

# Federal Bar Association Immigration Law Conference

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## IMMIGRATION COURT CHALLENGES

Presenters:

Hon. Lawrence O. Burman  
Secretary-Treasurer  
National Association of Immigration Judges

Hon. Amiena Khan  
Executive Vice President  
National Association of Immigration Judges

Hon. A. Ashley Tabaddor  
President  
National Association of Immigration Judges

Moderator:

Karen T. Grisez  
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# Goals for the Panel

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- Highlight Current Challenges in Immigration Court
  - for Practitioners
  - for Immigration Judges
- Some Practical or Procedural
  - Others are Substantive or Policy Related
- Discuss Potential Responses
  - What Practitioners Can Do to Help Themselves and Their Clients
  - Longer Term Policy or Structural Changes
- Q & A

# Current Challenges in Immigration Court

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- Backlogs - currently over 870,000 pending cases (330,000 more may be recalendared)
- Increased new filings by DHS - EOIR cannot control
- Docketing Issues - Case scheduling problems
  - Hearing dates move backwards or forward without warning
  - Assigned judges change

# Current Challenges in Immigration Court (cont'd)

- Elimination of docket management tools / Erosion of IJ Independence
  - Restriction on Continuances by 2018 AG Decision (Matter of L-A-B-R-)
  - Withdrawal of Authority for Admin Closure by 2018 AG Decision (Matter of Castro-Tum)
  - Similar Removal by AG in 2018 of Authority to Dismiss or Terminate NTA unless for a reason specifically authorized by regulations or where charges in NTA not sustained (Matter of SOG and FDB)
  
- Docket Changes by EOIR
  - Judge reassignments to different dockets or courts
  - Prioritization of categories of cases

# Performance-related Pressures on Immigration Judges

- 2018 Case Production Guidelines from EOIR
  - Speed more important than fairness
  - Evaluations focus on Case Completions rather than good decisions
- Probationary Period for new IJs
- Potential reassignment of individual cases to other judges by HQ in an effort to control outcomes
- Concern about AG Self-Certification in addition to BIA Precedent

# Other Concerns

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- Need for Diversity on the Immigration Court Bench
- Restrictions on IJ participations in trainings, model hearing programs, stakeholder meetings
- Public advocacy by EOIR (Myth vs. Fact Sheet)

# Possible Solutions

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## A. Short Term

- What Practitioners Can Do Better in Light of These Challenges?
- What Tools Do Judges Still Have at Their Disposal?

## B. Longer Term

- Independent Article I Court

Questions???

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