

REPORT ON LEGISLATION

H.R. 1815
S.845

Rep. Espailat
Sen. Blumenthal

TO AMEND section 287 of the Immigration and Nationality Act to limit immigration enforcement actions at sensitive locations, to clarify the powers of immigration officers at sensitive locations, and for other purposes.

Protecting Sensitive Locations Act

THESE BILLS ARE APPROVED

The New York City Bar Association supports passage of H.R. 1815 and S.845 (the “Protecting Sensitive Locations Act”). The bills would expand the definition of “sensitive locations” to include courthouses, among other state and local public safety implicated locations. If successful, the Protecting Sensitive Locations Act would require ICE to demonstrate “exigent circumstances” for conducting civil arrests at state courthouses.¹ Both bills would amend Section 287 of the Immigration and Nationality Act (8 U.S.C. 1357) to codify what locations are “sensitive” and expand Department of Homeland Security’s definitions of “sensitive locations” to include, *inter alia*, domestic violence shelters, rape crisis centers, family justice centers, Congressional district offices, public assistance offices, Social Security offices and Department of Motor Vehicles offices. The bills specifically designate federal, state and local courthouses as sensitive locations, along with probation offices and the office of an individual’s legal counsel, and any physical space within 1,000 feet of all sensitive locations.

The bills also provide consequences for violating the requirements: if an immigration enforcement action is conducted in a designated sensitive location without exigent circumstances and prior approval, then “no information resulting from the enforcement action may be entered into the record or received into evidence in a removal proceeding resulting from the enforcement action,” and an individual “who is the subject of such removal proceeding may file a motion for the immediate termination of the removal proceeding.”

¹ See H.R. 1815, available at <https://www.congress.gov/bill/115th-congress/house-bill/1815?q=%7B%22search%22%3A%5B%22HR+1815%22%5D%7D&r=1> and S. 845, available at <https://www.congress.gov/bill/115th-congress/senate-bill/845?q=%7B%22search%22%3A%5B%22S+845%22%5D%7D&r=1>.

In August 2017, the American Bar Association’s House of Delegates passed a resolution in support of the bills, describing this as an important “access to justice” issue.²

The practice of conducting immigration enforcement activity in a courthouse interferes with the ability of our judicial system to ensure access to justice and due process and to achieve community-based public safety goals. Allowing all people, regardless of immigration status, to avail themselves of judicial relief free from the fear of Enforcement Agents, will not only assist individuals needing aid and protection, but will also benefit and support our diverse communities. This designation will further enhance access to justice in communities that often need it the most.

Therefore, we respectfully urge Congress to amend Section 287 of the Immigration and Nationality Act to codify the Sensitive Locations Policy to include courthouses as a sensitive location therein.

Civil Court Committee
Council on Judicial Administration
Criminal Courts Committee
Criminal Justice Operations Committee
Domestic Violence Committee
Family Court and Family Law Committee
Immigration and Nationality Law Committee
Pro Bono and Legal Services Committee
State Courts of Superior Jurisdiction Committee
Women in the Courts Committee

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² See ABA House of Delegates Resolution 10C (and Report in support of resolution), available at https://www.americanbar.org/news/reporter_resources/annual-meeting-2017/house-of-delegates-resolutions/10c.html. The New York State Bar House of Delegates passed a similar resolution on January 26, 2018. The New York City Bar Association fully supports the treatment of courthouses as “sensitive locations” but urges that “exigent circumstances” have a rigorous definition and require a transparent process in order to ensure it is an effective policy.