RESOLVED, That the American Bar Association urges the Executive Office for Immigration Review (EOIR) to expedite complete implementation of an integrated, system-wide electronic filing and case management system nationwide, with adequate funding from Congress;

FURTHER RESOLVED, That the Association urges Congress and the Department of Justice to create or restore docket management tools – including administrative closure, termination of proceedings, and reasonable continuances – that enable immigration judges to balance the need for prompt adjudications with the rights of respondents to achieve just outcomes. Such tools should be utilized particularly in cases involving vulnerable populations, including unaccompanied children and individuals experiencing mental illness, and otherwise as justice requires;

FURTHER RESOLVED, That the American Bar Association urges EOIR to increase its efforts to hire immigration judges and Board of Immigration Appeals members from diverse professional backgrounds, including practitioners with experience representing non-citizens and individuals reflecting a broad mix of racial, ethnic, gender and gender identity, sexual orientation, disability, religious and geographically diverse backgrounds;

FURTHER RESOLVED, That the American Bar Association urges the Department of Homeland Security to restore the use of prosecutorial discretion by both officers and attorneys to reduce the number of Notices to Appear served on and enforced against noncitizens who should not be priorities for removal, including those who: 1) are prima facie eligible for relief from removal; 2) veterans and members of the U.S. armed forces; 3) long-time lawful permanent residents; 4) minors and elderly individuals; 5) individuals present in the U.S. since childhood; 6) pregnant or nursing women; 7) victims of domestic violence, trafficking, or other serious crimes; 8) individuals who suffer from a serious mental or physical disability; and 9) individuals with serious health conditions; and
FURTHER RESOLVED, That the American Bar Association urges EOIR to amend 8 C.F.R. §1003 subpart G, the Professional Conduct Practitioners--Rules and Procedures, to authorize civil monetary contempt penalties to be imposed by immigration judges against both removal defense and government trial attorneys and establish criteria for when such penalties can be applied.
Since 1983, the immigration courts have been part of the Executive Office for Immigration Review (EOIR), which is housed within the U.S. Department of Justice (DOJ) and answers directly to the Attorney General. The Attorney General appoints a director, who supervises the two offices within EOIR — the Board of Immigration Appeals (BIA or Board) and the Office of the Chief Immigration Judge (OCIJ). The OCIJ supervises the immigration courts and the immigration judges. Approximately 400 immigration judges, sitting in courts in 63 locations around the country, hear several hundred thousand matters each year. The matters include, among others, removal proceedings, bond redeterminations for some immigrants and asylum-seekers held in detention, and reviews of credible and reasonable fear determinations.

Immigration judges issue life-altering decisions each day that may deprive individuals of their freedom; separate families, including from U.S. citizen family members; and, in the case of those seeking asylum, may be a matter of life and death. Yet, these agency courts lack many of the basic structural and procedural safeguards that we take for granted in other areas of our justice system. To address these systemic issues, the ABA has adopted a policy that supports restructuring the system to create an independent body for adjudicating immigration cases, such as an Article I court. Recognizing that system restructuring is likely to take a number of years, incremental reforms outlined in this resolution could be made within the current structure—either through policy revision, regulation or legislation—which would make significant improvements in the operation of the immigration courts.

**Administrative Management Measures**

Currently, there is no electronic filing system available in the vast majority of immigration courts. Attorneys and pro se respondents instead must mail or deliver in-person hard copies of documents related to their cases. This creates inefficiencies in the system and barriers for many respondents, particularly those in detention.

