

THE “STOP SANCTUARY CITIES ACT”

How S. 1814 Endangers Public Safety and Undermines Local Law Enforcement

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Senator David Vitter’s (R-LA) Stop Sanctuary Cities Act (S. 1814) would punish local law enforcement agencies and officials who embrace policies that prioritize community safety over immigration enforcement. Despite claims that it would prevent crime, S. 1814 actually would decrease public safety by eroding trust and communication between local and state police and the communities they protect. And the bill’s provisions violate fundamental constitutional protections.

S. 1814 Would Coerce Local Law Enforcement to Act as ICE Agents

Over 320 localities across the country—in states as diverse as Arizona, California, Colorado, Georgia, Iowa, Kentucky, and Wisconsin—have adopted policies that limit entanglement of local law enforcement with federal immigration authorities. By threatening to wipe out critical federal funds to these cities and counties whose law enforcement officers have embraced community-safety policies, S. 1814 attempts to strong-arm local police into playing the role of U.S. Immigration and Customs Enforcement (ICE) agents.

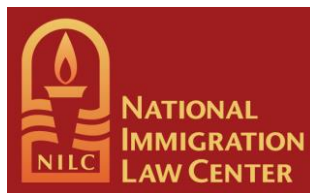
Law enforcement leaders around the country have uniformly rejected this role on public safety grounds, with the Major Cities Chiefs Police Association repeatedly affirming that separating their role from ICE promotes community trust and communication with local law enforcement.¹ This position has been echoed by the White House Task Force on 21st Century Policing, whose report states that, “whenever possible, state and local law enforcement should not be involved in immigration enforcement.”² The Police Executive Research Forum also has found that attempts to mandate local immigration enforcement removes local discretion to set law enforcement priorities and jeopardizes the relationship between police and their communities.³

S. 1814 Would Increase the Percentage of Crimes That Go Unreported

A 2013 study found that 44 percent of Latinos surveyed would be less likely to contact the police if they were the victim of a crime if they feared that doing so would lead to an inquiry about their immigration status or the status of someone they knew.⁴ Any legislation that attempts to coerce or mandate entanglement of local law enforcement and federal immigration enforcement will further chill communication between residents—regardless of their immigration status—and local police.

Survivors and witnesses of crimes who believe that merely reporting to the police will result in deportation and separation from loved ones will be too afraid to come forward, and local police will lose the community’s trust, an essential factor in preventing and

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investigating crime. While purporting to make communities safer, this bill would in fact lead to more community fear, distrust of local police, and unreported crimes.

S. 1814 Would Slash Funding and Endanger Public Safety

S. 1814 would withhold grants available under the State Criminal Alien Assistance Program (SCAAP) and the Edward Byrne Memorial Justice Assistance Grant (Byrne JAG) Program from local law enforcement agencies that choose to maintain community-safety policies that have long proven to be effective in building community trust and addressing crime. These grants cover essential expenses for everyday crime-solving tools such as rape kits and bulletproof vests. Cutting critical funding for effective police programs will make communities less safe and punish local law enforcement simply for doing their jobs. States could lose substantial sums—up to \$177 million per year—under S. 1814.⁵

S. 1814 is Unconstitutional and Exposes States to Costly Litigation

4th Amendment violations. By requiring that local law enforcement agencies comply with immigration “detainers” (requests by ICE that local law enforcement keep certain people detained for a period of time so that ICE can pick them up), S. 1814 simply ignores recent costly litigation and federal court decisions holding that such a detainer can violate a person’s right to be free from unreasonable seizures under the 4th Amendment. In his November 2014 memo announcing the end of the Secure Communities Program, which relied heavily on detainers, U.S. Dept. of Homeland Security Secretary Jeh Johnson stated that the program was “embroiled in litigation” and that “federal courts have rejected the authority of state and local law enforcement agencies to detain immigrants pursuant to federal detainers”⁶

10th Amendment violations. S. 1814 also raises 10th Amendment concerns by restricting state and local governments’ authority to retain discretion over resource distribution and priorities. The federal government may not command state and local governments to adopt or enforce federal regulatory programs. The U.S. Supreme Court has found that “such commands are fundamentally incompatible with our constitutional system of dual sovereignty.”⁷

Congress cannot grant states immunity for constitutional violations. S. 1814 attempts to grant immunity to states that comply with immigration detainers. This language in no way insulates states and their agencies from liability for constitutional or civil rights violations. Congress cannot legislate this away.

