

AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

AUGUST 14-15, 2017

RESOLUTION

RESOLVED, That the American Bar Association, in recognition of the critical importance of the fair and unfettered administration of justice and in order to protect the right of all persons to access to federal, state, local, territorial and tribal courthouses, urges Congress to amend Section 287 of the Immigration and Nationality Act to expand and codify Department of Homeland Security guidelines regarding immigration enforcement actions to include courthouses as “sensitive locations” in which immigration enforcement actions may only be taken upon a showing of exigent circumstances and with prior approval of a designated supervisory official.

FURTHER RESOLVED, That the American Bar Association urges U.S. Immigration and Customs Enforcement and Border Protection to revise the existing guidelines on enforcement actions in “sensitive locations” to include federal, state, local, territorial and tribal courthouses in which immigration enforcement actions may only be taken upon a showing of exigent circumstances and with prior approval of a designated official and to do so without awaiting congressional action.

REPORT

I. Introduction

The American Bar Association (ABA) is committed to supporting everyone's right to the fair and unfettered access to justice. However, in recent months, the U.S. Department of Homeland Security (DHS), acting principally through the Immigration and Customs Enforcement (ICE), has significantly increased enforcement actions in and around our courthouses. This practice interferes with the right of victims of crime, and persons aggrieved by civil wrongs, to access justice. To the extent that these enforcement practices prevent the fair adjudication of criminal cases in which undocumented persons are defendants, they deny such persons their constitutional right to defend themselves in criminal cases. These practices impact some of our most vulnerable populations and interfere with the proper administration of justice. They chill undocumented victims and defendants from seeking justice in court and deter witnesses from responding to legal process, frightened by the knowledge that they run the risk of being detained and deported should they participate in our system of justice, comply with lawful process requiring their participation, or dare enter an American courthouse.

This Resolution seeks to address currently unrestrained and unguided immigration enforcement practices in and around our courthouses by recognizing courthouses as “sensitive locations,” places in which enforcement actions—although certainly permissible—should only be undertaken with circumspection and in the event of exigency. This Resolution would limit immigration enforcement in our courthouses only to those situations where there is a showing of exigent circumstances, and upon the prior approval from a previously designated, supervisory official.

II. Current Immigration Enforcement Regulations Do Not Designate Courthouses As “Sensitive Locations” And Provide No Guidance Or Restriction On When An Immigration Enforcement Officer May Make Arrests In A Courthouse

Current ICE policy limits immigration enforcement actions at “sensitive locations,” but courthouses are not a location deemed worthy of such protection. Sensitive locations, currently, are designated to include the following:

- Schools, such as known and licensed daycares, pre-schools and other early learning programs; primary schools; secondary schools; post-secondary schools up to and including colleges and universities; as well as scholastic or education-related activities or events, and school bus stops that are marked and/or known to the officer, during periods when school children are present at the stop;
- Medical treatment and health care facilities, such as hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities;
- Places of worship, such as churches, synagogues, mosques, and temples;
- Religious or civil ceremonies or observances, such as funerals and weddings; and
- During a public demonstration, such as a march, rally, or parade.¹

¹ Memorandum from ICE Director John Morton, Enforcement Actions at or Focused on Sensitive Locations (Oct. 24, 2011), <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

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Where “exigent circumstances” are present, ICE policy allows for enforcement actions at sensitive locations.² Exigent circumstances are defined as: 1) if the action involves a national security or terrorism matter, 2) there is an imminent risk of death, violence, or physical harm to any person or property; 3) the action involves the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or anyone that presents an imminent danger to public safety; or 4) there is an imminent risk of destruction of evidence material to an ongoing criminal case.³

U.S. Customs and Border Patrol (CBP) policy is similar, except that CBP does not require the presence of “exigent circumstances” to justify enforcement actions at designated sensitive locations, officers merely being “expected to exercise sound judgment and common sense while taking appropriate action”.⁴

Notably, neither policy designates courthouses as sensitive locations. Accordingly, under either ICE or CBP policy, there is no limitation—or guidance—on when an ICE or CBP enforcement officer may make an arrest in any American courthouse.