Practitioners, immigration judges, and government officials all agree that electronic case management and filing are key to a more efficient and reliable system. An independent 2017 EOIR-funded audit of the immigration courts recommended moving to an electronic filing system as expeditiously as possible to improve the overall functioning of the immigration courts. EOIR initiated an effort to establish the EOIR Courts and Appeals System (ECAS), an e-filing and document storage program in 2016, but acknowledged that, as of

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December 2017, it had made “little appreciable progress” towards establishing an electronic filing system.¹ In July 2018, EOIR launched a pilot e-filing and document storage program in the San Diego Immigration Court, and it has since been rolled out in four other courts.² EOIR’s goal is to extend ECAS to all immigration courts in 2019.³

While this is a positive step, the full implementation of this system is long overdue, given the importance of electronic filing for a functioning and efficient court system. EOIR should be encouraged to expedite the nationwide implementation of ECAS, or a similar integrated, system-wide electronic filing and case management system, and Congress should provide the necessary funding to enable them to do so as soon as possible.

**Limitation of Docket Management Measures**

In the last decade, immigration courts have been used as an extension of immigration enforcement mechanisms. Executive actions and policies that reshuffle the immigration courts’ dockets and remove necessary docket management tools from immigration judges are disruptive and counterproductive to the independence of the judges and the administration of justice. This approach undermines judges’ ability to independently manage their courtrooms and to administer their dockets in a fair and efficient manner. Further, because the immigration courts are situated within EOIR, within the Executive branch, immigration judges are required to comply with such Executive directives regardless of the impact on their dockets. Ultimately, these actions reinforce the confusion between the enforcement of immigration laws and the adjudication of relief applications, creating the perception that immigration judges are simply part of the government’s prosecution efforts.

In 2017 and 2018, DOJ and EOIR severely limited or eliminated several tools that immigration judges routinely used to manage their caseloads and clear cases from their dockets. Specifically, DOJ sharply curtailed the use of continuances in immigration proceedings and virtually eliminated the use of administrative closure and termination so as to render them nearly extinct as avenues to resolve cases.⁴

In *Matter of Castro-Tum*, then-Attorney General Sessions rewrote decades of immigration law and practice by finding that neither immigration judges nor the Board of Immigration Appeals had the authority, express or implied, to suspend cases using the

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⁵ Id.
⁶ Notably, in redefining the legal landscape for each of these issues DOJ acted through or on the Attorney General’s referral power pursuant to 8 C.F.R. § 1003.1(h)(1). The potential negative impact such politicized use of this power can have on the immigration court system, and importantly, due process is addressed in a separate resolution submitted concurrently herewith.
procedure known as administrative closure.\textsuperscript{7} Instead, the former Attorney General found that administrative closure is authorized only in a very limited subset of cases in which a previous regulation or judicially approved settlement expressly authorized such action.\textsuperscript{8}

In \textit{Matter of S-O-G- & F-D-B-}, then-Attorney General Sessions similarly restricted the use of termination as a tool to remove cases from the immigration courts’ dockets. There he limited the use of termination of proceedings to those specific instances in which it is authorized by regulation or where DHS has failed to sustain the charges of removability.\textsuperscript{9} To support this conclusion, the former Attorney General again ruled that immigration judges “have no inherent authority to terminate or dismiss removal proceedings” for reasons other than those identified in statute or regulation.\textsuperscript{10}

In each decision implementing these changes, the Attorney General reasserted his authority, power, and influence over immigration judges, stating repeatedly that immigration judges may “exercise only the authority provided by statute or delegated by the Attorney General” (emphasis added) and that they have no “inherent authority” to use docket management tools unspecified by regulation.\textsuperscript{11} As a result of these decisions, immigration judges are now severely restricted from using two tools traditionally available to them to manage their dockets and prioritize adjudication of cases.

On August 16, 2018, in another case intruding into the independence and discretion of immigration judges, then-Attorney General Sessions decided \textit{Matter of L-A-B-R-}, a case regarding continuance practices in immigration courts.\textsuperscript{12} The decision expressed deep skepticism about the use of continuances in immigration proceedings and redefined how the standard for granting continuances would be applied to removal cases in which a respondent was seeking relief in collateral proceedings before U.S. Citizenship and Immigration Services or in state or federal courts.\textsuperscript{13} The decision states that to succeed on such a request, the noncitizen will usually need to present full evidentiary submissions and requires immigration judges to articulate the specific basis for granting a continuance on the record to aid in the review of such decisions.\textsuperscript{14} The ruling in \textit{Matter of L-A-B-R-} makes it more difficult and burdensome to obtain a continuance in immigration proceedings in which the respondent is or plans to seek collateral relief, wastes valuable court time, and reduces its utility as a tool to manage the immigration court’s docket.

