



## HISPANIC BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA

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October 20, 2015

*Via Electronic Mail*

The Honorable Chuck Grassley  
Chair, Senate Judiciary Committee  
United States Senate  
135 Hart Senate Office Building  
Washington, DC 20510

The Honorable Patrick Leahy  
Ranking member, Senate Judiciary Committee  
United States Senate  
437 Russell Senate Office Building  
Washington, DC 20510

**Re: S. 1814, the Stop Sanctuary Cities Act.**

Dear Chairman Grassley and Ranking Member Leahy:

The Hispanic Bar Association of the District of Columbia (“HBA-DC”) joins a broad spectrum of state and local governments, law enforcement, advocacy, and religious organizations in our strong opposition to S. 1814, the Stop Sanctuary Cities Act, and similar pending bills. We urge you to oppose S.1814 as well as the other bills.

S. 1814 threatens states and localities with revocation of federal funding under the Justice Department’s State Criminal Alien Assistance Program (“SCAAP”), Edward Byrne Memorial Justice Assistance Grant Program (“Byrne JAG”), the Community Oriented Policing Services (“COPS”), and Community Development Block Grants (“CDBG”) unless these jurisdictions comply with all Department of Homeland Security (“DHS”) detainer requests. The SCAAP, Byrne JAG, COPS, and CDBG programs offer needed federal funds that state and local governments use to increase public safety. By withholding federal law enforcement funding, these proposed bills seek to penalize municipalities that exercise local police discretion limiting inquiries into the citizenship or immigration status of local residents in order to build trust in the community and promote local public safety goals.

To characterize these municipalities as “sanctuary” zones is misleading. These cities have exercised their traditional local police powers by recognizing that immigrant victims and witnesses will not report crime, and crimes will go unsolved and unpunished, if immigrants fear that local police are acting as immigration agents. Moreover, state and local governments would do well to distance themselves from bills like S. 1814 that seek to force jurisdictions to join in immigration enforcement schemes that courts have already declared constitutionally deficient and that compound the problem by instituting senseless mandatory sentencing.

While the purported intent of the Stop Sanctuary Cities Act is to make America's communities more secure, the bill, like the other pending bills, will have the opposite effect. S. 1814 would virtually dismantle long-standing policies that promote equitable policing and safeguard against the diversion of police resources away from their core mission of protecting public safety. This legislative mandate will perpetuate the entanglement of local police in immigration enforcement, which created such controversy under the failed Secure Communities program some years ago. As with Secure Communities – a program the Obama Administration effectively set aside<sup>1</sup> – embroiling local police in federal immigration enforcement will erode the trust and cooperation between local law enforcement and the immigrant community and result in damage to public safety.

Apart from the negative impact on local policing efforts, the questionable legality of S. 1814 should give Congress pause. Recently, several federal courts have ruled that the DHS detainers do not comply with the Fourth Amendment of the U.S. Constitution where they do not rely on probable cause or a warrant.<sup>2</sup> Through the use of detainers, DHS asked state and local law enforcement to prolong a person's detention from two to five days without a judicial warrant or court order. Thus, bills like S. 1814 essentially force state and municipal governments to make the impossible choice of either violating the Constitution or losing vital federal law enforcement funding that helps them fight crime.

We, thus, urge you to oppose the following bills: S. 1812 (Improving Cooperation with States and Local Governments and Preventing the Catch and Release of Criminal Aliens Act of 2015) and S. 1842 (Protecting American Lives Act). These bills improperly punish cities that refuse to enforce immigration laws.

HBA-DC also opposes S. 1814 on the grounds that a recent amendment adds mandatory sentencing that poses additional threats to justice. The bill's proposed mandatory five-year minimum sentence would unnecessarily increase the federal prison population by applying a "one size fits all" sentence to a person who illegally reenters the country regardless of the reason – inevitably producing absurd, unintended, and unjust outcomes. No concern is expressed, for instance, for persons who flee across our borders seeking asylum from political persecution or other violence. We must acknowledge as well that as a nation we are still grappling with the negative social impacts that the mandatory sentencing of the so-called "War on Drugs" has visited upon populations in states across the country, particularly upon people of color. No evidence has been offered that mandatory sentencing in the immigration enforcement context serves an appropriate penological interest. Because of the damage that mandatory sentencing may cause, S. 1814 should be abandoned.

S. 1814 and other similar pending bills appear to reflect a misguided response to the tragic murder of an innocent woman in San Francisco. However, this type of legislative response is premised on sweeping generalizations about immigrants that give rise to stereotyping. This kind of discrimination in the immigration context, based on the actions of lone individuals, particularly threaten Hispanic immigrants. In fact, studies and press reports show that the vast majority of detained immigrants are incarcerated for non-violent immigration offenses. This danger of discrimination that the mandatory sentencing provision presents is another reason to discard it.

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<sup>1</sup> The Obama Administration has replaced Secure Communities with the Priority Enforcement Program ("PEP"), about which we express no opinion. Rather we note that the PEP reduction of the retainer period from days to just 48 hours supports the view that law enforcement treads on shaky Fourth Amendment grounds. See November 20, 2014, DHS Memorandum regarding Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants.

<sup>2</sup> See, e.g., *Morales v. Chadbourne*, 793 F.3d 208, 215-17 (1st Cir. 2015); *Miranda-Olivares v. Clackamas County*, 2014 WL 1414305, at \*10 (D.Or. Apr. 11, 2014); *Villars v. Kubiatsowski*, 45 F.Supp.3d 791, 807-08 (N.D.Ill. 2014).

For the above reasons, we similarly urge you to oppose the following bills that improperly impose mandatory sentencing: S. 1762 (Establishing Mandatory Minimums for Illegal Reentry Act of 2015), S. 1812 (Improving Cooperation with States and Local Governments and Preventing the Catch and Release of Criminal Aliens Act of 2015) and S. 184 (Protecting American Lives Act).

Given its position as described above, HBA-DC joins with the American Immigration Lawyers Association, the U.S. Conference of Mayors, the National Hispanic Leadership Agenda, and the Leadership Conference on Civil and Human Rights, among other groups, in calling for an end to the consideration of bills like S. 1814, the Stop Sanctuary Cities Act. These bills harm community public safety efforts, raise serious constitutional questions, and pose the threat of unwarranted discrimination.

The HBA-DC exists in part to promote equal justice and opportunity for all Hispanics. Established in 1977, our membership includes several hundred lawyers practicing in Washington D.C., Maryland, and Virginia as well as Hispanic students attending local law schools and other non-lawyer associate members. Consistent with the mission of our organization we offer you our position on this legislation. We are available to you to provide additional information as you consider this legislation and we thank you for your attention to our concerns.

Sincerely,



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Juan M. Sempertegui  
President  
Hispanic Bar Association of DC

Cc: The Honorable Charles Schumer  
The Honorable Dianne Feinstein  
The Honorable Orrin G. Hatch  
The Honorable Dick Durbin  
The Honorable Jeff Sessions  
The Honorable Sheldon Whitehouse  
The Honorable Lindsey Graham  
The Honorable Amy Klobuchar  
The Honorable John Cornyn

The Honorable Al Franken  
The Honorable Michael S. Lee  
The Honorable Christopher A. Coons  
The Honorable Ted Cruz  
The Honorable Richard Blumenthal  
The Honorable Jeff Flake  
The Honorable David Vitter  
The Honorable David Perdue  
The Honorable Thom Tillis