

August 4, 2015

RE: **Vote NO on the “Stop Sanctuary Cities Act” (S. 1814)**

Dear Senator:

On behalf of the 139 undersigned national, state, and local organizations, we write to express our strong opposition to the “Stop Sanctuary Cities Act” (S. 1814), introduced by Senators Vitter, Flake, and McCain. If enacted into law, S. 1814 would mandate that all state and local law enforcement agencies (“LEAs”) comply with all Homeland Security (“DHS”) immigration detainer requests, regardless of the constitutionality or validity of the detainers. At the same time S. 1814 would do nothing to solve the constitutional defects with DHS detainer requests that have led multiple federal courts to hold localities financially liable for violating the Constitution when they detain individuals on that basis. As a result, S. 1814 forces local LEAs into a Catch-22 position: either violate the Constitution and incur liability for unlawfully detaining individuals, or lose federal funding for following the Constitution and honoring community trust.

S. 1814 threatens states and localities with revocation of federal funding under the Justice Department’s State Criminal Alien Assistance Program (“SCAAP”) and Edward Byrne Memorial Justice Assistance Grant Program (“Byrne/JAG”) unless these jurisdictions comply with all DHS detainer requests. S. 1814 seeks to overturn local policies adopted by over 300 jurisdictions across the country that have chosen, as a matter of constitutional law and sound public policy, not to hold individuals beyond their release date on the mere basis of a DHS detainer request. These jurisdictions include cities and counties, large and small. One half of all states has a jurisdiction with a limited detainer policy including Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Virginia, Washington, Wisconsin, and the District of Columbia.¹

I. Limited detainer policies do not create “sanctuary” zones free from immigration enforcement.

The term “sanctuary” cities creates the false perception that some areas in the country are free from immigration enforcement. That is simply not true. DHS conducts immigration enforcement throughout the country, and DHS is immediately notified by LEAs of every single individual who is taken into state or local custody, through the automatic receipt of fingerprints. Importantly, none of the limited detainer policies shields anyone who is arrested and booked into state or local custody, from DHS.

While the sponsors of S. 1814 attempt to financially punish so-called “sanctuary” cities, their legislation targets over 300 localities – most of which expressly do not identify as “sanctuary” cities. Indeed, many sheriffs who established limited detainer policies strenuously object to the notion that upholding their sworn duty to adhere to the Constitution, and to require

¹ Immigrant Legal Resource Center Map, “Immigration Enforcement,” available at <http://www.ilrc.org/enforcement>.

DHS to get a judicial warrant as all other law enforcement agencies are required to do, means that they have a “sanctuary” policy. Far from being “sanctuary” zones, these jurisdictions have adopted local policies that reflect the careful balancing of interests by local officials who understand the particular needs and priorities in their communities. These localities have chosen to limit their participation in controversial DHS immigration enforcement practices that have caused countless unlawful detentions,² invited racial profiling,³ torn apart hundreds of thousands of families,⁴ and deterred immigrants from calling the police even if they had witnessed or been victimized by crime.⁵

II. S. 1814 is unconstitutional as it attempts to mandate state and local compliance with DHS detainer requests, which have been found by multiple federal courts to violate the Fourth Amendment.

For years, DHS has used immigration detainers to request extended detention by LEAs of individuals in custody based on mere suspicion of unlawful immigration status, disregarding the constitutional requirements of the Fourth Amendment. In addition, DHS issues detainer requests without any judicial approval or review. In recent years, multiple federal courts have found that state or local LEAs and/or officials may be held liable for their role in causing extended detentions in violation of the Fourth Amendment.⁶ In 2014, in response to a series of court decisions holding DHS and local LEAs liable for detaining people beyond their release times for immigration enforcement purposes, hundreds of LEAs across the country limited the circumstances under which they would enforce DHS detainer requests. Many of these localities adopted policies permitting compliance with an immigration detainer only if it is accompanied by a judicial warrant.