III. The Escalation Of Immigration Enforcement Actions in Our Courthouses

In March 2014, the Washington Legislative Office of the American Civil Liberties Union (ACLU) recommended that DHS to issue new guidelines that specified courthouses and their premises as sensitive locations.⁵ The ACLU cited “countless cases” from across the country in which ICE agents were documented “interrogating, detaining, and even deporting individuals” at courthouses.⁶ It went on to list myriad purposes for which these individuals were at a courthouse, including to obtain a domestic violence restraining order, pay for traffic tickets, appear for court hearings, meet with interpreters, get married, and accompany friends or family on their court visits. The ACLU was concerned that pursuing enforcement actions at courthouses obstructs access to the courts, endangers public safety, and in turn “runs counter to ICE’s stated priorities.”⁷

More recently, reports of enforcement actions at courthouses have been on the rise. In April 2017 alone, the Massachusetts Committee for Public Counsel Services Immigration Impact Unit received reports of almost 40 people who had been arrested by ICE agents in Massachusetts while on the courthouse steps, getting out of their cars to enter the courthouse, or inside courthouses.⁸ Massachusetts attorneys have observed that among those persons being arrested in

² *Id.*, at pp. 2-3

³ *Id.*

⁴ Memorandum from David Aguilar, Deputy Commissioner of Customs and Border Protection, “U.S. Customs and Border Protection Enforcement Actions at or Near Certain Community Locations,” Jan. 18, 2013, <https://foiarr.cbp.gov/streamingWord.asp?i=1251>.

⁵ American Civil Liberties Union - Washington Legislative Office, “ACLU Recommendations to DHS on Sensitive Locations Enforcement” (March 2014), <https://www.aclu.org/other/aclu-recommendations-dhs-sensitive-locations-enforcement>.

⁶ *Id.*

⁷ *Id.*

⁸ Maria Cramer, *ICE courthouse arrests worry attorneys, prosecutors*, BOSTON GLOBE, June 16, 2017, <https://www.bostonglobe.com/metro/2017/06/15/ice-arrests-and-around-local-courthouses-worry-lawyers-prosecutors/xxFH5vVJnMeggQa0NMi8gI/story.html>.

courthouses are individuals who are not even the subject of a detainer order.⁹ Other prominent reports of courthouse arrests include instances of ICE targeting asylum seekers (Maine),¹⁰ agricultural workers (Vermont),¹¹ victims of domestic violence (Texas),¹² and recipients of Deferred Action for Childhood Arrivals (Arizona).¹³ In February, 2017, ICE agents appeared in both the arraignment department and misdemeanor courtrooms at the New York County Criminal Courthouse in Manhattan, arresting at least one individual.¹⁴ Videos recorded in late April and early May in Denver showed two ICE arrests, one in the vestibule of the courtroom and the other in the plaza outside.¹⁵ One of the men arrested was at court for a misdemeanor traffic violation, and both were being held at detention centers at the time of reporting. One man leaving a Pasadena, California courtroom in February was rushed and detained by four ICE agents as soon as he entered the hallway.¹⁶ Similar reports of courthouse arrests have come in from Colorado, Oregon,¹⁷ and Washington.¹⁸ Victims of domestic abuse actually in the process of seeking protection from the courts have been arrested¹⁹ and in April, 2017, DHS formally announced its intention to continue pursuing enforcement actions at courthouses, even against individuals who are at court as witnesses or victims of crime.²⁰

⁹ Of note, the Massachusetts Supreme Judicial Court ruled on July 24, 2017 that it is illegal under state law for law enforcement officials, including court officers, to hold individuals on ICE detainers. *Lunn v. Commonwealth*, SJC No. 12276, slip op. at ___ (July 24, 2017). See also Kelly Cohen, *Massachusetts Supreme Judicial Court rules ICE detainer requests are illegal*. WASH. EXAMINER, July 24, 2017, <http://www.washingtonexaminer.com/massachusetts-supreme-judicial-court-rules-ice-detainer-requests-are-illegal/article/2629492>.

¹⁰ Danielle Waugh, *Attorney: ICE Arrests Asylum Seeker in Maine Courthouse*, NECN, Apr. 6, 2017, <http://www.necn.com/news/new-england/ICE-Courtroom-Arrest-Portland-Maine-418544273.html>.

¹¹ Kathleen Masterson, *ICE Agents Arrest Dairy Worker Outside Burlington Courthouse*, VERMONT PUBLIC RADIO, Mar. 16, 2017, <http://digital.vpr.net/post/ice-agents-arrest-dairy-worker-en-route-burlington-courthouse#stream/0>.

