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Subcommittee on Immigration Policy and Enforcement
Hearing on H.R. 3808
The Scott Gardner Act

March 7, 2012

Mr. Chairman, Honorable Members of the Judiciary Subcommittee on Immigration Policy Enforcement

It's a privilege this afternoon to testify on behalf of local law enforcement and many local Sheriff's across our nation in support of HR 3808, known as the "The Scott Gardner Act". I have expressed in previous testimony to a house committee and on panels that I believe that there is certainly a role and a need for local law enforcement in the enforcement of our nation's immigration laws.

I strongly believe that this legislation will enhance the ability of law enforcement in general to assist in the enforcement of our immigration laws; it will add additional teeth to our federal immigration laws, and more importantly help preserve the safety and security of Americans. This law will insure that illegal criminal aliens will no longer remain in our country after being arrested and convicted for Driving While Intoxicated.

Drunk Driving is recognized as a Violent Crime and a typically reoccurring and irresponsible act committed against Americans on our roadways. It is recognized nationally as a public safety issue. One of the primary responsibilities of local law enforcement is to make our roads and highways safe in part by combating drunk driving and enforcing the DWI laws. This national legislation will add a strong tool to law enforcement's toolbox and another means to combat DWI across the United States.

There are many stories of horrific and very sad tragedies that occur in communities across America every single day that impact Americans and their families. Are these offenders any less of a public safety threat than the perpetrators of other violent crimes?

I will talk briefly about Frederick County, Maryland, about one hour northwest of Washington, where I serve as Sheriff and Chief Law Enforcement authority in that jurisdiction. My office participates with DHS in both the 287g Program and Secure Communities, the 287g Program having been very effective working in partnership with ICE/ DHS since early 2008.

As of today, out of the 1032 detainers lodged under the 287g Program in Frederick County, 97 of those detainers lodged were for Driving While Intoxicated charges. That equates to 9.39 % of the arrests of all detainers lodged in the Frederick County program.

Currently, in jurisdictions without the 287g Program those offenders arrested for DWI and in this country illegally would and are, typically being released back in to our communities. Many are released back onto the streets after their initial appearance before a local District Court

Commissioner or Magistrate. Often times they never appear for court and are not held accountable or punished for these crimes. Many end up becoming repeat offenders in a revolving door system.

The Scott Gardner Act will fill this gap in closing this hole of allowing those back into our communities and prioritize the removal of these criminal aliens!

- I would like to cite three specific relevant cases in Frederick County

- On April 15, 2008 an offender was arrested by the Frederick County Sheriff's Office and charged with driving while intoxicated with a BAC of three times the legal limit, and other violations. This offense occurred in a school zone, during school hours, with the offender driving 20 mph over the posted speed. He was released under his own recognizance. Without the authority to file a detainer under 287g he would have been released, however during the offender's intake 287g certified officers determined the offender was in the country illegally. He was held and eventually ordered removed.

- On March 1, 2011 local law enforcement arrested an offender for DUI and other offenses. During intake screening the offender was determined to be a Lawful Permanent Resident, but because of his extensive criminal history he was subject to removal. The criminal history consisted of 10 prior arrests with four prior convictions. A detainer was lodged and he was eventually deported back to Germany.

- On August 22, 2010, an individual was arrested and charged with DWI in a fatal crash in Frederick County. The offender's blood alcohol level was 0.18, more than twice the .08 level, the amount necessary to support a conviction for drunk driving. This was the Guatemalan citizen's second conviction for drunk driving. The offender will serve a four-year sentence after which time he will face removal from the United States.

In addition, members of violent street gangs including MS-13 have been arrested for DWI, identified as not lawfully present, and have been removed from the streets of Frederick County.

Opponents of this legislation will say that the law will invite racial profiling of ethnic groups and result in discriminatory enforcement of the law, which is absolutely not the case. The wording is clear that the federal database check to determine immigration status and lawful presence will occur only after an arrest or apprehension for the DWI arrest. Status checks will not be conducted prior to taking offender into custody.

If the status check indicates the unlawful presence of the offender in the United States, the local enforcement officer is authorized to issue a Federal detainer to maintain that alien in custody in accordance with the agreement until the alien is convicted for the offense or the

alien is transferred to federal custody. This law will prioritize the removal of an illegal immigrant who is convicted of DWI. This not profiling, not racial or ethnic bias; this is simply strong effective enforcement of the law.

Currently, with the implementation and rollout of the Secure Communities program in every jurisdiction across the United States by DHS, the timing would be ideal to pass H.R. 3808 and implement that law in conjunction with Secure Communities. DHS would be able to train the officers to the extent necessary, to prepare and issue the detainers on local offenders.

I can speak to experience with my agency that DHS has always provided outstanding oversight and supervision within their programs. DHS needs the help of local law enforcement to be successful in carrying out its mission. This could in fact be a fairly seamless implementation of what potentially could be a very effective law.

For decades we have failed to protect American citizens by securing our borders, enforcing our immigration laws, and identifying criminal illegal aliens that are living in our country. This bill in itself is certainly not the entire solution but a reasonable step in the right direction to strengthen the Immigration and Nationality Act. It is certainly incumbent on lawmakers to pass laws that protect the safety and security of American citizens by closing loopholes in our laws and give local law enforcement agencies all of the tools and support possible to enforce those laws as effectively as possible.