State fiscal impact of constitutional violations. States and localities are exposed to liability for 4th Amendment violations and potential monetary damages for civil rights violations if immigration detainers are found to be unconstitutional. Nationwide, states have incurred millions of dollars in legal defense costs over the last five years alone to respond to allegations that immigration enforcement policies and practices lacked constitutional authority and fueled rights abuses, racial profiling, and unjustified detentions. Local governments that violated 4th Amendment rights through the use of unconstitutional detainers paid damages from \$8,000 to \$200,000.⁸

S. 1814 Imposes Mandatory Minimum Sentences for Border Crossers That Are Costly and Do Not Reduce Recidivism.

High cost of mandatory minimums. At a time when Congress and the president are agreeing on reducing mass incarceration, this bill’s increase in mandatory minimum

sentences for illegal reentry is counterproductive and ineffective. Increasing the current average sentence of 18 months to a mandatory five years would cost taxpayers approximately \$2 billion per year.⁹

Punishes family reunification. Many people entering or reentering the U.S. are desperately trying to reunite with family or to seek protection in the U.S. and are being increasingly criminalized for these efforts. A large number already face criminal penalties, including asylum-seekers, whose prosecution violates U.S. and international law.¹⁰

FOR MORE INFORMATION, CONTACT

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¹ See Testimony of Chief Thomas Manger, President of the Major Cities Chiefs Association, before the Senate Judiciary Committee, July 21, 2015, www.judiciary.senate.gov/imo/media/doc/07-21-15%20Manger%20Testimony.pdf.

² *Final Report of the President's Task Force on 21st Century Policing* (Office of Community Oriented Policing Services, May 18, 2015), www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf, p. 18.

³ See *Local Police Perspectives on State Immigration Policies* (Police Executive Research Forum, July 2014), www.policeforum.org/assets/docs/Free_Online_Documents/Immigration/local%20police%20perspectives%20on%20state%20immigration%20policies.pdf.

⁴ Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* (Dept. of Urban Planning and Policy, University of Illinois at Chicago, May 2013), www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF, p. 5.

⁵ *Critical DoJ and DHS Law Enforcement Funding at Risk for Community Trust Policy Jurisdictions* (National Immigration Law Center, American Immigration Lawyers Association, and Center for American Progress, July 2015), www.nilc.org/document.html?id=1270, p. 1.

⁶ Memorandum from Jeh Johnson, Secretary, U.S. Dept. of Homeland Security, to Thomas S. Winkowski, et al., Subject: Secure Communities, Nov. 20, 2014, www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf, p. 1.

⁷ See *Printz v. United States*, 521 U.S. 898, 935 (1997).

⁸ *Community and Courtroom Responses to Immigration Detainers* (National Immigration Forum, Dec. 16, 2013), <https://immigrationforum.org/blog/community-and-courtroom-responses-to-immigration-detainers-3/>; Tim Henderson, "More Jurisdictions Defying Feds on Deporting Immigrants," *Pew Stateline*, Oct. 31, 2014, www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2014/10/31/more-jurisdictions-defying-feds-on-deporting-immigrants.

⁹ This calculation was based on the U.S. Sentencing Commission's data on the number of FY13 new illegal reentry convictions (18,498), average sentence lengths (18 months), the conservative assumption that average sentences would not exceed a 5-year mandatory minimum, and the Federal Bureau of Prisons' FY13 cost calculation of \$80.25 per prisoner per day. *Illegal Reentry Offenses* (United States Sentencing Commission, April 2015), www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/immigration/2015_Illegal-Reentry-Report.pdf; "Federal Prison System Per Capita Costs: FY 2013" (Federal Bureau of Prisons, Dec. 20, 2013), www.bop.gov/foia/fy13_per_capita_costs.pdf.

¹⁰ *Streamline: Measuring the Effect on Illegal Border Crossings* (OIG-15-95, Office of Inspector General, U.S. Dept. of Homeland Security, May 15, 2015), https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf.