

ADOPTED

AMERICAN BAR ASSOCIATION

**CONNECTICUT BAR ASSOCIATION
NEW YORK STATE BAR ASSOCIATION
SECTION ON INTERNATIONAL LAW
SECTION OF CIVIL RIGHTS AND SOCIAL JUSTICE
CENTER FOR HUMAN RIGHTS**

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association reaffirms its support for the establishment of
2 laws, policies, and practices that ensure access to legal protection for refugees, asylum seekers,
3 torture victims, and others deserving of humanitarian refuge (hereinafter collectively, “Protection
4 Seekers”).
5
- 6 FURTHER RESOLVED, That the American Bar Association urges Congress to adopt additional
7 legislation and to appropriate adequate funding for refugee applications and processing.
8
- 9 FURTHER RESOLVED, That the American Bar Association urges Congress to adopt legislation
10 to mandate that refugees receive an appropriate individualized assessment in a timely fashion to
11 determine their eligibility as such, and that neither national origin nor religion be the basis for
12 barring an otherwise eligible individual in making such determination.

REPORT

The resettlement of refugees in the United States has a long, detailed, and, at times, [controversial history](#) in the United States. One only need visit the Ellis Island National Museum of Immigration to see the varied nature of how this country has dealt with these issues over time. Any resolution and report must begin by acknowledging the challenges and issues that any discussion of these topics must address.

But as the national voice of the legal community, the ABA has “long championed the principles that America is built on as a nation of laws and a nation of immigrants -- liberty and justice for all. This is underscored by the ABA adopting the theme of ‘Defending Liberty, Pursuing Justice’”¹ as its guiding vision. Indeed, as noted in a 2006 multi-faceted report from the ABA’s Commission on Immigration, the ABA goals are “particularly important for immigrants and refugees, who face unique challenges under our laws and justice system.”² Because of this, the “ABA’s leadership on issues relating to immigrants and refugees is absolutely essential....”³

On January 27, 2017, the current Administration issued an Executive Order entitled “Protecting the Nation from Foreign Terrorist Entry into the United States.” That Executive Order takes several different steps impacting immigration and the resettlement of refugees, some of which are beyond the scope of the resolution. For example, this resolution and report does not address the issue of whether a bar on immigration from seven countries may violate the Immigration and Nationality Act of 1965, which banned discrimination against immigrants on the basis of national origin. However, existing ABA policy regarding immigration is varied and covers many issues in depth.

Moreover, ABA President Linda Klein has already spoken on behalf of the ABA, with the backing of ABA policy, regarding several aspects of the Executive Order.⁴ In a statement released on January 31, 2017, President Klein stated:

The Jan. 27 executive order—which indefinitely bars Syrian refugees from entering the United States, suspends all refugee admissions for 120 days and blocks refugees and other citizens of seven Muslim-majority countries from entering the United States for 90

¹ See Report, 2006M107A. http://www.americanbar.org/content/dam/aba/directories/policy/2006_my_107a.pdf (last checked February 4, 2017)

² *Id.*

³ *Id.*

⁴ See Statement of Linda A. Klein, ABA president, Re: Recent executive orders on immigration, https://www.americanbar.org/news/abanews/aba-news-archives/2017/01/statement_of_lindaa.html (last checked February 4, 2017).

10B

days—raises several constitutional questions. Some of these have already been challenged in federal court. Additional litigation is bound to follow.

This order comes at a time when we are witnessing the highest levels of refugee displacement since World War II. It seriously disrupts our nation's immigration system and calls into question the United States as a leader in protecting the world's refugees.

Unfortunately, the haste of the order's implementation has also created confusion among the very agencies assigned to implement and enforce it. The lack of clarity has added to the chaos and caused panic among affected families and communities.

With President Klein already addressing some issues, a review of the ABA policy regarding refugees and resettlements is appropriate. Before doing so, it is important to keep in mind the scope and language of the Executive Order itself. The order states:

Sec. 5. Realignment of the U.S. Refugee Admissions Program for Fiscal Year 2017. (a) The Secretary of State shall suspend the U.S. Refugee Admissions Program (USRAP) for 120 days. During the 120-day period, the Secretary of State, in conjunction with the Secretary of Homeland Security and in consultation with the Director of National Intelligence, shall review the USRAP application and adjudication process to determine what additional procedures should be taken to ensure that those approved for refugee admission do not pose a threat to the security and welfare of the United States, and shall implement such additional procedures. Refugee applicants who are already in the USRAP process may be admitted upon the initiation and completion of these revised procedures. Upon the date that is 120 days after the date of this order, the Secretary of State shall resume USRAP admissions only for nationals of countries for which the Secretary of State, the Secretary of Homeland Security, and the Director of National Intelligence have jointly determined that such additional procedures are adequate to ensure the security and welfare of the United States.

