

June 1, 2012

Honorable Daniel K. Inouye
Chair, Senate Appropriations Committee
United States Senate
722 Hart Senate Office Building
Washington, D.C. 20510

Honorable Thad Cochran
Vice-Chair, Senate Appropriations Committee
United States Senate
113 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Barbara A. Mikulski
Chair, Appropriations Subcommittee on
Commerce, Justice, Science, and Related
Agencies
United States Senate
503 Hart Senate Office Building
Washington, D.C. 20510

Honorable Kay Bailey Hutchison
Ranking Member, Appropriations
Subcommittee on Commerce, Justice,
Science, and Related Agencies
United States Senate
284 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Inouye, Chairwoman Mikulski, Vice-Chairman Cochran, and Ranking Member Hutchison:

The following 35 undersigned organizations, representing a broad spectrum of faith, labor, civil rights, human rights, and immigrants' rights organizations, urge you to oppose – on the U.S. Senate floor and at conference – the addition of all detrimental immigration amendments to S. 2323, the Commerce, Justice, Science, and Related Agencies (CJS) Appropriations Act of 2013. In particular, we are concerned about two amendments added on the floor of the U.S. House of Representatives to the related CJS bill, H.R. 5326, which passed the House on May 10, 2012:

(a) Section 542 of H.R. 5326, an amendment offered by Rep. Diane Black (R-TN), which prohibits the use of funds by the Attorney General to originate or join litigation against nine specified state immigration laws that intrude on federal immigration authority; and

(b) Section 555 of H.R. 5326, an amendment offered by Rep. Joe Walsh (R-IL), which prohibits federal funding under the State Criminal Alien Assistance Program for state and local governments that “violate” 8 U.S.C. § 1373 by preventing communication with federal authorities on individuals' immigration status.

I. The Black amendment is a misguided effort to prevent the Department of Justice (DOJ) from acting to combat attacks on the federal authority over immigration policy by unconstitutional state immigration laws.

The Black amendment attempts to prevent the DOJ from taking action against nine named state laws, but its prohibitions are arbitrary and scattershot.¹ Two of the state laws, Oklahoma's and Missouri's, have been in effect for several years without DOJ challenge. The DOJ is currently challenging four of the specified laws, passed in Arizona, Alabama, Utah, and South Carolina, with a decision in Arizona's case due from the Supreme Court by late June 2012. The DOJ has not filed suit against the laws passed last year by Indiana (two) and Georgia. Yet for all nine of these lengthy and wide-ranging laws, the amendment prohibits *any* prospective DOJ litigation.

While the Black amendment does not affect pending DOJ litigation, the amendment would impair the DOJ's ability to make future litigation choices consistent with the executive branch's responsibility to uphold the Constitution. As the executive branch's lawyer, the DOJ is constitutionally tasked with ensuring the faithful execution of federal laws. In its pending lawsuits, the DOJ is arguing that states may not legislate in conflict with federal law because immigration enforcement is an exclusively federal responsibility under the Constitution. The patchwork caused by state immigration enforcement laws undermines Congress' ability to ensure uniform and consistent immigration policies.

In addition, such laws force federal immigration officials to squander limited resources investigating persons, including U.S. citizens and lawful residents, who are arrested and detained by state and local police untrained in federal immigration law. The DOJ's line of argument has prevailed, in whole or in part, in every court to date which has ruled on the challenged state immigration laws. As a result, provisions of Arizona's, Alabama's, and South Carolina's laws were enjoined as preempted by federal law, while the district court in Utah issued a temporary restraining order against that state's law.

It is critical that the DOJ retain the ability to challenge the application of "show me your papers" provisions in Arizona and other states. State immigration enforcement laws encourage the racial profiling of Latinos and all people perceived to look or sound foreign. As there is no way of perceiving whether someone is here lawfully, police in these states must fall back on racial bias in requiring certain individuals to carry and present their papers. Arizona's S.B. 1070 and similar laws turn racial minorities residing in these states, including U.S. citizens and lawful residents, into potential suspects. These provisions also divert the resources and attention of state and local law enforcement agencies away from serious threats to public safety. They have made it more difficult for police to investigate and address serious criminal activity because victims and witnesses of crime are fearful of cooperating with law enforcement agencies – especially those within the targeted minority communities.

¹ The nine named state laws in the Black amendment are: the Oklahoma Taxpayer and Citizen Protection Act of 2007; Missouri House Bill 390 (2009); Arizona's S.B. 1070 (2010); Alabama's HB 56 (2011); Utah's Illegal Immigration Enforcement Act (2011); Indiana Senate Enrolled Act No. 590 and an Act to amend the Indiana Code concerning education (HB 1402) (2011); South Carolina Act No. 69 (2011); and Georgia's Illegal Immigration Reform and Enforcement Act of 2011.