¹² *Undocumented transgender woman filing domestic violence claim arrested at El Paso courthouse by ICE, official says*, CBS NEWS, Feb. 16, 2017, <http://www.cbsnews.com/news/undocumented-transgender-woman-filing-domestic-violence-claim-arrested-at-el-paso-courthouse-by-ice-official-says/>.

¹³ James Queally, *ICE makes arrests at courthouses, sparking backlash from attorneys and state supreme court*, LOS ANGELES TIMES, Mar. 16, 2017, <http://www.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html>.

¹⁴ Will Bredderman, *ICE Agents Arresting Undocumented Immigrants in NYC Misdemeanor Court, Advocates Report*, OBSERVER, February 21, 2017, <http://observer.com/2017/02/immigration-agents-arresting-undocumented-immigrants-in-nyc-misdemeanor-court-advocates-report/>.

¹⁵ Erica Meltzer, *New videos show ICE arresting immigrants at Denver courthouse, despite local leaders' requests*, DENVERITE, May 9, 2017, <https://www.denverite.com/new-videos-show-ice-arresting-immigrants-denver-county-court-something-local-officials-asked-not-35314/>.

¹⁶ James Queally, *ICE agents make arrests at courthouses, sparking backlash from attorneys and state supreme court*, LOS ANGELES TIMES, March 16, 2017, <http://www.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html>.

¹⁷ *Id.*

¹⁸ Gene Johnson, *Washington justice to feds: Keep immigration agents away*, ASSOCIATED PRESS., March 22, 2017, <https://www.apnews.com/5622e73e5f014f2d8822f8d5f200358a/Washington-justice-to-feds:-Keep-immigration-agents-away>.

¹⁹ *Id.*

²⁰ Devlin Barrett, *DHS: Immigration agents may arrest crime victims, witnesses, at courthouses*, WASH. POST., April 4, 2017, http://www.washingtonpost.com/world/national-security/dhs-immigration-agents-may-arrest-crime-victims-witnesses-at-courthouses/2017/04/04/3956e6d8-196d-11e7-9887-1a5314b56a08_story.html?utm_term=.976562fa9d9b.

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These actions by ICE and CBP agents have sparked a backlash among state and federal prosecutors, judges, and politicians. Of particular concern for prosecutors are the chilling effect that such actions can have within a community, leading to less cooperation between immigrants and law enforcement. San Francisco District Attorney George Gascon called the effect “devastating.”²¹ Denver City Attorney Kristin Bronson has reported that courthouse detentions have already made a significant impact, leading to the dismissal of four separate domestic violence prosecutions because the witnesses feared facing deportation should they testify.²² In May, Orange County Superior Court Presiding Judge Charles Margines was so concerned that he arranged a meeting with local ICE agents to determine the exact bounds of the policy and what agents will or won’t do in local courthouses, later communicating the information to courthouse staff.²³ The chief justices of both the California and Washington State Supreme Courts have separately sent letters to DHS, urging an end to enforcement actions at courthouses.²⁴

California Chief Justice Tani G. Cantil-Sakauye wrote that “courthouses serve as a vital forum for ensuring access to justice and protecting public safety.”²⁵ Addressing the letter to both Attorney General Jeff Sessions and Secretary of Homeland Security John Kelly, the Chief Justice referenced the need to protect and ensure justice for “crime victims, victims of sexual abuse and domestic violence, witnesses to crimes who are aiding law enforcement, limited-English speakers, unrepresented litigants, and children and families,” and suggested that ICE’s policy of pursuing enforcement actions at courthouses amounts to “stalking courthouses.”²⁶ The letter was met with emphatic support from City Attorney of San Francisco Dennis Herrera.²⁷ In response, Sessions and Kelly wrote that sanctuary policies, such as those enacted by the State of California and many counties and cities therein, “prohibit or hinder ICE from enforcing immigration law” and have necessitated the courthouse detentions.²⁸ Sessions and Kelly also cited the fact that courthouse visitors are screened upon entry as further justification for the policy, reducing safety risks for the arresting officers.²⁹ But as the California Chief Justice stated in her remarks to the Section of Litigation Annual Conference in San Francisco on May 3, 2017, to respect the

²¹ *Id.*

²² *Id.*

²³ Jordan Graham, *Some Orange County judges worry ICE presence might scare undocumented immigrants away from court*, ORANGE COUNTY REGISTER., May 8, 2017, <http://www.ocregister.com/2017/05/08/some-orange-county-judges-court-workers-worry-that-courthouse-presence-of-immigration-agents-is-steering-some-people-away/>.

