torial functions of the agencies or offices referred to
14 in subparagraphs (A) through (C) of paragraph (1)
15 on the date of the enactment of this Act are per-
16 formed by different agencies or offices in a future
17 fiscal year, the Office of Management and Budget
18 shall use the amount appropriated for those func-
19 tions in calculating the prosecution-defense ratio
20 under paragraph (1).

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