RESOLVED, That the American Bar Association supports the creation of an Article I court, with both trial and appellate divisions, to adjudicate immigration cases, which should have features substantially consistent with the following guidelines:

1. Selection of Judges

   (a) A Standing Referral Committee should be created to screen and recommend candidates for judicial appointments. The Committee should include certain appellate judges and trial judges from the Article I court. Other governmental and non-governmental stakeholders would be represented on the Committee or have an opportunity to comment on candidates before they are recommended for appointment.

   (b) The Chief Trial Judge, Chief Appellate Judge, and other appellate judges should be appointed by
the President and with the advice and consent of
the U.S. Senate.

(c) The trial judges should be appointed by the Chief
Trial Judge or by the Assistant Chief Trial Judges
with the approval of the Chief Trial Judge.

2. Tenure
(a) Appellate and trial judges should have fixed
terms, which should be relatively long as in other
Article I courts (e.g., 8 to 10 years for trial judges
and 12 to 15 years for appellate judges).

3. Removal
(a) Judges may be removed by the appointing
authority only for incompetency, misconduct,
neglect of duty, malfeasance, or disability.

4. Supervision and Evaluation
(a) Each trial immigration judge would be
supervised by the Assistant Chief Trial Judge
responsible for the local court on which the judge
serves. Each appellate judge would be under the
supervision of the Chief Appellate Judge.
(b) Performance would be reviewed based on a
system using the ABA’s Guidelines for the
Evaluation of Judicial Performance and the model
for judicial performance evaluation proposed by
the Institute for Advancement of the American
Legal System.
5. Discipline

(a) Judges would be subject to a code of ethics and conduct based on the ABA Model Code of Judicial Conduct, tailored as necessary to take into account any unique requirements for the immigration judiciary.

(b) Complaints against immigration judges at the trial or appellate level would be made directly to a reviewing body established specifically for this purpose. The final decision on disciplinary action would rest with the Chief Appellate Judge as to appellate judges and the Chief Trial Judge as to trial judges. A trial judge would have the right to appeal the adverse action to the court of appeals for the circuit in which he presides, while an appellate judge could appeal to the DC Circuit.

6. Transition

(a) Existing judges would serve out the remainder of the new fixed terms, which are deemed to have begun at the time of their prior appointment to current positions, and are eligible for reappointment thereafter.

(b) The Chair of the Board of Immigration Appeals (“BIA” or “Board”) would serve as Chief Appellate Judge of the Article I court until replaced by Presidential appointment.
(c) The current members of the BIA would become the appellate judges of the Article I court and would serve out the recommended fixed terms, which would be deemed to have begun at the time of their prior appointment to the BIA. Thereafter, these judges would be eligible for reappointment by the President with the advice and consent of the Senate.

(d) The Chief Immigration Judge in Executive Office of Immigration Review (“EOIR”) would serve as Chief Trial Judge of the new Article I court until replaced by Presidential appointment.

(e) The current Assistant Chief Immigration Judges would serve as Assistant Chief Trial Judges in the Article I court until replaced by the new method of appointment.

FURTHER RESOLVED, That as an alternative to an Article I court, the American Bar Association supports the creation of an independent agency for both trial and appellate functions. Such an agency should include an Office of Immigration Hearings (“OIH”) at the trial level and a Board of Immigration Review for administrative appeals, and should have features substantially consistent with the following guidelines:

1. Selection of Judges
(a) A Standing Referral Committee should be created to screen and recommend candidates for judicial appointments. The Committee would consist of certain members of the Board and certain immigration judges. Other governmental and non-governmental stakeholders would be represented on the Committee or have an opportunity to comment on candidates before they are recommended for appointment.

(b) The Chair and members of the Board and the Chief Immigration Judge should be appointed by the President with the advice and consent of the Senate.

(c) Trial judges should selected through a competitive, merit-based appointment process, similar to the one used for Administrative Law Judges ("ALJs") but administered through the personnel office of the independent agency.
2. Tenure

(a) The Chair of the Board would be appointed for a single, relatively short term (e.g., 5 to 7 years). At the end of this term, the Chair would be eligible to continue to serve the Board as one of its members for a term of similar length.

(b) Other Board members would be appointed for fixed, renewable terms (e.g., 5 to 7 years).

(c) The Chief Immigration Judge would be appointed for a relatively short term (e.g. 5 to 7 years) and would be eligible to continue as an immigration judge at the end of this term for a new term of similar length.

(d) Other immigration judges would not be limited to fixed terms

3. Removal

(a) Members of the Board and Chief Immigration Judge would be subject to removal prior to the end of their terms by the President for inefficiency, neglect of duty or malfeasance in office.

(b) Other immigration judges would be subject to removal only for good cause after an opportunity for a hearing before the Merit Systems Protection Board (“MSPB”) under the same procedures that apply to removal of an ALJ. Any removal would be subject to judicial review.
4. Supervision and Evaluation
   (a) Immigration judges would be supervised by the Assistant Chief Immigration Judge responsible for the local court on which the judge served; each appellate judge would be supervised by the Chair of the Board.
   (b) Immigration judges would be exempt from the use of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining or removing them. Performance would be reviewed based on a system using the ABA’s Guidelines for the Evaluation of Judicial Performance and the model for judicial performance evaluation proposed by the Institute for Advancement of the American Legal System.

5. Discipline
   (a) The agency would have a separate office responsible for receiving, reviewing and investigating complaints filed against Board members and immigration judges.
   (b) The Chair of the Board and the Chief Immigration Judge would have final authority to act.
   (c) Any discipline would be subject to review by the MSPB and subsequent judicial review.