In presenting S. 1814, Senators Vitter and Flake have ignored the growing body of court decisions that affirm the constitutional deficiencies inherent in immigration detainers. Rather, the senators have chosen to foist the unconstitutional practice of DHS detainers onto more than 300 localities that responsibly limited compliance with detainers. Ultimately, S. 1814 fails to

² Julia Preston, “Immigration Crackdown Also Snares Americans,” *New York Times* (Dec. 13, 2011), http://www.nytimes.com/2011/12/14/us/measures-to-capture-illegal-aliens-nab-citizens.html?_r=1.

³ Aarti Kohli, Peter L. Markowitz, and Lisa Chavez, The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, “Secure Communities by the Numbers: An Analysis of Demographics and Due Process” (Oct. 2011), available at https://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

⁴ Ginger Thompson and Sarah Cohen, “More Deportations Follow Minor Crimes, Records Show,” *New York Times* (Apr. 6, 2014), http://www.nytimes.com/2014/04/07/us/more-deportations-follow-minor-crimes-data-shows.html?gwh=334656DC850EE9BC311DADF1D154084E&gwt=pay&assetType=nyt_now.

⁵ Nik Theodore, Department of Urban Planning and Policy at the University of Illinois at Chicago, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* (May 2013), http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

⁶ See, e.g., *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D. R.I. 2014), *affirmed*, *Morales v. Chadbourne*, -- F.3d ---, 2015 WL 4385945 (1st Cir. July 17, 2015); *Galarza v. Szalczyk*, No. 10-6815, 2012 WL 1080020 (E.D. Pa. Mar. 30, 2012), *rev'd on other grounds*, *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014); *Mendoza v. Osterberg*, No. 13-65, 2014 WL 3784141 (D. Neb. July 31, 2014); *Villars v. Kubiawski*, 45 F.Supp.3d 791 (N.D. Ill. 2014); *Miranda-Olivares v. Clackamas Cnty.*, -- F.Supp.2d ----, No. 12-02317, 2014 WL 1414305 (D. Or. Apr. 11, 2014); *Uroza v. Salt Lake County*, No. 11-713, 2013 WL 653968 (D. Ut. Feb. 21, 2013); *Vohra v. United States*, No. 04-0972, 2010 U.S. Dist. LEXIS 34363 (C.D. Cal. Feb. 4, 2010), *adopted*, 2010 U.S. Dist. LEXIS 34088 (C.D. Cal. Mar. 29, 2010).

inoculate local LEAs from liability for complying with DHS detainees as the bill does not remedy, or even address, the constitutional defects inherent in DHS detainees.

The Senate should heed the constitutional requirement of the Fourth Amendment and its guarantee that individuals not be deprived of their liberty without a judicial warrant. Federal legislation cannot trump the Constitution, and the Judiciary Committee should not approve or advance a bill that is unconstitutional.

III. S. 1814 aims to topple over 300 local policies designed to protect public safety and promote crime reduction.

The sponsors of S. 1814 fail to understand the fundamental purpose of community trust policies adopted by more than 300 jurisdictions across the country. Far from being “sanctuary” zones, these localities recognize that immigrant victims and witnesses will not report crime if they fear that police are collaborating with immigration enforcement authorities – and thus, in order to combat crime, local police need to win and maintain the trust of immigrant communities.

Law enforcement leaders from the Major Cities Chiefs Association⁷ to the President’s Task Force on 21st Century Policing⁸ have stated that promoting trust between local law enforcement officials and communities fosters cooperation and enhances their core mission of protecting public safety. As the President of the Major Cities Chiefs Association and Montgomery County (MD) Police Chief Tom Manger recently testified before the Senate Judiciary Committee, “To do our job we must have the trust and respect of the communities we serve. We fail if the public fears their police and will not come forward when we need them. Whether we seek to stop child predators, drug dealers, rapists or robbers – we need the full cooperation of victims and witness. Cooperation is not forthcoming from persons who see their police as immigration agents. When immigrants come to view their local police and sheriffs with distrust because they fear deportation, it creates conditions that encourage criminals to prey upon victims and witnesses alike.”⁹

Strengthening community trust in local police has also led to crime reduction in cities across the country. As Dayton (OH) Police Chief Richard Biehl recently testified before the House Immigration Subcommittee, Dayton’s inclusive policies “have been successful in building trust and making our city safer,” and have led to a nearly 22 percent reduction in serious violent

⁷ Major Cities Chiefs Association, “Immigration Policy” (2013), *available at* https://www.majorcitieschiefs.com/pdf/news/2013_immigration_policy.pdf (recognizing that “trust and cooperation with immigrant communities . . . are essential elements of community oriented policing.”).

