

119TH CONGRESS
2D SESSION

S. _____

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

Mr. SCHIFF introduced the following bill; which was read twice and referred to the Committee on _____

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 2026”.

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 expenses of counsel.
- 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 U.S. Citizenship and
10 Immigration Services related to relief from removal;

11 “(4) post-conviction relief in criminal pro-
12 ceedings; and

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

16 “(c) SCOPE OF COUNSEL.—

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

22 “(A) act with reasonable diligence, prompt-
23 ness, commitment, and dedication to the inter-
24 ests of the client and with zeal in advocating on
25 the client’s behalf; and

1 “(B) hold the Federal Government to its
2 burden by presenting the fullest defense pos-
3 sible in each such proceeding or matter.

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

6 “(A) counsel and interpretation and trans-
7 lation services; and

8 “(B) any other services that are necessary
9 for effective representation, including the serv-
10 ices described in section 209 of the Fairness to
11 Freedom Act of 2026.

12 “(3) COMMENCEMENT OF REPRESENTATION.—

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

18 “(i) the placement of such individual
19 in the custody of either department, re-
20 gardless of whether such individual has
21 been formally placed in a proceeding de-
22 scribed in subsection (a); or

23 “(ii) the issuance to such individual of
24 a Notice to Appear or other document ini-

1 tiating proceedings under section 235, 238,
2 240, or 241.

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

12 “(4) CONTINUOUS REPRESENTATION.—

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

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

9 “(C) APPOINTMENT OF NEW COUNSEL
10 AFTER RELOCATION.—The Office of Immigra-
11 tion Representation established under section
12 202 of the Fairness to Freedom Act of 2026
13 shall ensure that each individual who is released
14 from custody and moves to a State or munici-
15 pality other than the State or municipality in
16 which he or she was held in custody, or who is
17 transferred to a detention facility in another
18 State or municipality, is provided with counsel
19 in the new State or municipality in which the
20 individual resides or is detained.

21 “(5) RULE OF CONSTRUCTION.—This sub-
22 section shall be broadly construed to attach in any
23 proceeding and related matter, including any peti-
24 tion for review or appellate process, request for re-
25 interview, request for reconsideration, and motion to

1 reopen, arising from any proceeding or matter de-
2 scribed in subsection (a).

3 “(d) ELIGIBILITY AND COMMENCEMENT OF IMMI-
4 GRATION PROCEEDINGS.—

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

18 “(A) such individual has the right to be
19 represented by counsel;

20 “(B) counsel will be appointed by the Gov-
21 ernment to represent such individual before the
22 commencement of such proceeding, without re-
23 quiring the individual to personally sign entry
24 of appearance of attorney forms or other docu-

1 ments necessary to commence representation, if
2 the individual—

3 “(i) has not retained private counsel;
4 and

5 “(ii) is financially unable to obtain
6 counsel; and

7 “(C) any such appointment to represent
8 such individual will not impede the individual’s
9 ability to terminate such legal representation at
10 any time.

11 “(2) DETERMINATION OF FINANCIAL ABILITY
12 TO OBTAIN COUNSEL.—

13 “(A) IN GENERAL.—An individual shall be
14 deemed to be financially unable to obtain coun-
15 sel under paragraph (1)(B)(ii) if such individ-
16 ual’s net financial resources and income are in-
17 sufficient to obtain qualified counsel.

18 “(B) ELIGIBILITY FOR COUNSEL.—An in-
19 dividual who makes a sworn statement to the
20 adjudicatory official referred to in subsection
21 (a) that he or she is a member of a family
22 whose income is not more than 200 percent of
23 the poverty line (as defined in section 673(2) of
24 the Community Services Block Grant Act (42

1 U.S.C. 9902(2))) is eligible for Government-ap-
2 pointed counsel under this section.

3 “(3) ACCESS TO PERTINENT DOCUMENTS AND
4 INFORMATION.—

5 “(A) IN GENERAL.—An individual de-
6 scribed in subsection (a) and his or her counsel
7 shall automatically receive a complete copy of
8 all documents and information pertaining to
9 such individual that are in the possession of the
10 Department of Homeland Security or the De-
11 partment of Health and Human Services, in-
12 cluding documents obtained from other Govern-
13 ment agencies, unless the disclosure of any such
14 document or information is barred by privilege
15 or otherwise prohibited by law.

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

20 “(i) provide such individual and coun-
21 sel with a complete copy of the individual’s
22 immigration file (commonly known as the
23 ‘A-file’); and

24 “(ii) facilitate the provision to such
25 individual and counsel of a copy of any

1 Record of Proceeding that is in the posses-
2 sion of the Department of Homeland Secu-
3 rity, the Department of Health and
4 Human Services, or the Department of
5 Justice (other than documents protected
6 from disclosure under section 552(b) of
7 title 5, United States Code).

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

16 “(e) APPOINTMENT OF COUNSEL.—

17 “(1) NOTIFICATION REQUIREMENT.—If an indi-
18 vidual who is entitled to representation under this
19 section is not represented by counsel, the adjudica-
20 tory official shall—

21 “(A) notify the Local Administrator ap-
22 pointed pursuant to section 206(k)(3) of the
23 Fairness to Freedom Act of 2026 (or the des-
24 ignee of the Local Administrator) that such in-
25 dividual is not represented by counsel; and

1 “(B) advise such individual—

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

4 “(ii) that such counsel will be ap-
5 pointed, at Government expense, if such
6 person is financially unable to obtain coun-
7 sel.

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

11 “(A) in the physical presence of appointed
12 counsel;

13 “(B) if such waiver is knowing and vol-
14 untary; and

15 “(C) if the individual demonstrates that he
16 or she—

17 “(i) understands the nature of any
18 charges and the possible defenses and out-
19 comes; and

20 “(ii) possesses the knowledge and in-
21 telligence necessary to conduct his or her
22 own defense.

23 “(3) APPEAL OF WAIVER; RETROACTIVE AP-
24 POINTMENT.—Counsel may appeal any putative
25 waiver to the Office of Immigration Representation

1 established under section 202 of the Fairness to
2 Freedom Act of 2026 if counsel reasonably believes
3 such waiver did not meet the requirements under
4 paragraph (2). If the Office of Immigration Rep-
5 resentation concurs with counsel's assessment, the
6 Office may retroactively appoint counsel in order to
7 include any representation furnished pursuant to the
8 plan before such appointment.

9 “(4) APPOINTMENT OF COUNSEL.—Unless an
10 individual waives representation by counsel pursuant
11 to paragraph (2), the Local Administrator, upon no-
12 tification that such individual may meet the criteria
13 for appointed counsel, shall appoint counsel for such
14 individual in accordance with the Local Plan devel-
15 oped pursuant to section 206(k)(1) of the Fairness
16 to Freedom Act of 2026 if the Local Administrator
17 determines, after appropriate inquiry, that such indi-
18 vidual is financially unable to obtain counsel. An ap-
19 pointment under this paragraph may be made retro-
20 actively to include any representation furnished to
21 such individual by such counsel before such appoint-
22 ment.

