



To: House Civil Justice Subcommittee  
From: Michelle Richardson, Director of Public Policy & Advocacy  
Date: November 17, 2015  
Re: **Opposition to House Civil Justice PCS for HB 9: Creating State Felony for Reentry after Removal**

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We write to confirm our continued opposition to HB 9, which seeks to create a state immigration crime: a new state felony for re-entering the state after deportation. The proposed committee substitute, like its predecessor, is unconstitutional and fundamentally flawed.

Under the U.S. Constitution, the federal government has power over immigration policy, not the states. This means that the states are preempted from enacting their own immigration rules and/or punishments. The states have no power to invent crimes to punish individuals for violations of federal immigration laws.

Numerous other states' attempts to do so, under the theory that their laws were simply mirror-images of federal immigration laws, have been struck down as unconstitutional. *See, e.g., Arizona v. United States*, 132 S.Ct. 2492, 2501-02 (2012) (holding that state could not make failure to carry alien registration documents a crime, as the federal government comprehensively regulated registration requirements); *United States v. Alabama*, 691 F.3d 1269, 1282, 1285-88 (11th Cir. 2012) (based on federal preemption in the field of immigration enforcement, affirming injunction of laws criminalizing failure to carry alien registration documents and transporting, harboring, or concealing unauthorized immigrants); *Ga. Latino Alliance for Human Rights v. Governor of Ga.*, 691 F.3d 1250, 1263-67 (11th Cir. 2012) (affirming injunction of laws creating state criminal violations for transporting and harboring unauthorized immigrants and inducing them to enter the state because such state laws were preempted by federal laws, despite the state's argument that its laws shared goals with federal immigration enforcement provisions). If HB 9 were to pass, it would similarly be invalidated by the courts as unconstitutional.

Beyond this bill's constitutional infirmities, forcing local law enforcement to become immigration agents would drive a wedge between them and the communities they serve, undermining their ability to investigate crimes. If HB 9/SB 118 were to become law, immigrants and their families would simply avoid contact with the police—even to report crimes or identify suspects—because they fear that

officers will ask about the immigration status of people they know.<sup>1</sup> Apart from that, because local police officers are not experts in immigration law, HB 9/SB 118 could lead to unlawful racial profiling.

The national press has covered a small number of recent crimes committed by immigrants and it has led to unfortunate stereotyping about the entire immigrant community. It is important to note that empirical evidence shows that immigrants—including both legal and unauthorized immigrants—are less likely to commit serious crimes than U.S.-born individuals.<sup>2</sup> Legislation criminalizing this specific community is unwarranted.

For more information, please contact Policy and Advocacy Director Michelle Richardson at [mrichardson@aclufl.org](mailto:mrichardson@aclufl.org).

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<sup>1</sup> 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), available at [http://www.policylink.org/sites/default/files/INSECURE\\_COMMUNITIES\\_REPORT\\_FINAL.PDF](http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF) (noting that 44% of Latinos surveyed were less likely to contact police if they had been victim of crime for fear that police would inquire into the immigration status of them or people they know, and that this number rises to 70 percent for undocumented immigrants).

<sup>2</sup> Walter A. Ewing, Daniel E. Martinez, & Ruben G. Rumbaut, *The Criminalization of Immigration in the United States*, American Immigration Council (July 2015), at <http://www.immigrationpolicy.org/special-reports/criminalization-immigration-united-states>.