²⁴ Johnson, *supra* note 8.

²⁵ Letter from Tani G. Cantil-Sakauye, Chief Justice, Supreme Court of Cal., to Jeff Sessions, Attorney General, U.S. Dep’t of Just. and John F. Kelly, Sec’y, U.S. Dep’t of Homeland Security (March 16, 2017), <http://newsroom.courts.ca.gov/news/chief-justice-cantil-sakauye-objects-to-immigration-enforcement-tactics-at-california-courthouses>.

²⁶ *Id.*

²⁷ City Attorney of San Francisco, Statement in support of Chief Justice Cantil-Sakauye’s request that ICE refrain from arrests at courthouses (April 3, 2017), <https://www.sfcityattorney.org/2017/04/03/statement-support-chief-justice-cantil-sakauyes-request-ice-refrain-arrests-courthouses/>.

²⁸ Letter from Jeff Sessions, Attorney General, U.S. Dep’t of Just. and John F. Kelly, Sec’y, U.S. Dep’t of Homeland Security to Tani G. Cantil-Sakauye, Chief Justice, Supreme Court of Cal. (March 29, 2017), <http://apps.washingtonpost.com/g/documents/national/attorney-general-and-homeland-security-secretary-defend-immigration-arrests-at-courthouses/2394/>; Will Racke, *Department of Homeland Security: Courthouse arrests are necessary because of sanctuary city policies*, DAILY SIGNAL, April 5, 2017, <http://dailysignal.com/2017/04/05/department-of-homeland-security-courthouse-arrests-are-necessary-because-of-sanctuary-city-policies/>.

²⁹ *Id.*

sensitivity of courthouses is not to question the legitimate role of ICE and CBP in enforcement of the nation's immigration laws. Respect for the sensitivity of courthouses acknowledges that courts encourage “the vulnerable to come to our courthouses for help,” and recognizes that the fear of arrests at courthouses detracts from public trust in our institutions, disrupts court activities and negatively impacts the lives of those seeking justice.³⁰

State and federal legislators around the country have begun to take action to ban courthouse detentions. In Rhode Island, State Representative Jean Philippe Barros has co-sponsored a bill barring “schools, churches, hospitals, and courthouses from allowing immigration arrests.”³¹ Legislators in California, Illinois, and Pennsylvania have all proposed similar legislation, even extending the protection to workplaces in one California version.³² Federally, the “Protecting Sensitive Locations Act” was introduced in the House of Representatives on March 30, 2017.³³ A parallel version of the bill was introduced in the Senate on April 5.³⁴

IV. The Protecting Sensitive Locations Act

The Protecting Sensitive Locations Act was introduced in the House of Representatives as House Bill 1815 on March 20, 2017. The bill was introduced by a total of twenty-five cosponsors from fourteen states: Arizona, California, Colorado, Florida, Illinois, Massachusetts, Minnesota, New York, Oregon, Pennsylvania, Vermont, Virginia, Wisconsin, and Texas, as well as the District of Columbia. As of July 11, seventeen additional cosponsors have joined the legislation. House Bill 1815 has been referred to the House Committee on the Judiciary. In the Senate, a parallel version of the bill was introduced on April 5, 2017. Senate Bill 845 was introduced with eleven cosponsors hailing from nine states: Senators Blumenthal (CT), Hirono (HI), Franken (MN), Kaine (VA), Merkley (OR), Gillibrand (NY), Harris (CA), Markey (MA), Booker (NJ), Warren (MA), and Wyden (OR). As of July 11, four additional cosponsors have joined: Senators Cortez Masto (NV), Murphy (CT), Udall (NM), and Heinrich (NM). Senate Bill 845 was read twice and referred to the Senate Committee on the Judiciary.³⁵

While the two versions of the Protecting Sensitive Locations Act have some differences, they largely mirror one another. Both bills would amend Section 827 of the Immigration and Nationality Act (8 U.S.C. 1357)³⁶ by adding language to codify and expand upon existing DHS guidelines regarding sensitive locations. One example of expansion of existing guidelines is that the bill would require both exigent circumstances *and* prior approval before an “enforcement

³⁰ *The Mercury News*, Commentary, “*Cantil-Sakauye: Courthouse Isn’t Place for Immigration Enforcement*,” April 21, 2017, available at <http://www.mercurynews.com/2017/04/21/cantil-sakauye-courthouse-isnt-place-for-immigration-enforcement/>.

