

## MEMORANDUM

Agenda Item No. 11(A)(24)

**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners


**DATE:** January 20, 2016

**FROM:** Abigail Price-Williams  
County Attorney

**SUBJECT:** Resolution opposing SB 118,  
HB 9, or similar legislation that  
would make it a crime under  
Florida law to reenter the state  
after being denied admission  
or removed from the United  
States or after departing the  
United States while an order  
of removal is outstanding

Resolution No. R-73-16

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Daniella Levine Carafioti



Abigail Price-Williams  
County Attorney

APW/jls



# MEMORANDUM

(Revised)

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Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_ ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 11(A)(24)  
1-20-16

RESOLUTION NO. R-73-16

RESOLUTION OPPOSING SB 118, HB 9, OR SIMILAR LEGISLATION THAT WOULD MAKE IT A CRIME UNDER FLORIDA LAW TO REENTER THE STATE AFTER BEING DENIED ADMISSION OR REMOVED FROM THE UNITED STATES OR AFTER DEPARTING THE UNITED STATES WHILE AN ORDER OF REMOVAL IS OUTSTANDING

**WHEREAS**, Article I, Section 8, Clause 4 of the United States Constitution grants the federal government the power to establish a uniform Rule of Naturalization; and

**WHEREAS**, in furtherance of that authority, the federal government has enacted an extensive and comprehensive framework of immigration laws including, but not limited to, criminal penalties for individuals who reenter the United States after (1) being denied admission, excluded, deported, or removed or (2) departing the United States while an order of deportation is outstanding absent certain limited circumstances, such as attaining consent from the United States Attorney General; and

**WHEREAS**, Senate Bill (SB) 118 and House Bill (HB) 9 have been filed for consideration during the 2016 session of the Florida Legislature by Senator Travis Hutson (R – Palm Coast) and Representative Carlos Trujillo (R - Doral), respectively; and

**WHEREAS**, the current version of these bills would make it a third degree felony under Florida law for any individual to reenter or be found in the state if he or she has been denied admission, excluded, deported, or removed, or has departed the United States while an order of exclusion, deportation, or removal is outstanding, unless he or she has attained consent from the United State Attorney General to reapply for admission or has established that he or she was not required to obtain advance consent under federal law; and

**WHEREAS**, this proposed legislation would create a nearly identical prohibition under state law to a prohibition that already exists under federal law, 8 U.S.C. § 1326, and impose a maximum sentence (five years) that is greater than the maximum sentence under federal law (two years); and

**WHEREAS**, similar efforts by other states have been struck down by the United States Supreme Court as being preempted by federal law; and

**WHEREAS**, for example, the Supreme Court in *Arizona v. United States*, 132 S.Ct. 2492 (2012), struck down an Arizona statute that, among other things, added a state-law penalty for conduct already prohibited by federal immigration law, and held that the statute was preempted by federal law because “permitting the State to impose its own penalties for the federal offenses here would conflict with the careful framework Congress adopted”; and

**WHEREAS**, SB 118 and HB 9 would also unnecessarily devote local resources towards enforcement of matters that are the responsibility of the federal government; and

**WHEREAS**, the Supreme Court found in *Arizona*, 132 S.Ct. at 2498, that “it is fundamental that foreign countries [and family members] concerned about the status, safety, and security of their nationals in the United States must be able to confer and communicate on this subject with one national sovereign, not the 50 separate states”; and

**WHEREAS**, the proposed legislation would enable the state to bring criminal charges against individuals for purportedly violating federal law even when the federal officials charged with enforcing those laws determined that prosecution would frustrate the federal government’s comprehensive immigration policy,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA,** that this Board:

**Section 1.** Opposes SB 118, HB 9, or similar legislation that would make it a crime under Florida law to reenter the state after being denied admission or removed from the United States or after departing the United States while an order of removal is outstanding.

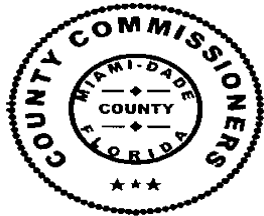
**Section 2.** Directs the Clerk of the Board to transmit a certified copy of this resolution to the Governor, Senate President, House Speaker, Senator Travis Hutson, Representative Carlos Trujillo and the Chair and remaining Members of the Miami-Dade County State Legislative Delegation.

**Section 3.** Directs the County's state lobbyists to advocate against the legislation set forth in Section 1 above, and authorizes and directs the Office of Intergovernmental Affairs to amend the 2016 State Legislative Package to include this item.

The Prime Sponsor of the foregoing resolution is Commissioner Daniella Levine Cava. It was offered by Commissioner **Daniella Levine Cava** , who moved its adoption. The motion was seconded by Commissioner **Jean Monestime** and upon being put to a vote, the vote was as follows:

	Jean Monestime, Chairman	<b>aye</b>	
	Esteban L. Bovo, Jr., Vice Chairman	<b>absent</b>	
Bruno A. Barreiro	<b>aye</b>	Daniella Levine Cava	<b>aye</b>
Jose "Pepe" Diaz	<b>nay</b>	Audrey M. Edmonson	<b>aye</b>
Sally A. Heyman	<b>aye</b>	Barbara J. Jordan	<b>aye</b>
Dennis C. Moss	<b>aye</b>	Rebeca Sosa	<b>nay</b>
Sen. Javier D. Souto	<b>absent</b>	Xavier L. Suarez	<b>aye</b>
Juan C. Zapata	<b>aye</b>		

The Chairperson thereupon declared the resolution duly passed and adopted this 20<sup>th</sup> day of January, 2016. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA  
BY ITS BOARD OF  
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **Christopher Agrippa**  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.

MBV

Michael B. Valdes