23 “(5) APPOINTMENT OF SEPARATE COUNSEL.—
24 The Local Administrator shall appoint separate

1 counsel for individuals who are subjected to the
2 same proceeding or related proceedings if—

3 “(A) the interests of such individuals can-
4 not, consistent with ethical responsibilities and
5 manageable workloads, be properly be rep-
6 resented by a single counsel; or

7 “(B) the Local Administrator dem-
8 onstrates another good cause for appointing
9 separate counsel.

10 “(6) CONSOLIDATED CASES.—

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

21 “(B) CONFLICT OF INTEREST.—If a con-
22 flict of interest prevents joint representation
23 under subparagraph (A), the Local Adminis-
24 trator shall appoint separate counsel for the in-
25 dividuals referred to in such subparagraph un-

1 less the Local Administrator demonstrates that
2 there is a good cause for not appointing sepa-
3 rate counsel.

4 “(7) CHANGE OF FINANCIAL CIRCUMSTANCES
5 DURING PROCEEDINGS.—If an individual who has
6 retained counsel becomes financially unable to pay
7 such counsel and is eligible for appointed counsel
8 under this section, the Local Administrator may ap-
9 point counsel for such individual in accordance with
10 this section.

11 “(8) SUBSTITUTION OF COUNSEL.—The Local
12 Administrator, in the interests of justice, upon a
13 showing of good cause, and consistent with ethical
14 requirements applicable to attorneys practicing in
15 the region, may substitute an appointed counsel for
16 another appointed counsel at any stage of a pro-
17 ceeding referred to in subsection (a).

18 “(f) ACCESS TO COUNSEL.—

19 “(1) IN GENERAL.—If an individual is subject
20 to a proceeding described in subsection (a), or to de-
21 tention or inspection at a port of entry, U.S. Cus-
22 toms and Border Protection, U.S. Immigration and
23 Customs Enforcement, or the Office of Refugee Re-
24 settlement, as appropriate, shall—

1 “(A) facilitate access for such individual to
2 counsel without requiring such individual per-
3 sonally sign entry of appearance and attorney
4 forms or other documents necessary to com-
5 mence representation ; and

6 “(B) ensure that counsel appointed under
7 this section is permitted to meet in person with
8 such individual in a confidential, private setting
9 when requested during the first 12 hours the
10 individual is detained and as soon as practicable
11 after subsequent meeting requests.

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

1 “(3) EFFECT OF FAILURE TO PROVIDE TIMELY
2 ACCESS TO COUNSEL.—If U.S. Customs and Border
3 Protection, U.S. Immigration and Customs Enforce-
4 ment, or the Office of Refugee Resettlement, as ap-
5 plicable, fails to timely provide an individual with ac-
6 cess to counsel in accordance with paragraph (1) or
7 (2) no statement made by the individual before such
8 access has been made available may be introduced
9 into evidence against the respondent except on a mo-
10 tion by the appointed counsel, and appointed counsel
11 shall be entitled to a continuance in the proceedings
12 giving rise to the appointment of such counsel.

13 “(4) LIMITATION.—Any individual held or de-
14 tained at a port of entry may not submit a valid
15 Record of Abandonment of Lawful Permanent Resi-
16 dent Status or Withdrawal of Application for Admis-
17 sion if U.S. Customs and Border Protection or U.S.
18 Immigration and Customs Enforcement has failed to
19 provide such individual with access to counsel in ac-
20 cordance with this section.

21 “(5) INSTITUTIONAL HEARING PROGRAM.—In-
22 dividuals held in Federal, State, or local criminal
23 custody who are placed in any proceeding described
24 in subsection (a) shall be ensured access to counsel
25 consistent with the requirements of this section. No

1 statement made by the respondent before such ac-
2 cess has been made available may be introduced into
3 evidence against the respondent except on appointed
4 counsel's own motion. Counsel shall be entitled to a
5 continuance in the proceedings giving rise to his or
6 her appointment.

7 “(6) TERMINATION OF PROCEEDINGS.—If the
8 Local Administrator fails to provide counsel to an
9 individual in accordance with this section, the Sec-
10 retary of Homeland Security or the Attorney Gen-
11 eral, as appropriate, shall terminate any proceedings
12 involving such individual with prejudice.”.

13 **SEC. 102. PUBLIC CHARGE.**

14 Seeking or receiving appointed counsel under section
15 292 of the Immigration and Nationality Act, as amended
16 by section 101, may not be serve as the basis for any de-
17 termination that the individual seeking or receiving such
18 services is likely to become a public charge for the pur-
19 poses of determining the admissibility, removability, ex-
20 cludability, or deportability of such individual under such
21 Act, or in any other proceeding in which such individual's
22 likelihood of becoming a public charge is at issue for immi-
23 gration purposes.

1 **TITLE II—OFFICE OF IMMIGRA-**
2 **TION REPRESENTATION**

3 **SEC. 201. DEFINITIONS.**

4 In this title:

5 (1) BOARD.—The term “Board” means the
6 Board of Directors of the Office.

7 (2) DIRECTOR.—The term “Director” means
8 the Director of the Office of Immigration Represen-
9 tation appointed pursuant to section 206(k)(1).

10 (3) IMMIGRATION PUBLIC DEFENDER ORGANI-
11 ZATION.—The term “Immigration Public Defender
12 Organization” means an organization established by
13 a Local Board pursuant to section 207(a)(1).

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

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

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

21 (a) ESTABLISHMENT.—There is established in the
22 District of Columbia a private nonprofit corporation,
23 which shall be known as the Office of Immigration Rep-
24 resentation.

1 (b) PURPOSE.—The purpose of the Office shall be to
2 ensure high-quality legal representation and related serv-
3 ices to all individuals described in section 292(a) of the
4 Immigration and Nationality Act, as amended by section
5 101, who cannot afford representation.

6 (c) INDEPENDENCE.—Except as otherwise provided
7 in this Act, the Office shall exercise its authority inde-
8 pendently of any Government official, agency, or depart-
9 ment, including the Department of Justice, the Depart-
10 ment of Homeland Security, and the Department of
11 Health and Human Services.

12 **SEC. 203. BOARD OF DIRECTORS.**

13 (a) NUMBER AND APPOINTMENT.—

14 (1) IN GENERAL.—The Office shall be governed
15 by a Board of Directors, consisting of 24 members
16 who shall be appointed not later than 1 year after
17 the date of the enactment of this Act, in accordance
18 with paragraph (2).

19 (2) INITIAL JUDICIAL APPOINTMENTS.—

20 (A) IN GENERAL.—Subject to subpara-
21 graphs (B) and (C), the chief judge of each
22 United States Court of Appeals (except for the
23 chief judge for the Federal Circuit) shall ap-
24 point 2 individuals to the Board who meet the
25 requirements set forth in subsection (b).