⁸ President’s Task Force on 21st Century Policing Final Report at 18 (May 2015), *available at* http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf (recognizing that “build[ing] relationships based on trust with immigrant communities . . . is central to overall public safety.”).

⁹ Testimony of Tom Manger, Chief of Police, President of the Major Cities Chiefs Assoc. before the Senate Judiciary Committee for a Hearing on: Oversight of the Administration’s Misdirected Immigration Enforcement Policies: Examining the Impact on Public Safety and Honoring the Victims, (July 21, 2015) *available at* <http://www.judiciary.senate.gov/imo/media/doc/07-21-15%20Manger%20Testimony.pdf>.

crime and 15 percent reduction in serious property crime in Dayton since the adoption of those policies.¹⁰

Even DHS has recognized that legislation mandating LEA compliance with immigration detainers would be counterproductive and unwise. As Secretary Johnson recently testified before the House Judiciary Committee: “The courts were saying that state and local law enforcement does not have the authority under the due process clause of the Constitution to hold people until we could come and get them. Last time I looked, through federal legislation, you cannot rewrite the due process clause of the federal Constitution, so that is a problem. I do not believe that mandating through federal legislation conduct of sheriffs and police chiefs is the way to go. I think it will be hugely controversial, I think it will have problems with the Constitution....”¹¹

Congress cannot legislate around the Constitutional guarantee in the Fourth Amendment. Rather, the solution is for DHS to fix the constitutional problem with detainers, or to discontinue their use entirely. In the meantime, the Senate should respect the carefully calibrated, limited detainer policies adopted by more than 300 localities across the country. We urge the Senate to reject S. 1814.

Sincerely,

National Organizations

AFL-CIO
Alliance for a Just Society
Alliance for Citizenship
American Civil Liberties Union
American Federation of State, County and Municipal Employees
American Immigration Lawyers Association
America's Voice Education Fund
Asian American Legal Defense and Education Fund (AALDEF)
Asian Americans Advancing Justice-AAJC
Asian Pacific American Labor Alliance (APALA)
Asian Pacific Institute on Gender Based Violence
Center for Community Change (CCC)
Christian Church (Disciples of Christ) Refugee and Immigration Ministries
Church World Service
Detention Watch Network
Disciples Women
(DRM) Dream Action Coalition
The Episcopal Network for Economic Justice

¹⁰ Testimony of Richard S. Biehl, Chief of Police, Dayton Police Department, in front of the Immigration and Border Subcommittee of the House Judiciary Committee for a Hearing on “Sanctuary Cities: A Threat to Public Safety” (Jul. 23, 2015), <http://judiciary.house.gov/cache/files/f535f46d-35be-466f-9270-d32cd7ad9582/biehl-testimony.pdf>.

¹¹ Transcript of testimony of DHS Secretary Jeh Johnson in front of the House Judiciary Committee for a Hearing on “Oversight of the United States Department of Homeland Security” (Jul. 14, 2015).

