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**The American Immigration Lawyers Association opposes the
“Stop Sanctuary Policies and Protect Americans Act” (Sen. Vitter, S. 2146)**

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The American Immigration Lawyers Association (AILA) urges senators to vote no on the motion to proceed to Senator Vitter’s newly proposed bill S. 2146, the “Stop Sanctuary Policies and Protect Americans Act” when it comes to the floor on Tuesday, October 20.

Contrary to its stated purpose, this bill will not make communities safer. In fact, it will undermine public safety by penalizing and denying funding to states and local law enforcement agencies that are working to build trust within their communities. S. 2146 is not only counter-productive but will cost American taxpayers hundreds of millions of dollars by unnecessarily incarcerating thousands of immigrants who pose no threat to our communities. Equally important, S. 2146 suffers from serious constitutional problems and likely violates the Fourth and Tenth Amendments to the Constitution.

Understandably, in the wake of recent violent crimes, lawmakers and law enforcement officials are looking for solutions to protect the public. But S. 2146 takes a step backward by imposing federal policy on states and localities despite resistance from dozens of jurisdictions. The bill seeks to compel states and localities to enforce immigration law when their primary mission is to protect their communities. It threatens state and local law enforcement agencies’ autonomy in decision making and thereby threatens the safety of all community members. The Department of Homeland Security (DHS) and local law enforcement officials have asked Congress to refrain from passing such heavy-handed legislation that disregards state and local interests.

Americans have overwhelmingly indicated that they want workable solutions to our nation’s immigration system, not an extreme, enforcement-only proposal like Sen. Vitter’s bill. Poll after poll show the great majority of Americans favor commonsense reforms to the immigration system, including legalization of those who are out of status, as the right way to make our nation safer and stronger.

Properly addressing this complex issue requires far more thoughtful consideration than the rushed process given to S. 2146, which was just introduced on October 6 and now comes to the full Senate having bypassed committee markup pursuant to Rule 14. Senators should vote no on the motion to proceed to S. 2146 because the bill has not been reviewed adequately and moving forward is premature.

S. 2146 undermines public safety by taking away funding for local policing

The principal impact of S. 2146 is that it would penalize any state or locality that fails to comply with requests from DHS to detain a non-citizen even after the local law enforcement agency has decided further detention is no longer justified for criminal law enforcement purposes. S. 2146 also mandates that states and localities respond to requests to notify DHS that they are about to release an individual of concern to DHS. The consequence for failing to comply with the provisions of S. 2146 is the denial of federal funding from three federal grant programs: the State Criminal Alien Assistance Program (SCAAP), Community Oriented Policing Services (COPS), and Community Development Block Grants (CDBG).

Currently, about 300 jurisdictions are at risk of losing millions of dollars in funding which sheriffs and police chiefs rely on to keep their communities safe. Denial of this funding will deprive local communities of funding for the salaries of law enforcement personnel, training, safety equipment, and support and services for victims—all of which are critical to improving public safety and fighting crime. S. 2146 hurts law enforcement efforts to protect the public despite its claim that it will do the opposite. For this reason the Fraternal Order of Police opposes any legislation that “would penalize law enforcement agencies by withholding Federal funding or resources from law enforcement assistance programs in an effort to coerce a policy change in so-called ‘sanctuary cities.’” The U.S. Conference of Mayors stated that local law enforcement agencies should be the ones making the decisions on how to prioritize their resources, direct their workforce, and define the duties of their employees: “Effective policing cannot be achieved by forcing an unwanted role upon the police by threat of sanctions or withholding of law enforcement or other federal assistance funding.”

S. 2146 undermines public safety by eroding the community’s trust in local law enforcement

Senator Vitter’s bill wrongly assumes that states and localities established community trust policies in order to provide “sanctuary” for illegal immigrants. In fact, local law enforcement officials have adopted these policies to improve the community’s trust in law enforcement so that victims and witnesses of crimes will come forward and report crimes. A victim advocate in Minnesota described a domestic violence victim’s story as follows:

Areli endured abuse from her husband for two years before she decided to call the police. She was always scared to call the police because others always said that if somebody who was undocumented called the police they would get deported. ... Areli finally decided to call the police after her husband threw her down a staircase and strangled her.¹

Citing examples such as Areli’s, the National Task Force to End Sexual Assault and Domestic Violence and the California Partnership to End Domestic Violence have expressed opposition to S. 2146 and any program that intertwines local law enforcement authorities with the activity of immigration enforcement. By requiring that local law enforcement detain individuals at ICE’s request, S. 2146 turns local police into immigration enforcement agents and makes it harder for them to protect the community, not easier.