(b) Upon the resumption of USRAP admissions, the Secretary of State, in consultation with the Secretary of Homeland Security, is further directed to make changes, to the extent permitted by law, to prioritize refugee claims made by individuals on the basis of religious-based persecution, provided that the religion of the individual is a minority religion in the individual's country of nationality. Where necessary and appropriate, the Secretaries of State and Homeland Security shall recommend legislation to the President that would assist with such prioritization.

(c) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of nationals of Syria as refugees is detrimental to the interests of the United States

and thus suspend any such entry until such time as I have determined that sufficient changes have been made to the USRAP to ensure that admission of Syrian refugees is consistent with the national interest.

(d) Pursuant to section 212(f) of the INA, 8 U.S.C. 1182(f), I hereby proclaim that the entry of more than 50,000 refugees in fiscal year 2017 would be detrimental to the interests of the United States, and thus suspend any such entry until such time as I determine that additional admissions would be in the national interest.

(e) Notwithstanding the temporary suspension imposed pursuant to subsection (a) of this section, the Secretaries of State and Homeland Security may jointly determine to admit individuals to the United States as refugees on a case-by-case basis, in their discretion, but only so long as they determine that the admission of such individuals as refugees is in the national interest — including when the person is a religious minority in his country of nationality facing religious persecution, when admitting the person would enable the United States to conform its conduct to a preexisting international agreement, or when the person is already in transit and denying admission would cause undue hardship — and it would not pose a risk to the security or welfare of the United States.

Since the entry of the Executive Order, several federal district courts have entered injunctions of various scope, calling into question the propriety of a ban on refugees.

For example, on January 28, 2017, a federal judge sitting in the District Court of the Eastern District of New York issued an order prohibiting the removal of “individuals with refugee applications approved by the U.S. Citizenship and Immigration Services as part of the U.S. Refugee Admissions program as well as holders of valid immigrant and nonimmigrant visas.”⁵ In doing so, the court found that the petitioners have a “strong likelihood of success in establishing that the removal of the petitioner and others similarly situated violates their rights to Due Process and Equal Protection” and that there is an imminent danger of substantial and irreparable injury to “refugees, visa-holders and other individuals from nations” subject to the Executive Order. *See id.*

Additionally, on Friday, February 3, 2017, a federal judge sitting in the District Court of the Western District of Washington issued an temporary restraining order enjoining and restraining the federal government from enforcing Sections 5(a), 5(b) in an “action that prioritizes the refugee claims of certain religious minorities”, 5(c), and 5(e) “to the extent that Section 5(e) purports to prioritize refugee claims of certain religious minorities.”⁶ The temporary restraining order was granted on a nationwide basis. On February 4, 2017, the United

⁵ *See Darweesh v. Trump*, Decision and Order, Case No. 17 Civ. 480 (Jan. 28, 2017 E.D.N.Y.).

⁶ *See Washington v. Trump*, Decision and Order, Case 2:17-cv-00141-JLR (Feb. 3, 2017 W.D. Wash.).

10B

States Court of Appeals for the Ninth Circuit denied Appellants' request for an immediate administrative stay pending full consideration of the emergency motion for a stay pending appeal.⁷

The Executive Order with regard to refugees has drawn criticism from various entities and constitutional experts as well. [The United Nations High Commissioner for Refugees](#) has expressed concern regarding the safety of 20,000 people who were expecting resettlement in the United States stating: "Refugees...are fleeing war, persecution, oppression and terrorism. The individuals and families [referred] to governments for resettlement are the most vulnerable - such as people needing urgent medical assistance, survivors of torture, and women and girls at risk. The new homes provided by resettlement countries are lifesaving for people who have no other options." [Noted Constitutional law expert Erwin Chemerisky on January 29, 2017](#) stated bluntly that the new refugee policy is "unconstitutional and inhumane" and "completely unnecessary."

The overall authority to regulate the flow of refugees in the United States is found, in part in 8 U.S.C. 1182(f), which provides: "Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate."

The American Bar Association has long supported the need for legal protections and other considerations for refugees and others deserving of humanitarian refuge.

In 1990, the ABA supported detaining asylum seekers only in extraordinary circumstances, and in the least restrictive environment necessary to ensure appearance at court proceedings. The ABA also encouraged the Bureau of Immigration and Customs Enforcement to explore alternative means to ensure appearance at court proceedings, such as supervised pretrial release or bond.