\begin{itemize}
  \item \textsuperscript{7} \textit{Matter of Castro-Tum}, 27 I&N 217, 272 (A.G. 2018).
  \item \textsuperscript{8} Id.
  \item \textsuperscript{10} Id.
  \item \textsuperscript{12} See \textit{Matter of L-A-B-R-}, 27 I&N Dec. 245 (A.G. 2018) (certifying for review issues relating to “when there is ‘good cause’ to grant a continuance for a collateral matter to be adjudicated, [and] ordering cases stayed pending review”).
  \item \textsuperscript{13} \textit{Matter of L-A-B-R-}, 27 I&N Dec. at 411 (stating that “[t]he overuse of continuances in immigration courts is a significant and recurring problem.”).
  \item \textsuperscript{14} Id. at 418.
\end{itemize}
These decisions have eroded or threaten to erode the fundamental fairness and impede the efficiency of immigration proceedings. Efforts that undermine the immigration courts’ ability to independently administer justice free of political interference or fear of retribution raise the question whether respondents are able to receive a fair hearing. If judges don’t have the necessary tools to ensure the appropriate time, attention, or detailed consideration to the matters before them, both the system and those individuals subject to it suffer.

Therefore, Congress and the Department of Justice should create or restore docket management tools – including administrative closure, termination of proceedings, and reasonable continuances – that enable immigration judges to balance the need for prompt adjudications with the rights of respondents to achieve just outcomes. Such tools should be utilized particularly in cases involving vulnerable populations, including unaccompanied children and individuals experiencing mental illness, or as justice requires.

**Hiring of Immigration Judges and Board of Immigration Appeals Members**

Historically, many immigration judges have been recruited and hired from the ranks of government attorneys with experience working for either ICE (or its predecessor, INS) or DOJ. Some commentators have noted that when a majority of immigration judges possess similar background and experience, the result may be a body of decision makers with similar perspectives and a lack of system-wide neutrality. For this reason, it is important that members of the immigration judiciary reflect a broad range of diversity.

In the wake of allegations of politicized hiring and firing of immigration judges and BIA members between 2004 and 2007, EOIR adopted reforms purportedly to guard against such actions in the future. While the measures adopted from 2007 to 2016 appeared to have stemmed politicized hiring in that period, they had the unintended consequences of slowing hiring to a glacial pace. These measures also did little to address concerns regarding the lack of diversity of immigration judges, as a very high percentage of new immigration judges continued to be former government attorneys.  

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17 Id. at 2-10, 2-18-19.

As noted earlier, the lack of diversity on the bench is troubling, as the implications for such hiring bias is far reaching. It impacts both practice before the courts and perceptions of fairness in the public eye. An audit of the immigration courts commissioned by EOIR found that “having a body of [immigration judges] largely composed of lawyers who previously worked for DHS, ICE or DOJ branches limits the diversity of perspectives on the bench.” The audit recommended that EOIR “broaden hiring pools and outreach programs to increase diversity of experience of [immigration judges].” Policies and hiring practices adopted and implemented in 2017 and 2018, however, appear poised to frustrate these recommendations.

In April 2017, DOJ announced its plan to “streamline its hiring of [immigration] judges, reflecting the dire need to reduce the backlogs in our immigration courts.” At a high level, EOIR announced that the new hiring process “requires thorough vetting, as before, but also aims to reduce the hiring timeline . . . [by] set[ting] clear deadlines for . . . moving applicants to the next stage . . . [, eliminating] steps that did not aid the selection process in order to decrease processing times . . . [, and] allow[ing] for temporary appointments pending the completion of full background investigations for both federal and non-federal employees.” EOIR estimated that these changes would result in a hiring timeline of less than six months. That timeline stands in sharp contrast to the time it took applicants to navigate the multi-layered, multi-agency approach that was put in place after 2007. DOJ began implementing this new approach as of February 2018.