1 (B) STAGGERED TERMS OF SERVICE.—The
2 terms of service of the members of the Board
3 appointed pursuant to subparagraph (A) shall
4 be staggered so that—

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

7 (ii) 6 members serve an initial term of
8 2 years;

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

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

13 (C) CIRCUITS.—

14 (i) EASTERN CIRCUITS.—The chief
15 judge of the 1st, 2nd, 3rd, 4th, 11th, and
16 DC Circuit Courts of Appeals shall each
17 appoint 1 individual to serve an initial
18 term of 1 year and 1 individual to serve an
19 initial term of 4 years.

20 (ii) REMAINING CIRCUITS.—The chief
21 judge of the 5th, 6th, 7th, 8th, 9th, and
22 10th Circuit Courts of Appeals shall each
23 appoint 1 individual to serve an initial
24 term of 2 years and 1 individual to serve
25 an initial term of 3 years.

1 (3) IMMIGRATION REPRESENTATION ADVISORY
2 BOARD APPOINTMENTS.—

3 (A) INITIAL APPOINTMENTS.—Upon the
4 expiration of the initial term of the 6 members
5 of the Board who were appointed to 1-year
6 terms pursuant to paragraph (2)(B)(i), the Im-
7 migration Representation Advisory Board es-
8 tablished under section 210 shall appoint to 4-
9 year terms—

10 (i) 6 members of the Board;

11 (ii) an Immigration Public Defender,
12 who shall serve as a nonvoting, ex-officio
13 member of the Board; and

14 (iii) a Panel Attorney, who shall serve
15 as a nonvoting, ex-officio member of the
16 Board.

17 (B) SUBSEQUENT APPOINTMENTS.—Upon
18 the expiration of the initial term of the 6 mem-
19 bers of the Board who were appointed to 2-year
20 terms pursuant to paragraph (2)(B)(ii), the Im-
21 migration Representation Advisory Board es-
22 tablished under section 210 shall appoint 6
23 members of the Board to 4-year terms. The Im-
24 migration Representation Advisory Board shall
25 also appoint individuals to replace any member

1 of the Board who had been appointed by the
2 Immigration Representation Advisory Board,
3 upon the expiration of such member's term.

4 (4) SUBSEQUENT JUDICIAL APPOINTMENTS.—

5 (A) IN GENERAL.—Upon the expiration of
6 the term of any member of the Board appointed
7 by a chief judge to a 3-year or 4-year term, the
8 chief judge shall appoint an individual to the
9 Board from a list of 5 qualified individuals
10 nominated, by majority vote, by a committee
11 consisting of—

12 (i) the head of each Immigration Pub-
13 lic Defender Organization that is
14 headquartered within the corresponding
15 circuit;

16 (ii) the head of each community de-
17 fender office that is headquartered within
18 the corresponding circuit; and

19 (iii) panel attorney representatives
20 within the corresponding circuit.

21 (B) FAILURE TO PRODUCE LIST.—If a
22 committee described in subparagraph (A) based
23 in any circuit does not provide a list of 5 Board
24 nominees to the chief judge of the cor-
25 responding circuit before the date that is 30

1 days after the expiration of the term of service
2 of a member of the Board representing such
3 circuit, the chief judge of such circuit may ap-
4 point an individual to replace such member of
5 the Board without regard to nominations.

6 (b) RESTRICTIONS ON MEMBERSHIP.—

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

9 (A) shall be nonpartisan;

10 (B) shall have significant experience rep-
11 resenting persons in proceedings described in
12 section 292(a) of the Immigration and Nation-
13 ality Act, as amended by section 101 of this
14 Act; and

15 (C) shall have demonstrated a strong com-
16 mitment to representation in indigent defense
17 matters.

18 (2) DIVERSITY.—In making appointments to
19 the Board pursuant to subsection (a), chief judges
20 and the Immigration Representation Advisory Board
21 shall seek to appoint individuals, in the aggregate,
22 who reflect the characteristics of the population rep-
23 resented by counsel appointed pursuant section 292
24 of the Immigration and Nationality Act, including
25 the characteristics of race, gender identity, sexual

1 orientation, immigration experience, and socio-
2 economic background.

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

6 (A) an employee of the Office, a member
7 of a Local Board, an Immigration Public De-
8 fender Organization, or a Community Defender
9 Office, or a Panel Attorney, unless he or she is
10 serving as an ex-officio member of the Board;

11 (B) a judge or employee of any Federal or
12 State court, any immigration court, or the
13 Board of Immigration Appeals; or

14 (C) a prosecutor or law enforcement officer
15 or employee thereof, or any person who has
16 served in such a position during the 3-year pe-
17 riod immediately preceding his or her appoint-
18 ment to the Board.

19 (c) TERM OF MEMBERSHIP.—

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

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

4 (A) shall serve the remainder of the term
5 of such member; and

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

8 (d) VACANCIES.—

9 (1) MEMBERS SELECTED BY A CHIEF JUDGE.—
10 Not later than 90 days after the creation of a va-
11 cancy arising from a Board member position selected
12 by a chief judge, the committee described in sub-
13 section (a)(2)(A) from the corresponding circuit
14 shall submit a list of 5 qualified nominees to such
15 chief judge, who shall appoint 1 of such nominees as
16 the new member of the Board.

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

21 (3) MEMBERS SELECTED BY THE IMMIGRATION
22 REPRESENTATION ADVISORY BOARD.—Not later
23 than 90 days after the creation of a vacancy arising
24 from a Board member position selected by the Immi-
25 gration Representation Advisory Board, the Immi-

1 gration Representation Advisory Board shall appoint
2 a new member of the Board to fill such vacancy.

3 (e) RATES OF PAY; TRAVEL EXPENSES.—

4 (1) RATES OF PAY.—Members of the Board
5 shall be paid for their services on the Board at a
6 rate not to exceed the daily rate at which judges of
7 the United States courts of appeals are com-
8 pensated. No member may be paid for more than 90
9 days in any calendar year.

10 (2) TRAVEL EXPENSES.—Each member of the
11 Board shall receive travel expenses, including per
12 diem in lieu of subsistence, in accordance with appli-
13 cable provisions under subchapter I of chapter 57 of
14 title 5, United States Code.

15 (f) CHAIRPERSON.—The Chairperson of the Board
16 shall be elected by the members of the Board and shall
17 serve for a 2-year term, which may be renewed once by
18 the Board for an additional 2-year term.

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

22 (1) malfeasance in office;

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

1 (3) conduct unbecoming of a member of the
2 Board.

3 (h) QUORUM.—A quorum for purposes of conducting
4 Board business shall be a majority of the members of the
5 Board presently serving.

6 (i) VOTING.—All members of the Board are entitled
7 to vote on any matters coming before the Board unless
8 otherwise provided by rules adopted by the Board con-
9 cerning voting on matters in which a member has, or ap-
10 pears to have, a financial or other personal interest.