¹ See list of 10 case examples provided by advocates for victims of violence: <http://www.aila.org/infonet/ntf-end-sexual-and-dom-violence-legislation-opp>.

Senator Vitter has not fixed the constitutional problems in his bill

Like previous versions, S. 2146 suffers from serious constitutional infirmities that make it vulnerable to legal challenge and explicitly subjects the federal government to additional risk of liability. Before a local law enforcement authority can detain an individual after making a warrantless arrest, the Fourth Amendment requires that there be probable cause to believe that the law has been broken, and that probable cause must be promptly reviewed by a judge. When ICE requests that an individual be held, ICE does not obtain a warrant or seek review by a judge before issuing the detainer to a local law enforcement authority. Several courts have held that localities have violated the Fourth Amendment and can be held liable for detaining individuals solely on the basis of an ICE detainer request. If this legislation is passed, state and local law enforcement will be pressured into violating the Constitution.

Currently, more than 300 jurisdictions decline to act on ICE detainer requests because of their constitutional infirmities. Chief Thomas Manger, President of the Major Cities Chiefs Association, explained: "We can't hold them. Basically, you're falsely imprisoning an individual without legal foundation to hold them." In July, Department of Homeland Security (DHS) Secretary Jeh Johnson testified before Congress: "I do not believe that mandating through federal legislation the conduct of sheriffs and police chiefs is the way to go. I think it will be hugely controversial, I think it will have problems with the Constitution."

In an attempt to alleviate the liability concerns of states and localities, S. 2146 would shield them and individual officers from liability for complying with the bill. But the bill transfers the financial burden by explicitly substituting the federal government as the defendant in place of individual officers who are sued. It would leave American taxpayers stuck paying for lawsuits brought by those who would be unconstitutionally detained if S. 2146 becomes law.

By mandating local compliance with federal detainer and notification requests, S. 2146 also risks violating the Tenth Amendment to the Constitution which forbids the federal government from commandeering or coercing states and localities to comply with federal programs. S. 2146 seeks to avoid this problem by requiring compliance from state and local governments as a condition for receiving funding. Nonetheless S. 2146 still raises serious Tenth Amendment concerns by stripping states and localities of the authority and discretion to determine how funds are spent and how policies are established.

Congress should not pass legislation that is vulnerable to legal and constitutional challenge. No bill with such fundamental problems should even receive a vote by the full Senate.

Increased sentences and mandatory minimums are excessive and will cost taxpayers millions

At a time when our nation's lawmakers are striving to reduce incarceration rates for non-violent offenders, S. 2146 would imprison thousands of nonviolent offenders convicted under the illegal reentry statute for excessive and disproportionate periods of up to 10 years. S. 2146 also creates a new sentencing structure for the crime of illegal reentry, establishing new mandatory minimum sentences that would greatly increase the federal prison population. Federal sentencing statutes already limit the discretion exercised by judges to decide what penalty to impose on individuals convicted of illegal reentry. The mandatory minimums included in S. 2146 further ties the hands

of judges by preventing them from making individualized sentencing determinations based on the severity and circumstances of each case.

If these mandatory penalties become law, the federal prison population will increase by thousands and result in hundreds of millions of dollars in detention costs borne by American taxpayers. Given how quickly S. 2146 has been brought to full Senate, the Congressional Budget Office has not provided an official cost assessment for the bill. Senators should insist on obtaining accurate information about the financial impact S. 2146 will have on the federal budget before deciding to proceed on this bill.

American communities are asking how our elected leaders will make our nation safer. S. 2146 does not, however, accomplish this goal. It will make cities and states less safe. It treads upon protections of the Fourth Amendment. And it will result in the incarceration of thousands of people costing Americans millions. AILA urges Congress to address concerns about illegal immigration by passing carefully-crafted reforms to the immigration system rather than ill-considered measures like S. 2146 that have not received proper review.