



HNBA 2021 RESOLUTION IN SUPPORT OF CREATING AN ARTICLE I UNITED STATES IMMIGRATION COURT

WHEREAS, the Hispanic National Bar Association (“HNBA”) is an association created to represent the interests of Hispanic legal professionals and the Hispanic community, acting as a collective voice for issues of common concern to its members; and

WHEREAS, the HNBA is the national voice of its legal community and Hispanics in the United States and its territories and possessions; and

WHEREAS, our current immigration court system cannot meet the standards which justice demands; and

WHEREAS, the current perception is that immigration judges are not independent, fair adjudicators, and the immigration trial and appellate courts have become so politicized that their decisions are based not on the established law but on the changing views of successive administrations as evidenced by examples of the U.S. Department of Justice issuing ruled changes limiting the ability of immigration judges to remand or reopen cases and removing their discretion to manage their own dockets by preventing them from administratively closing cases; and

WHEREAS, recent attempts by the U.S. Department of Justice to strip immigration judges of their right to unionize and decertify the National Association of Immigration Judges is another example of the lack of judicial independence given to immigration judges; and

WHEREAS, bureaucracy and inefficiency within the current immigration court system have created a backlog of over 1 million cases, with some cases not scheduled for hearings until 2024; and

WHEREAS, the immigration court system—or Executive Office for Immigration Review (EOIR)—is housed within the U.S. Department of Justice and the U.S. Attorney General heads the department and oversees immigration judges and the lawyers who respectively adjudicate and prosecute cases in immigration court; and

WHEREAS, the U.S. Attorney General is not only the lead prosecutor in immigration cases, but also appoints and oversees immigration judges, which poses an inherent conflict of interest; and

WHEREAS, immigration judges, as administrative judges, do not enjoy many of the protections that Article III judges receive, including life-tenure and independence from political appointees; and

WHEREAS, in June 2017, the Government Accountability Office (GAO) report documented EOIR case backlogs of epic size, costly and ineffective case management, and reliance on outdated technologies and reported that a majority of immigration court experts and stakeholders interviewed favored EOIR replacement with an independent Article I immigration court; and

WHEREAS, this increased judicial independence afford the immigration judiciary greater discretion in responding to fluctuations in caseload and responses to health and safety issues as was the case with the court's slow response to allow for telephonic/video hearings in response to the covid-19 pandemic; and

WHEREAS, the creation of an independent immigration court system outside the control of the U.S. Department of Justice would protect and advance America's core values of fairness and equality by safeguarding the independence and impartiality of the immigration court system, while ensuring the timely adjudication of cases.

NOW THEREFORE BE IT RESOLVED, that the HNBA supports federal legislation requiring that the courts outside of the Executive Branch and into an independent, Article I court that will bring immigration courts in line with other US courts which rely on common law as a bedrock for impartiality and equity; and

NOW THEREFORE BE IT RESOLVED, that the HNBA supports the measures suggested in the March 23, 2021 letter from Senator Kirsten Gillibrand and several other senators to Attorney General Merrick Garland as a means towards addressing the issues facing the U.S. Immigration Court system.

NOW THEREFORE BE IT FURTHER RESOLVED, that the HNBA authorizes its officers and staff to communicate this Resolution's content to other bar associations, members of the U.S. Congress, the press, and to whomever else is suited to receive the information in order to affect this Resolution.

BE IT FINALLY RESOLVED, that this resolution shall be the policy of the HNBA until it is withdrawn or modified by subsequent resolution.

CERTIFICATION

I, **Elia Diaz Yaeger**, National President of the Hispanic National Bar Association, hereby certify that the foregoing resolution was duly enacted by the Executive Committee pursuant to the authority delegated to it by a duly-noticed meeting of the Board of Governors.



Elia Diaz Yaeger
HNBA National President