³¹ Tim Henderson, *Cities, states move to calm fear of deportation*, STATELINE, May 10, 2017, <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/05/10/cities-states-move-to-calm-fear-of-deportation>.

³² *Id.*

³³ Katie Mettler, *Democrats want to limit ICE power by banning agents from courthouses, bus stops*, WASH. POST, April 3, 2017, <https://www.washingtonpost.com/news/morning-mix/wp/2017/04/03/democrats-want-to-limit-ice-power-by-banning-agents-from-courthouses-bus-stops/>.

³⁴ See Protecting Sensitive Locations Act, S. 845, 115th Cong. (2017); Protecting Sensitive Locations Act, H.R. 1815, 115th Cong. (2017).

³⁵ See H.R. 1815; S. 845. Bill activity recorded in the Congressional Record details additions of cosponsors.

³⁶ H.R. 1815, § 2; S. 845, § 2.

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action” could be taken at a sensitive location.³⁷ While the House version’s definition of “enforcement actions” is consistent with existing guidelines (“an arrest, interview, search, or surveillance for the purposes of immigration enforcement”),³⁸ the Senate bill expands upon the definition, including any “apprehension, arrest, interview, request for identification, search, or surveillance for the purposes of immigration enforcement.”³⁹

The heart of each bill—beyond codifying a policy that as of now exists only in agency guidelines—is the expansion of what locations qualify as “sensitive.” Many of the locations are already covered by the current guidelines (although the bills expressly protect any physical space *within 1,000 feet* of each location, which would be new).⁴⁰ These include: schools, bus stops, and scholastic-related activities;⁴¹ medical treatment or health care facilities;⁴² places of worship and civil or religious ceremonies, such as funerals or weddings;⁴³ and public demonstrations.⁴⁴ This, however, is where the current guidelines end. Going beyond them, each version of the Protecting Sensitive Locations Act includes language to cover organizations that provide emergency services, food, and shelter, including domestic violence shelters, rape crisis centers, and family justice centers, though the language of each bill differs.⁴⁵ The House version also explicitly lists various federal properties, including Congressional district offices,⁴⁶ public assistance offices,⁴⁷ Social Security offices,⁴⁸ and the departments of motor vehicles.⁴⁹

Each bill also designates federal, state, and local courthouses as sensitive locations. House Bill 1815 reads, “Any Federal, State, or local courthouse, including the office of an individual’s legal counsel or representative, and a probation office.”⁵⁰ Senate Bill 845 expands the definition slightly, including “any Federal, State, or local courthouse, including the office of an individual’s legal counsel or representative, and a probation, parole, or supervised release office.”⁵¹ As with each of the other designated locations, this includes any physical space within 1,000 feet of any courthouse.

As a remedy, the bills also mandate consequences for a violation of the requirements, the language of which is exactly the same in each version. Should immigration enforcement agents violate the policy - that is, conduct an enforcement action at any of the designated sensitive locations without both 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

³⁷ H.R. 1815, §§ 2(i)(2)(A)(i)-(ii); S. 845, §§ 2(i)(2)(A)(i)-(ii).

³⁸ H.R. 1815, § 2(i)(7)(B).

³⁹ S. 845, § 2(i)(1)(B)(i).

⁴⁰ H.R. 1815, § 2(i)(7)(E); S. 845, § 2(i)(1)(E).

⁴¹ H.R. 1815, §§ 2(i)(7)(E)(ii)-(iv); S. 845, §§ 2(i)(1)(E)(ii)-(iv).

⁴² H.R. 1815, § 2(i)(7)(E)(i); S. 845, § 2(i)(1)(E)(i).

⁴³ H.R. 1815, §§ 2(i)(7)(E)(vii)-(viii); S. 845, §§ 2(i)(1)(E)(vi), (viii).

⁴⁴ H.R. 1815, § 2(i)(7)(E)(ix); S. 845, § 2(i)(1)(E)(ix).

⁴⁵ See H.R. 1815, §§ 2(i)(7)(E)(v)-(vi); S. 845, §§ 2(i)(1)(E)(v), (x).

⁴⁶ H.R. 1815, § 2(i)(7)(E)(xi).