We urge the Senate to reject any amendments that interfere with the DOJ's authority to comply with the Constitution by bringing legally justified litigation against state immigration laws.

II. The Walsh amendment purports to address a “sanctuary” problem that does not exist, attacks state and local efforts to promote public safety, and is completely unnecessary for sound federal immigration enforcement.

8 U.S.C. § 1373 prohibits interference with the lines of communication between federal authorities and state or local authorities regarding immigration status information. Some jurisdictions have passed laws and policies – often labeled “sanctuary” laws – that limit the role their law enforcement officers play in enforcing federal immigration law, for the benefit of community policing and reducing crime. These laws and policies address communication between police and residents, *not* communication between police and federal authorities which continues uninhibited. For example, the policies may prevent state or local police from attempting to enforce federal immigration law by initiating encounters with individuals merely to discover their immigration status, or from inquiring about the immigration status of an individual detained for a violation.

A 2007 DOJ audit of such laws found no interference with federal enforcement because “the local policy either did not preclude cooperation with ICE [Immigration and Customs Enforcement] or else included a statement to the effect that those agencies and officers must assist ICE or share information with ICE as required by federal law.”² That year, Department of Homeland Security Secretary Michael Chertoff testified before Congress: “I’m not aware of any city . . . that actually interferes with our ability to enforce the law.”³ Far from being “sanctuary cities,” these jurisdictions have enacted carefully considered local policing policies based on what works best to promote public safety, without interfering with federal immigration enforcement. They prioritize budgetary and law enforcement resources according to community needs, while still permitting federal immigration enforcement to take place.

Law enforcement leaders across the country, including the Major Cities Chiefs Association – which represents the 56 largest police departments in the United States (first responders to more than 50 million residents) – have said that police should not enforce immigration laws because they need the trust and confidence of all residents in order to fight crime and protect the public. Otherwise, “a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims, and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.”⁴ That principle is the cornerstone of community policing: Victims and witnesses will not come forward if they fear police officers could act as immigration agents.

² Department of Justice, Office of the Inspector General, “Cooperation of SCAAP Recipients in the Removal of Criminal Aliens from the United States.” (Jan. 2007), available at <http://www.justice.gov/oig/reports/OJP/a0707/chapter2.htm>

³ House Committee on Homeland Security, “Implementation of the 9/11 Commission's Recommendations.” (Sept. 6, 2007).

⁴ Chief J. Thomas Manger, Chairman of the Legislative Committee for the Major Cities Chiefs Association, “Examining 287(g): The Role of State and Local Law Enforcement in Immigration Law.” House Committee on Homeland Security (Mar. 4, 2009).

No federal law requires state and local police departments to enforce federal immigration law. Anti-“sanctuary cities” amendments seek to impair the ability of states and localities to obtain the benefits achieved through effective community policing, and to interfere without justification in matters of local concern. We urge the Senate to reject any amendments that cut off DOJ funding to so-called “sanctuary cities.”

Thank you for your efforts to oppose these unnecessary and detrimental provisions, which would significantly interfere with the sound and constitutional administration of justice in our nation. Please contact Max Sevillia, National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund, at (202) 546-2536 or msevillia@naleo.org with any questions.

Sincerely,

American Civil Liberties Union (ACLU)

American Federation of Teachers, AFL-CIO

The American Friends Service Committee (AFSC)

Americans for Immigrant Justice, formerly Florida Immigrant Advocacy Center (FIAC)

American Immigration Lawyers Association (AILA)

America’s Voice Education Fund

Asian American Justice Center, a member of the Asian American Center for Advancing Justice

ASPIRA

Casa Esperanza

Casa Latina

Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)

Defending Dissent Foundation

Desis Rising Up & Moving (DRUM)

Farmworker Justice

Hebrew Immigrant Aid Society (HIAS)

Illinois Coalition for Immigrant and Refugee Rights

Immigration Equality

Immigrant Law Center of Minnesota

Immigrant Legal Resource Center

The Leadership Conference on Civil and Human Rights

Lutheran Immigration and Refugee Service
Massachusetts Immigrant and Refugee Advocacy Coalition
Minority Executive Directors Coalition
Muslim Legal Fund of America (MLFA)
National Association of Hispanic Federal Executives (NAHFE)
National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund
The National Conference of Puerto Rican Women, Inc.
National Council of La Raza (NCLR)
National Hispanic Media Coalition (NHMC)
National Immigration Forum
National Latina Institute for Reproductive Health (NLIRH)
Rights Working Group
South Asian Americans Leading Together (SAALT)
Tennessee Immigrant and Refugee Rights Coalition
University of Miami School of Law Immigration Clinic