While many stakeholders agree that improved, faster hiring practices are necessary, there is some concern that DOJ’s current approach may elevate speed over substance and exacerbate the lack of diversity on the bench. As one report notes:

Review of this background information does raise concerns that DOJ is hiring immigration judges who were predominantly Department of Homeland Security (DHS) attorneys who prosecuted cases in immigration courts and on appeal. In fact, more than half of the judges selected in 2018—40 out of 78—are former DHS attorneys who prosecuted cases in immigration courts and on appeal. As one report notes:

742 days — to hire new immigration judges” and even after the end of the hiring freeze in February 2014, EOIR still took an average of 647 days to hire an immigration judge). One factor that contributed both to the lengthy hiring process and the lack of diversity in the selection process is the need for immigration judges to obtain certain security clearances. Id. The background checks take an average of 41 days, but the process is much faster for candidates with government experience, such as government trial attorneys, who have already cleared security checks. Id. at 40-43.


22 Id.


24 See id. at 11.
employees. An additional 37 percent were previously in other federal or state government positions. All in all, about 88 percent are former DHS or other government attorneys. Very few have backgrounds in public interest or private immigration law. More than one third of the recent hires do not list any prior immigration law experience in their published biographies.25

This lack of diversity can undermine the public’s confidence in fair and impartial decision making in the immigration courts. Therefore, EOIR should increase its efforts to hire immigration judges and Board of Immigration Appeals members from diverse professional backgrounds, including practitioners with experience representing non-citizens and individuals reflecting a broad mix of racial, ethnic, gender and gender identity, sexual orientation, disability, religious and geographically diverse backgrounds.

Another troubling aspect of the current hiring regime is the lack of transparency. Despite requests, DOJ and EOIR have declined to share the new hiring criteria with stakeholders, instead relying on high-level descriptions and generalities. To the extent the new hiring process in fact trades the “qualification requirements of judges” for speed, due process concerns are likely implicated; such an approach arguably removes safeguards designed to protect against politicized hiring and favors certain categories of candidates, which also likely undermines the diversity of immigration judges on the bench.

Prosecutorial Discretion

The decision to serve a Notice to Appear on a noncitizen is an exercise of prosecutorial discretion. DHS officers in ICE, CBP, and USCIS have considerable discretion with respect to removal proceedings against noncitizens in a variety of circumstances. In particular, they have discretion not to initiate proceedings at all; to concede eligibility for relief from removal after receipt of an application; to stop litigating a case after key facts develop to make removal unlikely or demonstrate compelling humanitarian factors (such as the serious illness of the respondent or a family member); to offer deferred action, administrative closure, or termination of proceedings early in the process; and not to file an appeal in certain types of cases.

In June 2010, then-Director of ICE John Morton issued the first of three memoranda describing ICE’s removal priorities and standards for the exercise of prosecutorial discretion.26 The first memorandum focused on delineating enforcement priorities based on the severity of the offense and utilization of scarce resources. Priority 1 included national security and criminal categories, “with a particular emphasis on violent criminals, felons, and repeat offenders,” as well as “aliens subject to outstanding criminal warrants,” and “aliens who otherwise pose a serious risk to public safety.”27 This latter

27 Id. at 1-2. ICE further subdivided Priority 1 into Levels 1, 2, and 3 according to type of offense.
category was “not intended to be read broadly,” but rather to be employed only when “serious and articulable public safety issues exist.”

Priority 2 included “recent illegal entrants,” though no entry date was specified; and Priority 3 included “aliens who are fugitives,” which included those subject to a final order of removal who failed to depart for various reasons as well as aliens who reentered unlawfully after being deported with enumerated subcategories.