11 (j) BYLAWS.—The Board shall adopt bylaws gov-
12 erning the operation of the Board, which may include pro-
13 visions authorizing other officers of the Board and gov-
14 erning proxy voting, telephonic and video meetings, and
15 the appointment of committees.

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

17 (1) appoint a Director of the Office not later
18 than 60 days after the establishment of the Board
19 who—

20 (A) shall be selected on the basis of train-
21 ing, experience, and other relevant qualifica-
22 tions; and

23 (B) shall serve at the pleasure of the
24 Board;

1 (2) convene a meeting not later than 120 days
2 after the establishment of the Board, and not less
3 frequently than quarterly thereafter;

4 (3) submit appropriations requests to Congress
5 for the provision of legal services to individuals rep-
6 resented by counsel in proceedings described in sec-
7 tion 292(a) of the Immigration and Nationality Act,
8 as amended by section 101;

9 (4) submit an annual report to Congress and
10 the President that—

11 (A) describes the operation of the Office
12 and the delivery of services required under sec-
13 tion 292 of the Immigration and Nationality
14 Act; and

15 (B) includes—

16 (i) the number of individuals who
17 were provided legal services during the re-
18 porting period pursuant to such section
19 292 and the types of proceedings in which
20 such people were represented;

21 (ii) the custodial status of the people
22 who were represented;

23 (iii) aggregate case outcomes for the
24 people who were represented; and

1 (iv) the status of appointments and
2 vacancies on the Board and the Local
3 Boards;

4 (5) not less frequently than once every 7 years,
5 complete and submit to Congress and to the Presi-
6 dent a comprehensive review and evaluation of the
7 implementation of this Act, including the identifica-
8 tion of the resources needed to carry out the require-
9 ments under this Act and the amendments made by
10 this Act for the foreseeable future;

11 (6) make the reports described in paragraphs
12 (4) and (5) publicly available at the time they are
13 submitted to Congress and to the President;

14 (7) establish and maintain standards for the
15 provision of representation that are consistent with
16 appointed counsel's duty to provide representation
17 under section 292 of the Immigration and Nation-
18 ality Act, including—

19 (A) the minimum experience, skill, per-
20 formance, and other qualifications for participa-
21 tion as appointed counsel;

22 (B) ongoing training, professional develop-
23 ment, mentorship, and supervision required to
24 remain eligible to serve as appointed counsel
25 under such section 292;

1 (C) reasonable, manageable, and sustain-
2 able appointed counsel caseloads that are con-
3 sistent with appointed counsel's primary duty to
4 provide representation to individuals described
5 in such section 292;

6 (D) the elements to be evaluated during
7 performance reviews of appointed counsel to de-
8 termine whether they complied with their duty
9 to provide representation under such section
10 292;

11 (E) how to provide adequate representation
12 of clients whose cases present conflicts of inter-
13 est; and

14 (F) ensuring continued representation in
15 circumstances in which clients move or are
16 transferred, or where cases are transferred or
17 change venue;

18 (8) evaluate plans submitted by Local Boards
19 for the provision of representation of individuals be-
20 fore U.S. Citizenship and Immigration Services in
21 matters described in section 292 of the Immigration
22 and Nationality Act, after taking into account the
23 ability of such plans to provide such representation,
24 and approve such plans if they meet applicable re-

1 quirements of law and are consistent with the poli-
2 cies of the Office;

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

7 (10) establish policies and procedures with re-
8 spect to compensation rates and reimbursement of
9 reasonable expenses for appointed counsel under
10 such section 292 and others providing services re-
11 lated to such representation;

12 (11) establish procedures to obtain investiga-
13 tors, experts, interpreters, and other providers of de-
14 fense services necessary for effective representation
15 of individuals who are entitled to counsel under such
16 section 292;

17 (12) establish procedures for the reimbursement
18 of reasonable expenses of attorneys, investigators,
19 experts, interpreters, and other persons providing
20 representation and related services under such sec-
21 tion 292;

22 (13) approve staffing levels and budgets for the
23 Immigration Public Defender Organizations;

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

1 (15) establish a mechanism for the submission,
2 review, resolution, and reporting of complaints from
3 individuals entitled to counsel under such section
4 292 regarding such representation.

5 (l) POWERS OF THE BOARD.—The Board is author-
6 ized—

7 (1) to delegate any of its duties, in whole or in
8 part, to the Director, except the duties described in
9 paragraphs (1), (7), (13) and (14) of subsection (k);

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

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

15 (4) to authorize studies or reports that relate to
16 the purpose of the Office;

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

21 (6) to remove, by a vote of at least 13 mem-
22 bers, a member or members of a Local Board for
23 malfeasance in office, persistent neglect of or inabil-
24 ity to discharge duties, or conduct unbecoming of a
25 member of the Local Board;

1 (7) to seek, accept, and use public grants, pri-
2 vate contributions, and voluntary and uncompen-
3 sated (gratuitous services) to assist the Board in
4 carrying out the purposes of this Act and other serv-
5 ices related to such purposes; and

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

9 **SEC. 204. DIRECTOR.**

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

11 (1) shall be a licensed attorney in good standing
12 in any United States jurisdiction at the time of his
13 or her appointment and at all times during his or
14 her service as the Director;

15 (2) shall be experienced in representing people
16 in proceedings described in section 292 of the Immi-
17 gration and Nationality Act, as amended by section
18 101 of this Act; and

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

20 (b) DUTIES.—The Director shall—

21 (1) appoint and fix the compensation of employ-
22 ees of the Office;

23 (2) establish a personnel management system
24 for the Office that provides for the appointment,
25 pay, promotion, and assignment of all employees on

1 the basis of merit, but without regard to the provi-
2 sions of subchapter I of chapter 33 of title 5, United
3 States, Code (relating to appointments in the com-
4 petitive service) or the provisions of chapter 51 and
5 subchapter III of chapter 53 of such title (relating
6 to classification and General Schedule pay rates);

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

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

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

15 (6) allocate and disburse funds appropriated for
16 legal representation and related services in cases
17 subject to this Act, in accordance with rules and
18 procedures established by the Board;

19 (7) enter into contracts to provide or receive
20 services with any public or private agency, group, or
21 individual;

22 (8) appoint a Local Administrator for each re-
23 gion to administer and approve, subject to the poli-
24 cies established by the Board, the payment of funds
25 necessary for Panel Attorney representation, includ-

1 ing Panel Attorney compensation, investigators, ex-
2 perts, and other providers of representation services,
3 and any other necessary expenses for effective rep-
4 resentation;

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

7 (10) coordinate the services funded by the Of-
8 fice with any Federal, State, county, local, or private
9 programs established to provide legal assistance to
10 persons in cases subject to this Act, who are unable
11 to afford representation;

12 (11) consult with professional bodies concerning
13 improving the administration of legal representation
14 for persons in proceedings described in section
15 292(a) of the Immigration and Nationality Act, as
16 amended by section 101 of this Act; and

17 (12) perform such other duties that may be as-
18 signed by the Board.