⁴⁷ H.R. 1815, § 2(i)(7)(E)(xii).

⁴⁸ H.R. 1815, § 2(i)(7)(E)(xiii).

⁴⁹ H.R. 1815, § 2(i)(7)(E)(xiv).

⁵⁰ H.R. 1815, § 2(i)(7)(E)(x).

⁵¹ S. 845, § 2(i)(1)(E)(vii).

removal proceeding resulting from the enforcement action.”⁵² Furthermore, the individual “who is the subject of such removal proceeding may file a motion for the immediate termination of the removal proceeding.”⁵³

It should be noted that this Resolution also urges ICE and CBP to revise their sensitive locations policies similarly, and independent of any action that might be taken by Congress, in order to ensure all persons’ fair and unfettered access to justice.

Conclusion

For the reasons set forth above, the ABA urges Congress to revise and codify Department of Homeland Security guidelines regarding immigration enforcement actions, to include courthouses as “sensitive locations” in which immigration enforcement actions may only be taken upon a showing of exigent circumstances and with prior approval of a designated supervisory official. The ABA also calls upon the U.S. Immigration and Customs Enforcement and Border Protection to revise their own existing guidelines on enforcement actions in “sensitive locations” to include federal, state, local, territorial and tribal courthouses and to do so without awaiting congressional action.

Respectfully submitted,

Jeffrey N. Catalano
President, Massachusetts Bar Association

August 2017

⁵² H.R. 1815, § 2(i)(4)(A); S. 845, § 2(i)(2)(C)(i).

⁵³ H.R. 1815, § 2(i)(4)(B); S. 845, § 2(i)(2)(C)(ii).

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GENERAL INFORMATION FORM

Submitting Entities: Massachusetts Bar Association, ABA Criminal Justice Section

Submitted By: Jeffrey N. Catalano, President, Massachusetts Bar Association;
Matthew Redle, Chair, ABA Criminal Justice Section
Laurence Pulgram, Chair, ABA Section of Litigation

1. Summary of Resolution(s).

This resolution advocates for the revision of Department of Homeland Security guidelines regarding immigration enforcement actions so as to include courthouses as “sensitive locations” in which immigration enforcement actions may only be taken upon a showing of exigent circumstances and with prior approval of a designated supervisory official. This resolution also advocates for U.S. Immigration and Customs Enforcement and Border Protection to revise the existing guidelines on enforcement actions in “sensitive locations” to include federal, state, local, territorial and tribal courthouses in which immigration enforcement actions may only be taken upon a showing of exigent circumstances and with prior approval of a designative official and to do so without awaiting congressional action.

2. Approval by Submitting Entity.

This resolution was passed by the Massachusetts Bar and the ABA Criminal Justice Council in August 2017.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this resolution and how would they be affected by its adoption?

The following Association policy is relevant but none would be affected by the adoption of this resolution:

- | | |
|-----------------|---|
| 2002 (AY) 115B: | <u>Protection of Rights of Immigration Detainees</u>
Opposing incommunicado detention of foreign nationals and urging immigration authorities to adopt certain detention standards, including access to counsel and legal information. |
| 2006 (MY) 107A: | <u>Due Process Right to Counsel in Immigration Related Matters:</u>
Supporting the due process right to counsel for all persons in removal proceedings, and the availability of legal |

representation for all non-citizens in immigration-related matters.

2006 (MY) 107B:

Immigration Reform

Supporting a regulated, orderly and safe system of immigration and the need for an effective and credible immigration enforcement strategy, including one that respects domestic and international legal norms.

2006 (MY) 107C:

Due Process and Judicial Review in Immigration Related Matters:

Urging an administrative agency structure that will provide all non-citizens with due process of law and in the conduct of their hearings or appeals; supporting the neutrality and independence of immigration judges so that such judges and agencies are not subject to the control of any executive cabinet officer.

2006 (MY) 107D:

Administration of Immigration Laws

Supporting a system for administering our immigration laws that is transparent, user-friendly, accessible, fair and efficient, and that has sufficient resources to carry out its function in a timely manner.

2006 (MY) 107E:

Detention in Immigration Removal Proceedings

Opposing the detention of non-citizens in removal proceedings except in extraordinary circumstances; supporting the use of humane alternatives to detention that are the least restrictive necessary to ensure appearance at immigration proceedings.

