

October 20, 2015

Senator David Vitter  
United States Senate  
516 Hart Senate Office Bldg.  
Washington, DC 20510

Chairman Chuck Grassley  
United States Senate  
135 Hart Senate Office Bldg.  
Washington, DC 20150

Senator Ron Johnson  
United States Senate  
328 Hart Senate Office Bldg.  
Washington, DC 20150

Senator Pat Toomey  
United States Senate  
248 Russell Senate Office Bldg.  
Washington, DC 20510

Senator Ted Cruz  
United States Senate  
404 Russell Senate Office Bldg.  
Washington, DC 20150

Dear Senators Vitter, Toomey, Grassley, Cruz, and Johnson:

On behalf of the National Sheriffs' Association, the National Association of Police Organizations, and the Federal Law Enforcement Officers Association and the local, state, and federal law enforcement officers we represent, we write to reiterate our support for the Stop Sanctuary Policies and Protect Americans Act (S.2146) and to correct some misrepresentations regarding the Act.

As the law enforcement officers on the front lines working to protect our communities, we know firsthand the challenges facing police officers. We know when a bill makes our jobs more difficult and when a bill makes our jobs easier.

We have been surprised to hear some misrepresent this bill and its effects on law enforcement.

For example, some have claimed that the Stop Sanctuary Policies Act will “requir[e] state and local law enforcement to carry out the federal government’s immigration enforcement responsibilities,” and thus “the federal government would be substituting its judgment for the judgment of state and local law enforcement agencies.” Nothing in the Stop Sanctuary Policies Act requires local law enforcement “to carry out federal immigration responsibilities.” Removing illegal immigrants remains the exclusive province of the federal government. The bill simply withholds certain federal funds from jurisdictions that prohibit their local law enforcement officers from cooperating with federal officials in the limited circumstance of honoring an immigration detainer. It is politicians in sanctuary jurisdictions who, by tying the hands of local law enforcement, are “substituting [their] judgment for the judgment of state and local law enforcement.”

Others have resorted to scare tactics, warning that that S.2146 will lead to the deportation of those who report crimes to law enforcement. This is simply false. The bill provides that if a jurisdiction has a policy that it will not inquire about the immigration status of crime victims or witnesses, the jurisdiction will not be deemed a sanctuary jurisdiction and will not lose any federal funds.

To be clear: We believe the Stop Sanctuary Policies Act will make America safer, enhance the ability of police to protect and serve, and provide greater flexibility for law enforcement officers at every level—federal, state, and local.

We also write to address those Members of Congress who insist that the Stop Sanctuary Policies Act is not needed; instead, Congress should “encourage” local officers to cooperate with federal officials. This ignores one crucial fact: *Across America, federal courts have issued decisions forbidding local officers from cooperating with federal requests to hold an illegal immigrant.* These decisions provide that local law enforcement and municipalities may be sued if they cooperate with federal officials to detain dangerous criminals. Under these decisions, even if a federal official would have had the authority to hold the individual, local law enforcement can still be sued.

Too often, local law enforcement officers are left with a terrible choice: Either release an individual who has been convicted of or arrested for violent crimes, or be sued and lose funds that are needed to protect our communities. As a result of these lawsuits, scores of cities and counties across America have become sanctuary jurisdictions.

The Stop Sanctuary Policies Act provides a solution. The bill confirms that local law enforcement may cooperate with federal requests to hold an illegal immigrant. The bill provides that when local officers comply with such requests, they are delegated the same powers to hold illegal immigrant as a DHS official would have. If the detention would have been legal if carried out by the Department of Homeland Security (DHS), then under S.2146 it is still legal; it does not become a crime simply because it is a local sheriff acting instead of a DHS official.

This provision was carefully drafted to protect individual liberties. It preserves an individual’s ability to sue for a violation of a constitutional or civil rights, regardless of whether the violation was the result of negligence or was purposeful. Under S.2146, if there was no basis to detain the individual—DHS issued the request for someone in the U.S. legally—the individual may still sue for a violation of rights. The difference is that the party responsible for the error, the federal government, is liable; not a local police officer or jailer acting in good faith. If a local law enforcement officer acts improperly—mistreating an individual or continuing to hold an individual after federal officials issue a release order—the individual may sue, with the local officer liable for all costs and judgments.

Contrary to the assertions of the American Civil Liberties Union (ACLU)—the party that has orchestrated these lawsuits against local law enforcement officers—the Stop Sanctuary Policies Act is fully consistent with the Fourth Amendment. In a letter to Congress, the ACLU states, “The Fourth Amendment provides that the government cannot hold anyone in jail without getting a warrant or the approval of a judge.” The fact is that the Constitution requires probable cause to detain an individual, which can be established by a judicial warrant issued *before* the arrest or by a demonstration of probable cause *after* the arrest. Otherwise police could never arrest someone whom they see committing a crime. The Stop Sanctuary Policies Act does not alter the requirement for probable cause. To the contrary, S.2146 explicitly preserves an individual’s ability to sue if he or she is held without probable cause or has suffered any other violation of a constitutional right.

The ACLU also tries scare tactics. It claims that the Stop Sanctuary Policies Act includes “provisions requiring DHS to absorb all liability in lawsuits brought by individuals unlawfully detained in violation of the Fourth Amendment.” This is false. If a lawsuit alleges that a local officer knowingly violated Fourth Amendment or other constitutional rights, then under S.2146, the individual officer will bear all liability—not the federal government. For some lawsuits, the U.S. will be substituted as defendant—specifically, suits alleging that the immigration detainer should not have been issued. But such a claim could already be brought against the U.S. under existing law; thus, S.2146

does not create a new source of liability for the federal government. S.2146 simply provides that if the federal government made the error, the federal government should be the defendant.

We, the law enforcement officers of America, are on the front lines day after day. We know the challenges of apprehending criminals and the difficulties of working with crime victims and witnesses—especially those who may be fearful of local and federal authorities. Based on our collective knowledge and experience, we strongly support the Stop Sanctuary Policies Act (S.2146) and urge the Senate to pass this important legislation.

Sincerely,

National Sheriffs' Association  
National Association of Police Organizations  
Federal Law Enforcement Officers Association