In 2011, Morton issued another guidance memo that emphasized the necessity of affirmatively exercising prosecutorial discretion, citing such positive factors such as length of residence, arrival in the United States as a young child, and lack of criminal history. The memorandum also stressed weighing potential prosecution against available relief, particularly if the individual was likely to qualify for a benefit based on a family relationship, or asylum or other humanitarian relief. An additional memorandum re-emphasized the necessity of exercising discretion in cases where the individual had been the victim of a crime, was a witness in a criminal or other judicial matter, or was attempting to vindicate a right in court.

However, in contrast to prior enforcement and discretion parameters, ranking enforcement priorities in order of importance, Executive Order 13768 issued by the current administration and DHS implementation memoranda prioritize virtually all undocumented or unlawful immigrants for removal. Under § 5(c) of the Executive Order, many undocumented immigrants with no criminal convictions (who entered the country without authorization) are designated as priorities for removal, because entering the United States without inspection is a “chargeable criminal offense.”

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28 Id. at 2 n.1.
29 Id. at 2-3.
31 Other factors outlined in the 2011 Morton Memorandum included: the person’s pursuit of education in the United States, with particular consideration given to those who have graduated from a U.S. high school or have successfully pursued or are pursuing a college or advanced degree; whether the person, or the person's immediate relative, has served in the U.S. military, reserves, or national guard; the person’s ties and contributions to the community, including family relationships; the person’s ties to the home country and conditions in the country; and whether the person is currently cooperating or has cooperated with federal, state, or local law enforcement authorities, such as ICE, the Department of Justice, the Department of Labor, or the National Labor Relations Board. Id. at 4-5.
32 Memorandum from John Morton, Director, ICE, to All Field Office Directors, All Special Agents in Charge, and All Chief Counsel, “Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs” (June 17, 2011), https://www.ice.gov/doclib/secure-communities/pdf/domestic-violence.pdf. The 2011 Morton Victims Memorandum built on prior agency guidance and provided for prosecutorial discretion to “minimize any effect that immigration enforcement may have on the willingness of victims, witnesses, and plaintiffs to call police and pursue justice.” Id. at 1.
34 Am. Immigration Council, Fact Sheet: Summary of Executive Order “Enhancing Public Safety in the Interior of the United States” (May 19, 2017),
Not surprisingly, as a result of these policy changes, ICE interior arrests escalated in 2017. According to an analysis prepared by ICE, 143,470 individuals were arrested in FY 2017, 110,568 of whom were arrested after January 20, 2017.\textsuperscript{35} During this same eight-month time period in 2016, ICE arrested 77,806 individuals.\textsuperscript{36} The analysis notes that ICE arrested more individuals during the first eight to nine months of 2017 than during the entirety of FY 2016.\textsuperscript{37}

Given limited enforcement and judicial resources at all levels, unnecessary removal proceedings or unnecessary litigation of legal and factual issues is particularly costly to the system. DHS should restore the use of prosecutorial discretion by both officers and attorneys to reduce the number of Notices to Appear served on or enforced against noncitizens who should not be priorities for removal, including persons who: 1) are prima facie eligible for relief from removal; 2) veterans and members of the U.S. armed forces; 3) long-time lawful permanent residents; 4) minors and elderly individuals; 5) individuals present in the U.S. since childhood; 6) pregnant or nursing women; 7) victims of domestic violence, trafficking, or other serious crimes; 8) individuals who suffer from a serious mental or physical disability; and 9) individuals with serious health conditions.