2006 (MY) 107G:

Crime Victims in Immigration Related Matters

Supporting avenues for lawful immigration status for victims of human trafficking and other related crimes; opposing the apprehension of victims of human trafficking and other related crimes.

2008 (MY) 111B:

Immigration Detention Standards

Supporting the issuance of federal regulations that codify the DHS-ICE National Detention Standards, and the improvement, periodic review and increased oversight of the standards to ensure that detained non-citizens and their families are treated humanely and have effective access to counsel and to the legal process.

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- 2009 (MY) 101C: Due Process and Access to Counsel in Immigration Enforcement Actions
Supporting legislation and/or administrative standards to ensure due process and access to appropriate legal assistance to persons arrested or detained in connection with immigration enforcement actions.
- 2010 (MY) 102G: Non-Partisan Attorneys in the Department of Justice
Urging the President and the Attorney General to ensure that lawyers in the Department of Justice, and leaders of state, local and territorial legal offices, do not make decisions concerning investigation or proceedings based upon partisan political interests and do not perceive that they will be rewarded for, or punished for not, making a decision based upon partisan political interests.
- 2017 (MY) 10C: Urges the President to Withdraw Executive Order 13769
Urging that the Executive Branch, while fulfilling its responsibilities to secure the nation’s borders, take care that any Executive Orders regarding border security, immigration enforcement, and terrorism respect the bounds of the U.S. Constitution and facilitate a transparent, accessible, fair, and efficient system of administering the immigration laws and policies of the United States.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

This resolution is the result of recent well-documented reports of a serious escalation of incidents in which persons have been arrested by DHS enforcement officers in courthouses. In order for the ABA and its members to advocate on behalf of this issue, we cannot wait until Midyear 2018 for the House of Delegates to meet again.

6. Status of Legislation.

Two parallel pieces of legislation, together called “The Protecting Sensitive Locations Act,” are currently pending. House Bill 1815 has been referred to the House Committee on the Judiciary. Senate Bill House Bill 845 has been referred to the Senate Committee on the Judiciary. These bills are discussed in Section IV of the Report.

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7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

This resolution will be used by the Government Affairs Office in its lobbying efforts, as well as by ABA members who wish to engage with members of Congress and the Executive Branch to advocate on behalf of the interests expressed in this resolution.

8. Cost to the Association. (Both direct and indirect costs)

None.

9. Disclosure of Interest. (If applicable)

N/A

10. Referrals. Concurrent with the filing of this resolution and Report with the House of Delegates, the Criminal Justice Section is sending the resolution and report to the following entities and/or interested groups:

Commission on Veteran's Legal Services
Legal Aid & Indigent Defense
Commission on Disability Rights
Special Committee on Hispanic Legal Rights & Responsibilities
Commission on Homelessness and Poverty
Center for Human Rights
Commission on Immigration
Racial & Ethnic Diversity
Racial & Ethnic Justice
Youth at Risk
Young Lawyer's Division
Civil Rights and Social Justice
Government and Public Sector Lawyers
International Law
Federal Trial Judges
State Trial Judges
Law Practice Division
Science & Technology
Health Law
Litigation

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

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

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EXECUTIVE SUMMARY

1. Summary of the Resolution

This Resolution advocates for the amendment of Section 287 of the Immigration and Nationality Act to expand and codify Department of Homeland Security guidelines regarding immigration enforcement actions, to include courthouses as “sensitive locations” in which immigration enforcement actions may only be taken upon a showing of exigent circumstances and with prior approval of a designated supervisory official. The Resolution also urges U.S. Immigration and Customs Enforcement and Customs and Border Patrol to revise existing guidelines on enforcement actions in “sensitive locations” to include federal, state, local, territorial and tribal courthouses, in which immigration enforcement actions may only be taken upon a showing of exigent circumstances and with prior approval of a designative official, and to do so without awaiting congressional action.

2. Summary of the Issue that the Resolution Addresses

This Resolution addresses the current state of unrestrained and unguided immigration enforcement practices taking place in our courthouses, by urging Congress and the Department of Homeland Security to recognize courthouses as “sensitive locations” in which enforcement actions should only be undertaken where there is a showing of exigent circumstances and upon the prior approval from a previously designated, supervisory official.

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

This resolution will be used by the Government Affairs Office in its lobbying efforts, as well as by ABA members who wish to engage with members of Congress and the Executive Branch to advocate on behalf of the interests expressed in this resolution.

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

None known.