

June 5, 2012

Dear Majority Leader Reid and Chairman Leahy:

The undersigned groups urge you to strip two provisions that threaten due process and fundamental fairness in immigration proceedings at the upcoming conference on the Violence Against Women Reauthorization Act (“VAWA”). These two provisions are:

- (1) **Section 1008 of S.1925**, which creates a new “aggravated felony” in the Immigration and Nationality Act (INA) for a third drunk-driving conviction;
- (2) **Section 814 of H.R. 4970 (Gowdy amendment)**, which allows hearsay information untested in a criminal court to be presented as evidence establishing deportability in immigration court proceedings.

1. Section 1008 of S. 1925 is irrelevant to VAWA.

The Senate aggravated felony provision has nothing to do with domestic abuse, sexual assault, or violence against women, and should be stricken as completely outside the bounds of VAWA. Section 1008 concerns repeat drunk driving offenses and has no relation to violence against women.

For the first time since its enactment in 1994 and subsequent reauthorization in 2000 and 2005, some are attempting to use VAWA as a political vehicle to make changes to the Immigration and Nationality Act (INA) that are not germane to the Act. Such non-germane changes also threaten to undermine VAWA’s focus on addressing domestic violence, sexual assault, dating violence, stalking and human trafficking and should be removed from the bill.

Even the House VAWA bill, which contained several harsh immigration provisions, refrained from altering the definition of an “aggravated felony.” The House Judiciary Committee, under Lamar Smith’s chairmanship, declined to include such a provision in the House VAWA bill. The provision should therefore be stripped from the final VAWA bill.

2. Section 814 of H.R. 4970 allows untested hearsay evidence to be used as grounds for deportation. This violates due process and will introduce enormous inefficiencies into already backlogged immigration proceedings.

Section 814 of the House VAWA bill (H.R. 4970) allows for hearsay evidence untested in a criminal court of law to be introduced in deportation proceedings. Introduced during the markup by Rep. Trey Gowdy (R-SC), it would allow immigration judges to consider evidence outside a potential deportee’s official record of criminal conviction, including “sentencing reports,” “police reports,” and “any other evidence” the “Attorney General determines to be

reliable” in deciding whether an individual is deportable on domestic violence grounds.¹ Section 814 violates due process, adversely affects domestic abuse survivors, and will create serious backlogs in both criminal and immigration courts.

A century-long line of Supreme Court cases has ruled that due process requires that deportability must not be based on evidence beyond an official record of criminal conviction.² Section 814, by contrast, encourages immigration judges to hunt for extraneous evidence instead of limiting their determinations to what was tested and proven in criminal court. By the time of a deportation hearing, witnesses may no longer remember what happened or be available to testify, and equally “reliable” records may provide conflicting versions of relevant events. Even an anonymous 911 call could become the basis for deportation so long as the document satisfies the undefined test of “reliability.”

Additionally, far from preventing violence against women, section 814 would actually harm domestic abuse survivors. Currently most criminal domestic violence cases are settled via plea bargains, thus sparing survivors from having to testify against their abusers in open criminal court. In 2010 the Supreme Court held that defendants have a constitutional right to be advised of the immigration consequences of their guilty pleas.³ However, criminal defense lawyers cannot meet this requirement if they do not know what evidence could be used in the future to establish deportability. Instead they will counsel their clients to go to trial, and domestic violence survivors, many of whom are today spared further trauma through guilty pleas, will either be compelled to testify against their abusers or have the criminal cases dismissed.

Finally, section 814 would exacerbate immigration court backlogs. First, it would create a backlog in the already burgeoning dockets of criminal courts because it would incentivize criminal defendants to opt for trial instead of pleading guilty. Immigrant defendants will be resistant to plead if they do not know what the immigration consequences of their pleas will be. Second, because section 814 would encourage the introduction of extraneous evidence, it will turn deportation proceedings into *second* criminal trials at a time when these courts are already wading through more than 300,000 cases.⁴ Neither the immigration nor the criminal adjudication systems can afford the costly consequences of section 814.

We urge you to work to strip section 1008 of S. 1925 and section 814 of H.R. 4970. Please do not hesitate to contact Mony Ruiz-Velasco, National Immigrant Justice Center, at (312) 660-

¹ H.R. Res. 4970, 112th Cong. § 814 (2012).

² See Rebecca Sharpless, *Towards a True Elements Test: Taylor and the Categorical Analysis of Crimes in Immigration Law*, 62 U. Miami L. Rev. 979, 994-95 (2008) (describing line of case law starting in 1914 that sets out a conviction-record approach for immigration adjudications).

³ *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010).

⁴ *Historic Drop in Deportation Orders as Immigration Court Backlog Increases*, TRAC (Apr. 21, 2012), available at <http://trac.syr.edu/immigration/reports/279/>.

1360 or mruiz-velasco@heartlandalliance.org for further information regarding these or related concerns.

Sincerely,

American Civil Liberties Union

America's Voice Education Fund

ASISTA Immigration Assistance

Casa de Esperanza: National Latin@ Network for Healthy Families and Communities

Center for Community Change

Immigrant Legal Resource Center

Lutheran Immigration and Refugee Service

National Council of La Raza

National Immigration Forum

National Immigrant Justice Center

National Immigration Law Center

National Immigration Project of the National Lawyers' Guild

Southern Poverty Law Center

Tahirih Justice Center

Washington State Coalition Against Domestic Violence