In 1991, the ABA passed Resolution 116B which urged the United Nations to provide international protection for refugee health needs and to review the adequacy of then-current international agreements to address the health and related humanitarian needs of refugees.

In 2001, the ABA opposed the involuntary transfers of detained immigrants and asylum seekers to remote facilities when it would impede access to counsel.

⁷ See *Washington v. Trump*, Decision and Order, Case No. 17-35105 (Feb. 4, 2017, 9th Cir.).

In 2005, the ABA passed Resolution 112 which expressed the ABA's support for the repeal of annual numerical caps that result in undue delays in the granting of lawful permanent residence to those individuals who have already been granted asylum status in the United States.

In 2006, the ABA passed resolution 107F, which expressed the ABA's support of the establishment of laws, policies, and practices that ensure optimal access to legal protection for refugees, asylum seekers, torture victims, and others deserving of humanitarian refuge. Specifically, Resolution 107F provided for the following:

RESOLVED, that the American Bar Association supports the establishment of laws, policies, and practices that ensure optimum access to legal protection for refugees, asylum seekers, torture victims, and others deserving of humanitarian refuge. Such measures should include:

- (a) the elimination of unduly restrictive or inflexible limitations such as the one-year deadline for asylum seekers to initiate claims;
- (b) the establishment of policies and practices that ensure prompt identification of asylum seekers at the border, or in expedited removal proceedings, and that enable asylum officers to grant asylum administratively after the "credible fear" interview;
- (c) the creation of fair and consistently applied screening procedures for those intercepted or interdicted, in order to quickly identify refugees, asylum seekers, torture victims, and others deserving of humanitarian refuge; and
- (d) the development of a refugee visa as well as improved visa and pre-clearance policies for refugees who cannot travel to the United States because of existing immigration policies.

The 2006 report remains as relevant today with words that mirror the issues today. At the time, the resolution was addressing a one-year deadline for asylum seekers to initiate claims. It noted that this deadline prevented many asylum seekers from having claims heard on the merits. The arbitrary nature of the deadline imposed then was the issue of the day, but the resolution's rationale has meaning with the new Executive Order, especially as it pertains to Protection Seekers as whole. And the language is a reminder of the needs Protection Seekers may have.

Genuine refugees often have good reasons for failing to file their claims immediately or soon after arrival. Many refugees are traumatized. Unless they are in countries that provide them with food and shelter, their first priority is survival—finding relatives, friends, or others who will help them. Language barriers, as well as ignorance of the law,

10B

also hinder prompt applications. Perhaps most importantly, asylum seekers experience great difficulty in finding legal representation. Getting an asylum application considered on its merits is extraordinarily difficult without help from a lawyer or another professional who specializes in asylum law. Two out of three asylum seekers lack representation in the first instance. Studies have demonstrated that asylum seekers who are represented at their court hearings are between 1.4 and 17 times more likely to be granted asylum than those who proceed without representation.

As a result of the deadline, people with legitimate reasons for failing to apply within one year are placed in legal proceedings in which their only chance of avoiding removal to the country of persecution is to qualify for “withholding of removal,” which requires them to establish a far greater likelihood of risk than would have been required to win asylum in the first instance. Those who are unable to meet this very high standard are expelled from the U.S. simply because they did not meet an arbitrary deadline. Those who do qualify for withholding can remain in the U.S., but are denied the right to become permanent residents or citizens and to bring their spouses or minor children to join them here.

The resolution went on to note that the United States should take the lead on Protection Seekers to uphold the notions present in the Universal Declaration of Human Rights:

While the challenges to developing such shared responsibility are significant, current American practices harm people who deserve protection. They also diminish the leadership role that the United States should play internationally in encouraging states around the world to protect refugees and to honor their treaty obligations. Given that most refugees seek asylum in developing states, this leadership role is critical to an effective international protection system.

The U.S. should develop fair policies and practices that successfully identify those interdicted asylum seekers who have a credible fear of return. It should apply those policies and practices to individuals of all nationalities. Those determined to have such a fear should then have an opportunity to “seek and enjoy asylum,” as proclaimed in the Universal Declaration of Human Rights. No refugee should ever be returned directly to a country of persecution.

Because it has been over ten years since the adoption of 2006_107F, it is appropriate for the ABA House of Delegates to review and reaffirm such policies as were previously adopted and to further expand the ABA’s policies to address additional issues that have arisen with regard to those in need of humanitarian refuge.

This resolution aims to accomplish three items.

First, it reaffirms the principles that the ABA has acted upon over ten years ago.

