

AMENDMENT NO. _____ Calendar No. _____

Purpose: To clarify the status and enhance the effectiveness of immigration courts.

IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.

S. 1494

To amend the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 to protect alien minors and to amend the Immigration and Nationality Act to end abuse of the asylum system and establish refugee application and processing centers outside the United States, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

1 At the end, add the following:

2 **SEC. 7. IMMIGRATION COURT IMPROVEMENT.**

3 (a) FINDING.—Congress finds that the United States
4 tradition as a nation of laws and a nation of immigrants
5 is best served by effective, fair, and impartial immigration
6 judges who have decisional independence and are free
7 from political influence.

8 (b) SENSE OF CONGRESS.—It is the sense of Con-
9 gress that—

10 (1) immigration judges—

1 (A) should be fair and impartial; and

2 (B) should have decisional independence
3 that is free from political pressure or influence;
4 and

5 (2) in order to promote even-handed, non-bi-
6 ased, decision-making that is representative of the
7 public at large, immigration judges should be se-
8 lected from a broad pool of candidates with a variety
9 of legal experience, such as law professors, private
10 practitioners, representatives of pro bono service and
11 other nongovernmental organizations, military offi-
12 cers, and government employees.

13 (c) PROFESSIONAL TREATMENT OF IMMIGRATION
14 JUDGES.—

15 (1) DEFINED TERM.—Section 101(b)(4) of the
16 Immigration and Nationality Act (8 U.S.C.
17 1101(b)(4)) is amended to read as follows:

18 “(4)(A) The term ‘immigration judge’ means an at-
19 torney who—

20 “(i) has been appointed by the Attorney Gen-
21 eral to serve as a United States immigration judge;
22 and

23 “(ii) is qualified to conduct proceedings under
24 this Act, including removal proceedings under sec-
25 tion 240.

1 “(B) An immigration judge shall be subject to such
2 supervision and shall perform such duties as the Attorney
3 General shall prescribe as long as such supervision does
4 not interfere with the immigration judge’s exercise of inde-
5 pendent decision-making authority over cases in which he
6 or she presides.

7 “(C) An immigration judge shall be an attorney at
8 the time of his or her appointment by the Attorney Gen-
9 eral and shall maintain good standing or appropriate judi-
10 cial status (as defined solely by the licensing jurisdiction)
11 with the bar of the highest court of any State.

12 “(D) The service of an immigration judge is deemed
13 to be judicial in nature. Actions taken by an immigration
14 judge while serving in a judicial capacity shall be reviewed
15 under the applicable Code of Judicial Conduct. Immigra-
16 tion judges shall not be subject to any code of attorney
17 behavior for conduct or actions taken while performing du-
18 ties as an immigration judge.

19 “(E) An immigration judge may not be disciplined
20 for any good faith legal decisions made in the course of
21 hearing and deciding cases. Criticism of an immigration
22 judge, in a decision of any appellate court may not be con-
23 sidered or construed as a finding of misconduct.”.

24 (2) PERFORMANCE APPRAISALS.—Any system
25 of completion goals or other efficiency standards im-

1 posed on immigration judges (as defined in section
2 101(b)(4) of the Immigration and Nationality
3 Act)—

4 (A) may be used solely as management
5 tools for obtaining or allocating resources; and

6 (B) may not be used—

7 (i) to limit the independent authority
8 of immigration judges to fulfill their du-
9 ties; or

10 (ii) as a reflection of individual judi-
11 cial performance.

12 (3) JUDICIAL COMPLAINT PROCESS.—Not later
13 than 180 days after the date of the enactment of
14 this Act, the Attorney General shall establish a
15 transparent judicial complaint process that is con-
16 sistent with—

17 (A) the Guidelines for the Evaluation of
18 Judicial Performance developed by the Amer-
19 ican Bar Association; and

20 (B) the judicial performance evaluation
21 principles developed by the Institute for the Ad-
22 vancement of the American Legal System.

23 (4) ANNUAL LEAVE.—Every immigration judge
24 shall be presumed to have 15 years of Federal civil-

1 ian service for the purpose of the accrual of annual
2 leave.

3 (5) CONTINUING LEGAL EDUCATION.—

4 (A) IN GENERAL.—In addition to the
5 training required under section 603(c) of the
6 International Religious Freedom Act of 1998
7 (22 U.S.C. 6473(c)), the Attorney General shall
8 provide immigration judges with—

9 (i) meaningful, ongoing training, in-
10 cluding annual, in-person training, to
11 maintain current knowledge of immigration
12 cases, changes in the law and effective
13 docketing practices; and

14 (ii) time away from the bench to as-
15 similate the knowledge gained through
16 such training.

17 (B) SERVICE TO THE LEGAL PROFES-
18 SION.—Because of the ethical duty owed by im-
19 migration judges to participate in continuing
20 legal education, including teaching of law at in-
21 stitutions of higher learning and other activities
22 to educate the public and to improve the legal
23 profession, the Attorney General may not pre-
24 vent or interfere with the participation of an

1 immigration judge in any such bona fide activi-
2 ties if—

3 (i) undertaken in conjunction with an
4 established university, law school, bar asso-
5 ciation, or legal organization; and

6 (ii) the immigration judge clearly indi-
7 cates that such participation is in his or
8 her personal capacity and does not reflect
9 any official positions or policies.

10 (6) CONTEMPT AUTHORITY.—

11 (A) RULEMAKING.—

12 (i) INTERIM REGULATIONS.—Not
13 later than 60 days after the date of the en-
14 actment of this Act, the Attorney General
15 shall promulgate interim regulations gov-
16 erning the exercise of the authority given
17 to immigration judges under section
18 240(b)(1) of the Immigration and Nation-
19 ality Act (8 U.S.C. 1229a(b)(1)) to sanc-
20 tion contempt of an immigration judge's
21 exercise of authority under such Act.

22 (ii) FINAL REGULATIONS.—Not later
23 than 180 days after the date of the enact-
24 ment of this Act, the Attorney General

1 shall promulgate final regulations gov-
2 erning the authority described in clause (i).

3 (B) EFFECT OF FAILURE TO PROMULGATE
4 REGULATIONS.—If the Attorney General fails to
5 comply with subparagraph (A)(ii), immigration
6 judges shall—

7 (i) make appropriate findings of con-
8 tempt; and

9 (ii) submit such findings to the
10 United States District Court for the judi-
11 cial district in which the immigration judge
12 is physically located.