19 **SEC. 205. EMPLOYEES.**

20 (a) IN GENERAL.—Employees of the Office shall be
21 treated as employees of the Federal Government solely for
22 purposes of—

23 (1) subchapter 1 of chapter 81 of title 5,
24 United States Code (relating to compensation for
25 work injuries);

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

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

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

7 (5) chapter 89 of such title 5 (relating to health
8 insurance).

9 (b) EMPLOYER CONTRIBUTIONS.—The Office shall
10 make contributions on behalf of employees of the Office
11 under the provisions referred to in subsection (a) at the
12 same rates applicable to employees of agencies of the Fed-
13 eral Government.

14 (c) THRIFT SAVINGS PLAN.—Employees of the Office
15 may make an election under section 8351 or 8432 of title
16 5, United States Code, to participate in the Thrift Savings
17 Plan for Federal employees.

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

19 (a) ESTABLISHMENT.—Not later than 6 months after
20 the establishment of the Board, the Office shall delineate
21 administrative regions throughout the United States and
22 establish a local immigration representation board for
23 each region.

24 (b) COMPOSITION OF LOCAL BOARDS.—

1 (1) IN GENERAL.—Subject to subsection (c),
2 each Local Board shall consist of not fewer than 5
3 members and not greater than 15 members, who
4 shall initially be selected by the Board after con-
5 sultation with stakeholders in the Local Board’s re-
6 gion, including immigration legal service providers,
7 community-based organizations, and individuals who
8 are or have been subject to proceedings described in
9 section 292 of the Immigration and Nationality Act,
10 as amended by section 101.

11 (2) ATTORNEYS.—Not fewer than 50 percent of
12 the members of the Local Board selected pursuant
13 to paragraph (1) shall be—

14 (A) licensed attorneys with experience in
15 the practice of removal defense; or

16 (B) employees of community-based organi-
17 zations providing services to immigrants.

18 (3) SUBSEQUENT MEMBERS.—After the initial
19 members are selected pursuant to paragraph (1),
20 each Local Board shall select its own members in
21 accordance with bylaws that have been approved by
22 the Office.

23 (c) QUALIFICATION OF MEMBERS.—

24 (1) EXPERIENCE; COMMITMENT.—Members of
25 a Local Board shall have—

1 (A) significant experience defending cases
2 described in section 292 of the Immigration and
3 Nationality Act, as amended by section 101;
4 and

5 (B) demonstrated a strong commitment to
6 representation in indigent defense matters.

7 (2) DIVERSITY.—The composition of the Local
8 Boards shall reflect the diversity of the population
9 that counsel appointed pursuant to such section 292
10 are responsible for representing, including diversity
11 of race, gender identity, sexual orientation, immigra-
12 tion experience, and socioeconomic background.

13 (3) RESTRICTIONS.—A member of a Local
14 Board may not—

15 (A) be an employee of an Immigration
16 Public Defender Organization or a Community
17 Defender Organization with a contract to pro-
18 vide representation under such section 292;

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

21 (C) be a judicial officer of the United
22 States or of a State, territory, district, posses-
23 sion, or commonwealth of the United States;

1 (D) be employed as a prosecutor, a law en-
2 forcement official, or a judicial official, or by a
3 prosecutorial or law enforcement agency; or

4 (E) have held a position described in sub-
5 paragraph (D) during the 3-year period imme-
6 diately preceding his or her appointment to the
7 Board.

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

9 (1) IN GENERAL.—Members of a Local Board
10 shall serve 4-year terms, except that the terms of
11 the initial members shall be staggered so that the
12 term of not more than 50 percent of the members
13 expire during any calendar year.

14 (2) MAXIMUM LENGTH OF SERVICE.—A person
15 may not serve for more than 9 years on a Local
16 Board.

17 (3) REPLACEMENT MEMBERS.—A person who
18 is appointed to replace a member who has resigned
19 or was removed shall serve the remainder of the
20 term of such departing person.

21 (e) COMPENSATION OF MEMBERS OF A LOCAL
22 BOARD.—

23 (1) IN GENERAL.—Members of any Local
24 Board shall be paid for their service at the daily rate
25 at which judges of the United States courts of ap-

1 peals are compensated, but may not be paid for
2 more than 90 days of such service in any calendar
3 year.

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

9 (f) CHAIR OF LOCAL BOARD.—Each Local Board
10 shall elect a member of the Local Board to serve as chair
11 for 2 years, which term shall begin on the date of election.
12 Such chair may be reelected to extend such service for an
13 additional 2-year term.

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

17 (1) malfeasance in office;

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

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

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

1 (i) LOCAL BOARD GOVERNANCE.—Each Local Board
2 shall adopt bylaws governing the operation of the Local
3 Board, which may include provisions authorizing other of-
4 ficers of the Local Board and proxy voting.

5 (j) DISSOLUTION OF LOCAL BOARDS.—The Board,
6 upon a $\frac{2}{3}$ vote, may dissolve a Local Board for good
7 cause. Upon dissolution, the Office shall ensure that a new
8 Local Board is established not later than 90 days of dis-
9 solution. The new members of the Local Board shall be
10 selected by the majority votes of the Immigration Public
11 Defenders and the Panel Attorney representatives of the
12 district or districts to be served and the Director.

13 (k) DUTIES OF LOCAL BOARDS.—

14 (1) LOCAL PLANS.—

15 (A) IN GENERAL.—Each Local Board—

16 (i) not later than 120 days after the
17 Local Board is established, shall develop
18 and submit to the Office for approval a
19 Local Plan for the provision of representa-
20 tion services for the region served by the
21 Local Board;

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

1 (iii) may modify the Local Plan at
2 any time, subject to the approval of the
3 Office; and

4 (iv) shall modify the Local Plan if so
5 directed by the Office.

6 (B) COMPONENTS; DEVELOPMENT.—Each
7 Local Plan developed pursuant to subparagraph
8 (A)—

9 (i) shall provide for the appointment
10 of counsel in a timely manner in accord-
11 ance with this Act;

12 (ii) shall be developed in consultation
13 with U.S. Citizenship and Immigration
14 Services to ensure that it adequately en-
15 compasses proceedings described in section
16 292 of the Immigration and Nationality
17 Act that are within the jurisdiction of U.S.
18 Citizenship and Immigration Services;

19 (iii) shall consider the existence of any
20 State, county, or locally funded programs
21 providing representation to people in pro-
22 ceedings described in such section 292;

23 (iv) may provide grants or reimburse-
24 ments to jurisdictions with programs de-
25 scribed in clause (iii) that provide rep-

1 representation that furthers the purposes of
2 this Act;

3 (v) shall prioritize such grants or re-
4 imbursements for State, county, and lo-
5 cally funded programs that provide rep-
6 resentation to people involved in a pro-
7 ceeding described in such section 292 with-
8 out regard to any past interaction with the
9 immigration or criminal legal systems;

10 (vi) may, in accordance with section
11 207—

12 (I) establish 1 or more Immigra-
13 tion Public Defender Organizations;
14 and

15 (II) contract with 1 or more
16 Community Defender Organizations;

17 (vii) shall provide for the establish-
18 ment of a panel of private attorneys to
19 provide representation under such section
20 292, in accordance with section 207 of this
21 Act; and

22 (viii) shall provide a plan for holding
23 community engagement meetings that are
24 open to the public not less frequently than
25 twice during each fiscal year.