Fair Immigration Reform Movement (FIRM)
Families for Freedom
Farmworker Justice
Franciscan Action Network
Friends Committee on National Legislation
Grassroots Leadership
Holy Spirit Missionary Sisters, USA-JPIC
Iglesia Nueva Creación
Ignatian Solidarity Network
Immigrant Justice Corps
Jobs With Justice
Latin America Working Group (LAWG)
The Leadership Conference on Civil and Human Rights
Leadership Conference of Women Religious
League of United Latin American Citizens
NAAPIMHA
National Alliance of Latin American and Caribbean Communities (NALACC)
National Association of Social Workers
National Council of Asian Pacific Americans (NCAPA)
National Council of La Raza (NCLR)
National Day Laborer Organizing Network (NDLON)
National Education Association
National Employment Law Project
National Immigrant Justice Center
National Immigration Law Center
National Immigration Project of the NLG
National Justice for Our Neighbors
National Korean American Service and Education Consortium
National Latin@ Network: Casa de Esperanza
National Latina Institute for Reproductive Health
National Lawyers Guild
National Network for Immigrant and Refugee Rights
NETWORK, A National Catholic Social Justice Lobby
North American Pacific/Asian Disciples
NQAPIA: National Queer Asian Pacific Islander Alliance
OCA - Asian Pacific American Advocates
Office of Social Justice of the Christian Reformed Church in North America
Presbyterian Church (USA) Office of Immigration Issues
Queer Detainee Empowerment Project
Sisters of Providence
Sisters of St. Francis
South Asian Americans Leading Together (SAALT)
Southeast Asia Resource Action Center (SEARAC)
Southeast Immigrant Rights Network
UNITE HERE
United We Dream

We Belong Together

State / Local Organizations

All Souls KC Social Responsibility Board
Arkansas United Community Coalition (AUCC)
Asian Americans Advancing Justice-LA
Asian Pacific Islander Legal Outreach
Asociacion de Liderazgo Comunitario
Austin Latin Ministerial Alliance
California Immigrant Youth Justice Alliance
Capital Area Immigrants' Rights (CAIR) Coalition
CASA
Center for Social Justice, Seton Hall University School of Law
Chicago Jobs with Justice
Cleveland Jobs with Justice
Coalicion de Derechos Humanos
Colorado Immigrant Rights Coalition
Community Church of New York, New Sanctuary
Community Legal Services in East Palo Alto
Dominican Sisters of Houston
DREAM Iowa
Dreamers
Filipino Advocates for Justice
Franciscans for Justice
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Defenders Law Center
Immigrant Justice Network of Grant and Luna Counties, NM
Immigrant Law Center of Minnesota
Immigrant Youth Coalition
Interfaith Movement for Immigrant Justice - IMIrJ
Iowa Chapter Methodist Federation for Social Action
Iowa Citizens for Community Improvement
Iowa Justice For Our Neighbors (JFON)
Interfaith Coalition on Immigration in Minnesota (ICOM)
Justice for Our Neighbors - Bay Area Immigration Taskforce
Kansas Appleseed
Latin American Coalition
Leadership Team Sisters of St. Francis
Legal Services for Children
Long Island Jobs with Justice
Lowcountry Immigration Coalition
Make the Road New York
Massachusetts Immigrant and Refugee Advocacy Coalition
Michiana Immigration Coalition
Mississippi Immigrants Rights Alliance

Missouri Immigrant and Refugee Advocates
Napa Valley Dream Team
Nebraska Appleseed Center for Law in the Public Interest
NewBridges Immigrant Resource Center
North Bay Immigrant Youth Union
North Georgia Immigrant Justice
Northeast Iowa Peace & Justice Center
Northwest Immigrant Rights Project
NYU Immigrant Rights Clinic
OneAmerica
Pangea Legal Services
Pennsylvania Council of Churches
Pennsylvania Immigration Resource Center
Political Asylum Immigration Representation Project
Portland Jobs with Justice
Public Counsel
Puentes: Advocacy, Counseling & Education
Racial Justice Action Center
Reformed Church of Highland Park, New Jersey
Rights for All People
San Diego Immigrant Rights Consortium
Sisters of Mercy South Central Community
St. Joseph Valley Project JwJ
STAR*PAC
Teamsters 777
Tennessee Immigrant and Refugee Rights Coalition
The Lighthouse United Methodist Church
Unitarian Universalist Fellowship of Silver City, New Mexico
United Taxi Workers
Virginia Coalition for Immigrant Rights
Washington State Coalition Against Domestic Violence
Workers Defense Project