Second, it calls on Congress to pass legislation and provide appropriate funding to process refugee applications. As the [U.S. Bureau of Population, Refugees and Migration noted in a January 20, 2017 fact sheet](#), “refugees are subject to the highest level of security checks of any category of traveler to the United States.” As noted in that same fact sheet, the “average processing time is about 18 to 24 months” from referral to the United States for consideration, through screening and processing and granting admission to the refugee. Ensuring that Protection Seekers receive appropriate consideration is part and parcel with notions of legal protections noted in the first part of the resolution.

Lastly, it asks Congress to pass legislation to mandate that individualized assessments of refugees again be the prevailing feature in consideration of refugee applications. While a refugee must have a well-founded fear of persecution based on one of the five protected grounds of religion, political opinion, race, nationality or membership in a particular social group, the resolution asks Congress to pass legislation to ensure that an otherwise eligible refugee not be barred because of their national origin or religion.

This resolution does not address, nor advocate against existing forms of screening for refugees. As provided on the U.S. Citizenship and Immigration Services website, such screening has included name checks through The Department of State’s Consular Lookout and Support System (CLASS), Security Advisory Opinions, Interagency Checks, FBI Fingerprint Check through Next Generation Identification, DHS Automated Biometric Identification System and DOD Defense Forensics and Biometrics Agency’s Automated Biometric Identification System as well as interviews by USCIS officers.⁸ Whether or not such screening is sufficient is beyond the scope of this resolution and report.

On February 1, 2017, the Connecticut Bar Association passed a resolution advocating the positions in the proposed resolution. In doing so, the CBA fulfilled many aspects of its Constitution, Article II:

The purposes of this Association shall be to **promote the public interest through the advancement of justice and the protection of liberty**; to aid its Members in the development and maintenance of their respective practices; **to facilitate the delivery of competent legal services to the public and particularly to those in greatest need**; to **support or oppose legislation and regulations consistent with the interests of the public good and its Members**; to supply the highest quality continuing legal education

⁸ See *Refugee Screening*, <https://www.uscis.gov/refugeescreening> (last reviewed February 2, 2017).

10B

opportunities and works of legal scholarship; to promote diversity within the Bar and the Bench; to develop collegial interaction among the members of the Bar; to safeguard the dignity of the legal profession; to coordinate the activities of the several bar associations within Connecticut; **and to advance the interests of its Members within the American Bar Association, other organizations with which the Association is affiliated, and society as a whole.**

This is an issue for our times. On February 4, 2017, U.S. Senators Richard Blumenthal and Christopher Murphy, from Connecticut, wrote to address House members, a copy of which is attached and incorporated into this report. In doing so, the Senators urge approval of the resolution noting “Providing humanitarian relief and legal protection to refugees who have been displaced by violence is not a choice, but an ethical obligation.” They go on to note that the “obligation to ensure refugees and similarly vulnerable migrants receive humane treatment and legal protection is particularly strong for attorneys. Regardless of career path -- government prosecutor, public defender, civil litigator or elected official -- we are all committed to upholding the rule of law.”

We call upon the American Bar Association to consider the resolution in light of the ABA’s purpose and goals.

Respectfully submitted,

Monte Frank
Connecticut Bar Association President
February 2017

Daniel A. Schwartz
ABA State Delegate (Connecticut)
February 2017

GENERAL INFORMATION FORM

Submitting Entity: Connecticut Bar Association

Submitted By: Monte Frank, President;
Daniel A. Schwartz, ABA State Delegate (Connecticut)

1. **Summary of Resolution:** This resolution expands existing ABA policy regarding Protection Seekers in light of the January 27, 2017 Executive Order or other restrictions. The resolution further calls for the reaffirmation of the guiding principles of Resolution 107F from the 2006 Midyear Meeting (2006M107F). In addition, it calls for increased funding and legislation to process and handle refugee applications. Finally, it urges Congress to pass legislation that would provide for individualized assessments of refugees and others in need of humanitarian refuge in determining their eligibility, and that they be conducted expeditiously and justly. In doing so, such legislation should mandate that otherwise eligible individuals not be barred because of national origin or religion in making such determinations.
2. **Approval by Submitting Entity.** The Connecticut Bar Association approved its resolution on February 1, 2017, and authorized its president, Monte Frank, to submit a resolution to the ABA House of Delegates.
3. **Has this or a similar resolution been submitted to the House or Board previously?**
No. However, the ABA considered a number of resolutions related to immigration in 2006. There has not been a recent resolution that addresses the issues addressed in this resolution.
4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?** In 2005, the ABA passed Resolution 112 which expressed the ABA's support for the repeal of annual numerical caps that result in undue delays in the granting of lawful permanent residence to those individuals who have already been granted asylum status in the United States. *See* 2005A112.