\textit{Immigration Judge Contempt Authority}

The Department of Justice has recognized the need for immigration judges to be able to "control their courtrooms and protect the adjudicatory system from fraud and abuse."\textsuperscript{38} To further this goal, EOIR should amend 8 C.F.R. §1003 subpart G, the Professional Conduct Practitioners—Rules and Procedures, to allow for civil monetary contempt authority to be imposed by immigration judges against both removal defense and government trial attorneys and establish criteria for when such penalties can be applied.\textsuperscript{39}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{36} Id.
\item \textsuperscript{37} Id.
\item \textsuperscript{38} Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances, 73 Fed. Reg. 76,914, 76,915 (Dec. 18, 2008).
\end{itemize}
\end{footnotesize}
This authority is currently enabled by legislation albeit not yet implemented by regulation. Contempt authority was specifically listed in the Attorney General’s 2006 Directives, but was not implemented in the amended rules. Although the contempt authority has existed since 1996, the Attorney General has not implemented it because DHS (and previously INS) has continually “objected to having its attorneys subjected to contempt provisions by other attorneys within the Department, even if they do serve as judges.” Contempt authority could provide immigration judges “with an important tool to enforce DHS compliance with its orders” and empower judges to “meaningfully sanction attorneys for contemptuous behavior, such as late filings or ignoring judicial orders, that slows down the court and makes just adjudications more difficult.”

Conclusion

The immigration courts are suffering under a massive backlog of cases and several recent policies put into place have raised concerns about due process and fairness in the system. While ultimately, as the ABA has recommended previously, the system should be restructured into an independent court, implementing the recommendations in this resolution will assist in alleviating some of the concerns in the current system.

Respectfully submitted,

Wendy S. Wayne
Chair, Commission on Immigration
August 2019

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40 See 8 U.S.C. § 1229a(b)(1) (“The immigration judge shall have authority (under regulations prescribed by the Attorney General) to sanction by civil money penalty any action (or inaction) in contempt of the judge’s proper exercise of authority under this chapter.”)
41 See OFFICE OF THE ATTORNEY GENERAL, MEASURES TO IMPROVE THE IMMIGRATION COURTS AND THE BOARD OF IMMIGRATION APPEALS 5 (Aug. 9, 2006), available at http://www.usdoj.gov/ag/readingroom/ag-080906.pdf (“The Director of EOIR . . . will draft a new proposed rule that creates a strictly defined and clearly delineated authority to sanction by civil money penalty an action (or inaction) in contempt of an immigration judge’s proper exercise of authority.”).
GENERAL INFORMATION FORM

Submitting Entity: Commission on Immigration

Submitted By: Wendy S. Wayne

1. **Summary of Resolution(s).** This resolution urges the Executive Office for Immigration Review (EOIR) to fully implement an electronic filing system for the immigration courts and urges Congress and the Department of Justice to restore docket management measures in order to achieve improved efficiency and fairness in the adjudication of immigration cases. EOIR should also increase its efforts to hire immigration judges and Board Members from diverse backgrounds. DHS should restore the use of prosecutorial discretion and not pursue removal against individuals who merit special care and consideration. EOIR should amend 8 C.F.R. §1003 subpart G, the Professional Conduct Practitioners--Rules and Procedures, to allow for civil monetary contempt authority to be imposed by immigration judges against both removal defense and government trial attorneys and establish criteria for when such penalties can be applied.

2. **Approval by Submitting Entity.** The resolution content was discussed and approved by the Commission on Immigration between April 22 and 26, 2019. Previously, Members were also active in preparing a Report from which the recommendations for the resolution originate, *2019 Update: Reforming the Immigration System*. The Update Report was released in March 2019 after 3 years of research and development.

3. **Has this or a similar resolution been submitted to the House or Board previously?** No.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

   **06M107D:** Supports (a) a system for administering our immigration laws that is transparent, user-friendly, accessible, fair, and efficient, and that has sufficient resources to carry out its functions in a timely manner; (b) the development of efficient interagency procedures to ensure that those involved in immigration matters have a clearly identified means for addressing and resolving issues that require action by more than one of the federal agencies that have jurisdiction.