1 (C) LOCAL PLANS WITH BORDER-BASED
2 COMPONENTS.—

3 (i) IN GENERAL.—The Local Plan for
4 each region that is adjacent to the inter-
5 national border between the United States
6 and Mexico border shall provide for rep-
7 resentation to all people subject to a pro-
8 ceeding described in section 292 of the Im-
9 migration and Nationality Act, as amended
10 by section 101 of this Act.

11 (ii) IDENTIFYING COUNSEL.—The
12 Local Board of each region described in
13 clause (i) may utilize the entities specified
14 in section 207 and Attorney of the Day,
15 attorney fellowship, and other models—

16 (I) to provide limited representa-
17 tion to people in proceedings at the
18 border; and

19 (II) to coordinate case transfers
20 and referrals for legal representation
21 for people who are subsequently re-
22 leased from, or transferred within, the
23 custody of the Department of Home-
24 land Security or the Office of Refugee
25 Resettlement.

1 (2) APPOINTMENTS TO IMMIGRATION REP-
2 RESENTATION ADVISORY BOARD.—If a Local Plan
3 does not provide for the establishment of an Immi-
4 gration Public Defender Organization or contracting
5 with a Community Defender Organization in the re-
6 gion, the Local Board shall appoint representatives
7 to the Immigration Representation Advisory Board
8 established under section 210(a).

9 (3) LOCAL ADMINISTRATOR.—Each Local
10 Board shall appoint, subject to the approval of the
11 Office, a Local Administrator and such staff as may
12 be necessary to assist the Local Board in admin-
13 istering the selection and appointment of Panel At-
14 torneys.

15 (4) IMMIGRATION PUBLIC DEFENDER.—If a
16 Local Plan includes the establishment of 1 or more
17 Immigration Public Defender Organizations, the
18 Local Board shall—

19 (A) select 1 or more Immigration Public
20 Defenders, who shall serve in accordance with
21 section 207(b), for the region or a portion of
22 the region that will be served by the Local
23 Board;

24 (B) periodically evaluate the performance
25 of the Immigration Public Defender; and

1 (C) submit the results of the evaluations
2 required under subparagraph (B), as directed
3 by the Office.

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

6 (A) review, and certify for payment, all
7 vouchers received from Panel Attorneys to com-
8 pensate them for—

9 (i) their time spent representing cli-
10 ents appointed to them pursuant to section
11 292 of the Immigration and Nationality
12 Act, as amended by section 101 of this
13 Act; and

14 (ii) the costs of investigators, experts,
15 interpreters, and other providers of defense
16 services for work performed on behalf of
17 the Panel Attorneys and their clients;

18 (B) authorize reasonable expenditures for
19 transcripts and the services of paralegals and
20 other legal support personnel, to the extent nec-
21 essary;

22 (C) prepare, at the direction of the Office,
23 an annual budget for the provision of represen-
24 tation services under such section 292, except

1 for representation services provided by an Im-
2 migration Public Defender Office;

3 (D) implement procedures established by
4 the Office, permitting a Panel Attorney or other
5 representative appointed under such section
6 292 to appeal a decision of the Local Adminis-
7 trator concerning compensation or reimburse-
8 ment; and

9 (E) perform other duties related to the au-
10 thorization, payment, and budgeting of ex-
11 penses related to Panel Attorneys, as assigned
12 by the Director.

13 (6) REPRESENTATION OF FINANCIALLY ELIGI-
14 BLE PERSONS.—The Local Board shall establish
15 procedures for the appointment of counsel for any
16 person who—

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

20 (B) is financially unable to obtain high-
21 quality representation.

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

23 (a) IN GENERAL.—To ensure representation of all el-
24 igible persons in proceedings described in section 292 of

1 the Immigration and Nationality Act, as amended by sec-
2 tion 101, the Local Board may—

3 (1) establish 1 or more Immigration Public De-
4 fender Organizations in the region comprising the
5 Local Board's jurisdiction;

6 (2) contract with existing Community Defender
7 Organizations; and

8 (3) establish a Panel Attorney system.

9 (b) IMMIGRATION PUBLIC DEFENDER.—

10 (1) IN GENERAL.—An Immigration Public De-
11 fender Organization shall consist of 1 or more full-
12 time salaried attorneys. Each Immigration Public
13 Defender Organization shall be supervised by an Im-
14 migration Public Defender appointed by the Local
15 Board that established the organization, subject to
16 the approval of the Office and without regard to the
17 provisions of title 5, United States Code, governing
18 appointments in the competitive service.

19 (2) REMOVAL.—

20 (A) IN GENERAL.—The Immigration Pub-
21 lic Defender shall serve at the pleasure of the
22 Local Board, but may be removed by the Direc-
23 tor for—

24 (i) malfeasance in office;

1 (ii) persistent neglect or inability to
2 discharge the duties of an Immigration
3 Public Defender; or

4 (iii) conduct unbecoming of a rep-
5 resentative of the Office.

6 (B) NONFACTORS FOR JUSTIFYING RE-
7 MOVAL.—The efforts and advocacy of an Immi-
8 gration Public Defender to ensure that the Of-
9 fice carries out its responsibilities under this
10 Act, including ensuring parity of resources, pro-
11 tecting counsel’s duty to provide representation,
12 and ensuring manageable caseloads consistent
13 with that duty, may not serve as a basis for re-
14 moval or for initiating proceedings for removal
15 against the Immigration Public Defender.

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

22 (A) the date on which a successor is ap-
23 pointed; or

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

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

4 (A) the rate of compensation received by
5 the Principal Legal Advisor of U.S. Immigra-
6 tion and Customs Enforcement who is prac-
7 ticing in the nearest court where representation
8 is furnished; or

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

12 (5) ADDITIONAL PERSONNEL.—

13 (A) APPOINTMENTS.—The Immigration
14 Public Defender, without regard to the provi-
15 sions of title 5, United States Code, governing
16 appointments in the competitive service, full-
17 time attorneys in such number as may be ap-
18 proved by the Office and other personnel in
19 such number as may be approved by the Office.