In 2006, the ABA passed resolution 107F, which expressed the ABA's support for the establishment of laws, policies, and practices that ensure optimal access to legal protection for refugees, asylum seekers, torture victims, and others deserving of humanitarian refuge, including: (1) the elimination of unduly restrictive limitations that prevent asylum seekers from initiating claims; (2) the establishment of practices that ensure the prompt identification of asylum seekers; (3) the creation of fair screening procedures for refugees intercepted or interdicted in order to quickly identify refugees, asylum seekers, and torture victims; and (4) the

10B

development of refugee visa and pre-clearance policies to assist refugees in coming to the United States. *See* 2006M107F

The proposed resolution reaffirms the guiding principle 2006M107F (which is appropriate after ten years) and expands upon it.

There are, it should be noted, many other existing ABA policies that address other aspects of the January 27, 2017 Executive Order and thus have not been addressed herein.

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:** There were several bills that were expected to be introduced into Congress during the week of January 30, 2017. On January 30, 2017, Senator Richard Blumenthal (D-Conn.) and Senator Chris Murphy (D-Conn.) introduced and co-sponsored a measure that would withhold any funding to enforce the January 27, 2017 Executive Order. The United States Senators from Connecticut have been consulted as to this resolution and support it (see letter from U.S. Senators Blumenthal and Murphy).

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.** Expected coordination with the Government Affairs Office to further pursue Congressional action, where that may be helpful to implementation of the resolution. Additional implementation plans are under consideration in consultation with various ABA entities.

8. **Cost to the Association. (Both direct and indirect costs.)** None is anticipated as any allocation of resources would be done with existing overhead. Moreover, because existing ABA policy addresses this issue in part and there is a reaffirmation of it, no additional cost is expected.

9. **Disclosure of Interest.** None

10. **Referrals.** This resolution has been referred to the Section of International Law, and the Civil Rights and Social Justice Section, the Commission on Immigration and the Center for Human Rights.

At the time of this report, the Young Lawyers Division, the Labor & Employment Law Section, the Massachusetts Bar Association, and the Commission on Immigration support this resolution.

11. **Contact Name and Address Information** (Prior to the meeting)

Monte E. Frank, President, Connecticut Bar Association
Cohen and Wolf, P.C.
158 Deer Hill Avenue
Danbury, CT 06810
203.749.5564
mfrank@cohenandwolf.com

Daniel A. Schwartz, ABA State Delegate (Connecticut)
Shipman & Goodwin LLP
1 Constitution Plaza
Hartford, CT 06103
860.251.5038
dschwartz@goodwin.com

12. **Contact Name and Address Information** (Who will present the report to the House)?

Initial Presenter - Monte E. Frank, President, Connecticut Bar Association
Cohen and Wolf, P.C.
158 Deer Hill Avenue
Danbury, CT 06810
203.749.5564
mfrank@cohenandwolf.com
Cell number at meeting: 203.512.1317

Additional Presenter - Daniel A. Schwartz, ABA State Delegate (Connecticut)
Shipman & Goodwin LLP
1 Constitution Plaza
Hartford, CT 06103
860.251.5038
dschwartz@goodwin.com
Cell number at meeting: 860.841.0927

10B

Executive Summary

1. Summary of the Resolution

This resolution expands existing ABA policy regarding Protection Seekers in light of the January 27, 2017 Executive Order. The resolution further calls for the reaffirmation of the guiding principles of Resolution 107F from the 2006 Midyear Meeting (2006M107F). In addition, it calls for increased funding and legislation to process and handle refugee applications. Finally, it urges Congress to pass legislation that would provide for individualized assessments of refugee and others in need of humanitarian refuge in determining their eligibility, and that they be conducted expeditiously and justly. In doing so, such legislation should mandate that otherwise eligible individuals not be barred because of national origin or religion in making such determinations.

2. Summary of the Issue that the Resolution Addresses?

It addresses the issue of how refugee applications are to be handled in light of the January 27, 2017 Executive Order or other restrictions. Existing ABA policy on refugees is expanded. It does not specifically address additional issues of the constitutionality of the Executive Order or proposed restrictions on travel for immigrants; existing ABA policy as well as other resolutions being proposed at the Midyear meeting address such issues.

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

It would call on Congress to pass legislation to address refugee applications and processing. Moreover, it would reaffirm existing policy to allow ABA leadership and others to speak with one voice on this issue.

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

None known.