



To: House Civil Justice Subcommittee
Senate Judiciary Committee

From: Michelle Richardson, Director of Public Policy & Advocacy

Date: October 30, 2015

Re: **Opposition to HB 9 and SB 118: Creating State Felony for Violation of Federal Immigration Order**

We write in opposition to HB 9/SB 118, which effectively criminalizes immigrants by making it a felony for a person to be knowingly present in the state after a final deportation order. The bill is unconstitutional and fundamentally flawed.

Under the U.S. Constitution, the federal government has plenary power over immigration policy. The act of being present in the United States in violation of the immigration laws, even after an order of deportation, is not, standing alone, a crime. In fact, Congress has repeatedly rejected proposals to make unauthorized presence a federal crime, including after extensive debate on the issue only two weeks ago. Instead, Congress has determined that unauthorized immigrants who remain present in the United States and willfully fail to depart after a final order of removal are subject to civil fines. 8 U.S.C. §1324d.

HB 9/SB 118 would change this penalty from a civil fine to a first-degree felony. Because the bill seeks to impose criminal penalties for conduct that the federal government decided to punish with civil penalties, it “would interfere with the careful balance struck by Congress” and is pre-empted under the Constitution’s Supremacy Clause. *Arizona v. United States*, 132 S.Ct. 2492, 2505 (2012). For the same reason, the Supreme Court struck down an Arizona law criminalizing undocumented individuals’ solicitation of employment—because it conflicted with federal law and was therefore preempted by Congress’ choice to impose only civil penalties on such conduct. *Id.* at 2503-05.

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.¹ Apart from that, because local police officers are not experts in immigration law, HB 9/SB 118 could lead to unlawful racial profiling.

¹ 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 (noting that 44% of

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.² Legislation criminalizing this specific community is unwarranted.

For more information, please contact Policy and Advocacy Director Michelle Richardson at mrichardson@aclufl.org.

Latinos surveyed were less likely to contact police if they had been victim of crime for fear that policy would inquire into the immigration status of them or people they know, and that this number rises to 70 percent for undocumented immigrants).

² 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>.