20 (B) COMPENSATION.—Compensation paid
21 to the attorneys and other personnel approved
22 by the Office pursuant to subparagraph (A)
23 shall be fixed by the Immigration Public De-
24 fender at a rate that is comparable to—

1 (i) the rate of compensation that is
2 paid to attorneys and other personnel of
3 similar qualifications and experience in the
4 Office of the Principal Legal Advisor in
5 the nearest court where representation is
6 furnished; or

7 (ii) if more than 1 court is involved,
8 the rate of compensation that is paid to
9 the higher paid person of similar qualifica-
10 tions and experience in such courts.

11 (6) TREATMENT AS FEDERAL GOVERNMENT
12 EMPLOYEES.—Employees of each Immigration Pub-
13 lic Defender Organization shall be treated as em-
14 ployees of the Federal Government solely for pur-
15 poses of—

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

19 (B) chapter 83 of such title 5 (relating to
20 retirement);

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

23 (D) chapter 87 of such title 5 (relating to
24 life insurance); and

1 (E) chapter 89 of such title 5 (relating to
2 health insurance).

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

7 (8) LIMITED LIABILITY.—The Office, to the ex-
8 tent the Director considers appropriate, shall provide
9 representation for and hold harmless, or provide li-
10 ability insurance for, any person who is an officer or
11 employee of an Immigration Public Defender Orga-
12 nization.

13 (9) REPORTS.—The Immigration Public De-
14 fender Organization shall submit periodic reports of
15 its activities and financial positions and its proposed
16 budget to the Local Board, at the times and in the
17 form prescribed by the Local Board.

18 (c) COMMUNITY DEFENDER ORGANIZATIONS.—

19 (1) IN GENERAL.—A Community Defender Or-
20 ganization shall be a nonprofit legal representation
21 service established and administered by any group
22 authorized by the Local Plan to provide representa-
23 tion to individuals subject to proceedings described
24 in section 292 of the Immigration and Nationality
25 Act, as amended by section 101.

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

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

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

10 (2) the implementation of standards established
11 by the Office setting forth the minimum qualifica-
12 tions for Panel Attorneys; and

13 (3) the establishment of a system to ensure
14 that—

15 (A) the number of attorneys on each Attor-
16 ney Panel is limited to provide each attorney
17 with sufficient appointments to maintain con-
18 tinuing familiarity with immigration law and
19 procedure;

20 (B) there is early entry of counsel, includ-
21 ing representation as soon as possible, in all
22 proceedings described in section 292(a) of the
23 Immigration and Nationality Act, as amended
24 by section 101;

1 (C) there are adequate support services,
2 including training and technical support, for
3 members of each Attorney Panel for every area
4 in the region;

5 (D) conflicts of interests are avoided; and

6 (E) there is equal employment opportunity
7 for the employees of Immigration Public De-
8 fender Organizations and Panel Attorneys.

9 **SEC. 208. COMPENSATION AND REIMBURSEMENT OF EX-**
10 **PENSES OF COUNSEL.**

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

14 (1) shall be established at levels that will ensure
15 the provision of high-quality legal representation for
16 all people represented in proceedings described in
17 section 292 of the Immigration and Nationality Act,
18 as amended by section 101; and

19 (2) shall be calculated to provide appointed
20 counsel with compensation that is comparable to the
21 compensation paid to—

22 (A) attorneys who are employed by the Of-
23 fice of the Principal Legal Advisor of U.S. Im-
24 migration and Customs Enforcement nearest to

1 the forum in which such counsel is providing
2 representation;

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

5 (C) any other attorney representing the
6 Government in connection with proceedings that
7 are comparable to proceedings described in such
8 section 292.

9 (b) USE OF BILLING CAPS.—If the Office places lim-
10 its on the total billing for legal representation, the Office
11 shall establish policies and procedures for counsel to re-
12 quest authorization to exceed such caps to the extent re-
13 quired to ensure effective representation.

14 (c) FEES; ADDITIONAL COMPENSATION.—The Office
15 shall establish—

16 (1) distinct fees to apply to counsel providing
17 services in proceedings that are conducted within the
18 geographic jurisdiction of each of the United States
19 courts of appeal within each region delineated by the
20 Office pursuant to section 206(a), after taking into
21 account the prevailing wage rates for qualified attor-
22 neys within the geographic area in which representa-
23 tion will be provided under section 292 of the Immi-
24 gration and Nationality Act, as amended by section
25 101 of this Act; and

1 (2) additional compensation to be paid to coun-
2 sel who provide representation under such section
3 292 to individuals in remote and underserved areas,
4 after taking into account the distance from the place
5 of business of such counsel to—

6 (A) the immigration courts;

7 (B) facilities operated by the Department
8 of Homeland Security or the Department of
9 Health and Human Services; and

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

12 (d) REIMBURSEMENT FOR EXPENSES; SALARY IN-
13 CREASES.—

14 (1) REIMBURSEMENTS.—Counsel providing rep-
15 resentation under section 292 of the Immigration
16 and Nationality Act, as amended by section 101,
17 shall be reimbursed by the Department of Homeland
18 Security for expenses reasonably incurred in the
19 course of such representation, including the costs of
20 transcripts, but may not be reimbursed by the Fed-
21 eral Government for expenses related to defending
22 against malpractice claims.

23 (2) SALARY INCREASES.—The Office shall es-
24 tablish policies and procedures governing increases

1 in hourly rates, salaries, and fees initially deter-
2 mined under subsection (a) or (c).

3 (e) PAYMENTS IN EXCESS OF ESTABLISHED FEES.—

4 The Office shall establish policies and procedures for re-
5 questing and approving payments in excess of the fees es-
6 tablished under subsection (c) for extended or complex
7 representation if such excess payments are necessary to
8 provide fair compensation for the counsel providing such
9 representation.

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

11 (a) SERVICES TO BE PREAPPROVED BY LOCAL
12 BOARD.—

13 (1) IN GENERAL.—Counsel appointed to rep-
14 resent individuals in proceedings described in section
15 292 of the Immigration and Nationality Act, as
16 amended by section 101, may request approval from
17 the Local Board for investigative, expert, or other
18 services necessary for such representation pursuant
19 to procedures established by the Board, including
20 services necessary to develop release plans and pro-
21 vide post-release services for people in the custody of
22 the Department of Homeland Security or the Office
23 of Refugee Resettlement.

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

1 (A) the retention of specialized counsel in
2 connection with ancillary matters appropriate to
3 such proceedings;

4 (B) services and support related to mental
5 health, housing, addiction, food, travel, and ac-
6 companiment to immigration court proceedings;

7 (C) copying or obtaining discovery mate-
8 rials that are in the possession, custody, or con-
9 trol of the Government; or

10 (D) any other services required to ensure
11 effective representation or the interests of jus-
12 tice.

13 (b) SERVICES TO BE APPROVED BY LOCAL BOARD
14 AFTER THEY ARE PROVIDED.—

15 (1) IN GENERAL.—Counsel appointed to rep-
16 resent individuals in proceedings described in section
17 292 of the Immigration and Nationality Act, as
18 amended by section 101, may obtain, without prior
19 authorization, but subject to later review by the
20 Local Board, investigative, expert, and other services
21 if necessary for such representation.