   **10M114A:** (a) Increase use of prosecutorial discretion by both DHS officers and attorneys to reduce the number of Notices to Appear (“NTA”) served on noncitizens who are prima facie eligible for relief from removal, and to reduce the number of issues litigated; (b) Give DHS attorneys greater control over the initiation of removal proceedings, and in DHS local offices with sufficient attorney resources, establish a pilot program requiring approval of a DHS lawyer prior to issuance of all discretionary Notices to Appear by DHS officers; (c) To the extent possible, assign one DHS trial attorney to each removal proceeding; (d) Cease issuing Notices to Appear to
noncitizens who are prima facie eligible to adjust to lawful permanent resident status; 
(e) Upgrade DHS’s data systems to permit better tracking of detainees within the 
detention system, and improve protocols for transfers of detainees between detention 
facilities to ensure notification of family members and counsel; and (f) Create a 
position within DHS to oversee and coordinate all aspects of DHS immigration policies 
and procedures, including asylum matters.

The policy proposal would complement and support existing policy.

5. If this is a late report, what urgency exists which requires action at this meeting of the 
House? n/a

6. Status of Legislation. (If applicable) n/a

7. Brief explanation regarding plans for implementation of the policy, if adopted by the 
House of Delegates. The Commission plans to coordinate with the ABA 
Governmental Affairs Office to advocate with relevant contacts within Congress, the 
Department of Homeland Security, the Department of Justice, and other stakeholders 
to bring awareness of of this policy and effect legislative change or updated 
procedures that reflect due process and fairness in the immigration adjudication 
system.

8. Cost to the Association. (Both direct and indirect costs)

Adoption of the resolution will not result in expenditures for the ABA.

9. Disclosure of Interest. (If applicable)

No known conflict of interest exists.

10. Referrals.

Center on Children and the Law
Commission on Hispanic Rights and Responsibilities
Section of Civil Rights and Social Justice
Section of Criminal Law
Section of International Law
Standing Committee on Pro Bono and Public Service
Working Group on Unaccompanied Minor Immigrants,

11. Contact Name and Address Information. (Prior to the meeting. Please include name, 
address, telephone number and e-mail address)

Meredith A. Linsky
Director, Commission on Immigration
1050 Connecticut Ave NW, Suite 400
12. Contact Name and Address Information. (Who will present the Resolution with Report to the House? Please include best contact information to use when on-site at the meeting. *Be aware that this information will be available to anyone who views the House of Delegates agenda online.*)

Mary Ryan  
Liaison to the Commission on Immigration from the Working Group on Unaccompanied Minor Immigrants  
Nutter McClennen & Fish LLP  
155 Seaport Blvd.  
Boston, MA 02210  
Tel: 617-439-2212  
E-mail: mryan@nutter.com
EXECUTIVE SUMMARY

1. Summary of the Resolution

EOIR should implement an electronic filing system for the immigration courts nationwide. Congress and DOJ should create or restore specified docket management measures in order to achieve improved efficiency and fairness in the adjudication of immigration cases. EOIR should also increase its efforts to hire immigration judges and Board Members from diverse backgrounds. DHS should restore the use of prosecutorial discretion and not pursue removal against individuals who merit special care and consideration. EOIR should amend 8 C.F.R. §1003 subpart G, the Professional Conduct Practitioners--Rules and Procedures, to allow for civil monetary contempt authority to be imposed by immigration judges against both removal defense and government trial attorneys and establish criteria for when such penalties can be applied.

2. Summary of the Issue that the Resolution Addresses

EOIR should establish an electronic filing system as expeditiously as possible to improve the overall functioning of the immigration courts. Executive orders and policies that reshuffle immigration judges’ dockets without input or reference to the status of any other pending matters are disruptive and counterproductive to the independence of the courts and the administration of justice. Non-diversified hiring threatens fairness and due process in immigration courts.

In contrast to prior enforcement and discretion parameters, ranking enforcement priorities in order of importance, recent administration and DHS policies prioritize virtually all undocumented or unlawful immigrants for removal, which increases the overall case backlog and undermines fairness and efficiency in the adjudication system. The Department of Justice has recognized the need for Immigration Judges to be able to “control their courtrooms and protect the adjudicatory system from fraud and abuse.”

3. Please Explain How the Proposed Policy Position Will Address the Issue

The proposal supports the more ideal operation of the immigration adjudication system by enabling tools that will result in efficiency, professionalism, and fairness.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

There are no minority views of which we are aware.