22 (2) PAYMENT.—In the interests of justice and
23 upon a determination by the Local Board that time-
24 ly procurement of certain necessary services could
25 not await prior authorization, payment for such

1 services may be approved by the Local Board after
2 they have been obtained.

3 (c) AMOUNT OF COMPENSATION.—In determining
4 the appropriate compensation for services other than
5 counsel, the Office shall ensure that such compensation
6 is comparable to the compensation paid to the Government
7 for substantially similar services.

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

10 (1) identify the circumstances under which—

11 (A) payment shall be made for services
12 other than counsel; and

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

15 (2) permit counsel appointed to represent indi-
16 viduals in proceedings described in section 292 of
17 the Immigration and Nationality Act, as amended by
18 section 101, to seek increases in funding for such
19 services if counsel reasonably believes that the com-
20 pensation established by the Office pursuant to sub-
21 section (c) does not meet the parity requirement
22 under such subsection.

23 (e) FINANCIAL ELIGIBILITY DETERMINATIONS.—

24 (1) IN GENERAL.—Private counsel for any per-
25 son who is financially unable to obtain services other

1 than counsel necessary for representation, including
2 services described in subsections (a) and (b), may re-
3 quest that the Local Administrator make a deter-
4 mination of the financial eligibility for such person
5 to receive Government funding for such services.

6 (2) PAYMENT.—If the Local Administrator de-
7 termines a person described in paragraph (1) is fi-
8 nancially unable to obtain necessary services other
9 than counsel, the Local Administrator shall author-
10 ize payment for such services pursuant to procedures
11 established by the Office.

12 **SEC. 210. IMMIGRATION REPRESENTATION ADVISORY**
13 **BOARD.**

14 (a) ESTABLISHMENT.—

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

18 (A) 1 Immigration Public Defender rep-
19 resentative from each region delineated pursu-
20 ant to section 206(a), who shall be selected by
21 the Immigration Public Defenders within each
22 such region;

23 (B) 1 Community Defender Organization
24 representative from each region delineated pur-
25 suant to section 206(a), who shall be selected

1 by the Community Defender Organizations
2 within each such region; and

3 (C) 1 Panel Attorney representative from
4 within the jurisdiction of each Federal circuit
5 court of appeals, who shall be selected by the
6 Panel Attorneys within each such circuit.

7 (2) ALTERNATIVE SELECTION PROCESS.—

8 (A) NO IMMIGRATION PUBLIC DEFENDER
9 OFFICE.—If a Local Plan does not provide for
10 the establishment of an Immigration Public De-
11 fender Office, the relevant Local Board shall
12 appoint 2 Community Defender Organization
13 representatives to serve on the Immigration
14 Representation Advisory Board.

15 (B) NO COMMUNITY DEFENDER ORGANIZA-
16 TION.—If a Local Plan does not provide for a
17 contract with a Community Defender Organiza-
18 tion, the relevant Local Board shall appoint 2
19 Immigration Public Defender Representatives
20 to serve on the Immigration Representation Ad-
21 visory Board.

22 (b) TERM OF SERVICE.—

23 (1) IN GENERAL.—Members of the Immigration
24 Representation Advisory Board shall serve 2-year
25 terms, except that the terms of 50 percent of the ini-

1 tial members appointed pursuant to subsection (a)
2 shall be 1 year.

3 (2) MAXIMUM CONSECUTIVE SERVICE.—No
4 member may serve on the Immigration Representa-
5 tion Advisory Board for more than 6 consecutive
6 years.

7 (3) PARTIAL TERM APPOINTMENTS.—If a mem-
8 ber of the Immigration Representation Advisory
9 Board does not serve until the end of his or her
10 term due to resignation or removal, the person ap-
11 pointed to replace such member shall serve for the
12 remainder of such term.

13 (c) COMPENSATION.—Members of the Immigration
14 Representation Advisory Board shall serve without com-
15 pensation, but shall be reimbursed for all actual and nec-
16 essary expenses reasonably incurred in the performance of
17 their duties as members of the Immigration Representa-
18 tion Advisory Board.

19 (d) GOVERNANCE; MEETINGS.—The Immigration
20 Representation Advisory Board shall—

21 (1) establish bylaws;

22 (2) select a chairperson from among its mem-
23 bers;

24 (3) appoint other such officers as it deems nec-
25 essary; and

1 (4) meet not less frequently than once each
2 year.

3 **TITLE III—AUTHORIZATION OF**
4 **APPROPRIATIONS**

5 **SEC. 301. AUTHORIZATION OF APPROPRIATIONS.**

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

11 (1) establishing and operating the Office; and
12 (2) providing continuing education and training
13 of counsel providing representation under section
14 292 of the Immigration and Nationality Act, as
15 amended by section 101.

16 (b) AVAILABILITY OF FUNDS.—If so specified in ap-
17 propriation Acts, amounts appropriated pursuant to sub-
18 section (a) shall remain available until expended. Pay-
19 ments from such appropriations shall be made under the
20 supervision of the Director of the Office of Immigration
21 Representation.

22 **SEC. 302. MINIMUM FUNDING FOR THE OFFICE OF IMMI-**
23 **GRATION REPRESENTATION.**

24 (a) IN GENERAL.—The amount appropriated to the
25 Office of Immigration Representation for each fiscal year

1 shall be not less than the amount equal to the sum of
2 the combined amount appropriated for Federal immigra-
3 tion enforcement and prosecution agencies and the Office,
4 multiplied by the “prosecution-defense” ratio calculated
5 pursuant to subsection (b).

6 (b) CALCULATION OF PROSECUTION-DEFENSE
7 RATIO.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the Office of Management and Budget
10 shall calculate the prosecution-defense ratio, for pur-
11 poses of subsection (a), by dividing the sum appro-
12 priated to the Office of Immigration Representation
13 account for the most recently concluded fiscal year
14 by the combined amount appropriated for such fiscal
15 year for Federal immigration enforcement and pros-
16 ecution agencies, including amounts appropriated
17 for—

18 (A) U.S. Immigration and Customs En-
19 forcement;

20 (B) U.S. Customs and Border Protection;
21 and

22 (C) the Office of Immigration Litigation of
23 the Department of Justice.

24 (2) EFFECT OF SHIFTING PROSECUTORIAL
25 FUNCTIONS.—If the law enforcement or prosecu-

1 torial functions of the agencies or offices referred to
2 in subparagraphs (A) through (C) of paragraph (1)
3 on the date of the enactment of this Act are per-
4 formed by different agencies or offices in a future
5 fiscal year, the Office of Management and Budget
6 shall use the amount appropriated for those func-
7 tions in calculating the prosecution-defense ratio
8 under paragraph (1).