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EMPOWERING LOCAL LAW ENFORCEMENT TO COMBAT ILLEGAL IMMIGRATION

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN RESOURCES

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

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EMPOWERING LOCAL LAW ENFORCEMENT TO COMBAT ILLEGAL IMMIGRATION

FRIDAY, AUGUST 25, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY,
AND HUMAN RESOURCES,
COMMITTEE ON GOVERNMENT REFORM,
Gastonia, NC.

The subcommittee met, pursuant to notice, at 10:06 a.m., at Congresswoman Myrick's District Office, Gastonia, NC, Mark E. Souder (chairman of the subcommittee) presiding.

Present: Representatives Souder, Myrick, Foxx and McHenry.

Staff present: Dennis Kilcoyne, counsel; Scott Springer, congressional fellow; and Kimberly Craswell, clerk.

Mr. SOUDER. The subcommittee will come to order. Good morning and thank you all for coming. This is the third hearing our subcommittee has held this year on the subject of illegal immigration. The first was in Winston-Salem in April on illegal immigrant gangs, and the second was just last month in Washington, DC, on the proposed expansion of the Southwest border fence. I'd like to thank my fellow member and good friend, Sue Myrick, classmate, who was—has invited us here to her district. I hope that the information we gather at this hearing will help us achieve the goals of securing our border and enhancing Federal partnership with State and local officials in combating illegal immigration. I should also point out that this subcommittee did a major border report three or 4 years ago before the creation of the Homeland Security Committee that was the foundation of the border committee, that 2-year cycle we did somewhere in the vicinity of 10 to 12 hearings on both the Southwest border and on the Northern border in Canada so—and we have oversight over the Justice Department, which is why we work on illegal immigration. This is just the third hearing in the cycle of the last 6 months.

Since 2001, the illegal immigrant population in this country has been swelling by nearly 1 million annually. After crossing the border, most illegal immigrants undoubtedly would prefer to quietly find work and earn money rather than participate in any activity that might draw the attention of law enforcement. However, some of them feel no such restraint, as many Federal, State and local police agencies will attest. As the illegal immigrant population swells, so too does the population of criminals among them.

To cope with this growing problem, drastic improvements in border security and internal enforcement of immigration laws are needed. Today's hearing will focus on what Federal law enforce-

ment agencies can do and are doing to partner with State and local officials in enforcing immigration laws.

The main Federal agency tasked with internal enforcement of immigration laws is Immigration and Customs Enforcement, or ICE, which is part of the Department of Homeland Security. The most recent estimate for our illegal immigrant population from January 2005 is 10.5 million. Undoubtedly, then, it must be at 11 million by now, and over 300,000 of these are in North Carolina. For this, ICE has approximately 3,500 agents. It is unable to adequately pursue all leads on immigration violations, even ones that involve serious criminal violations. As long as these violations can only be pursued spottily there is little hope of building a genuine climate of deterrence of those inclined to violate immigration laws. Even deportation of criminal aliens released from prison cannot always be done, due to the lack of resources and coordination, not to mention that they come right back across.

One solution to these dilemmas has been growing since it was first tried in 2002. This is known as the 287(g) cross- designation training program. By the authority of Section 287(g) of the Immigration and Nationality Act, the Department of Homeland Security can enter into assistance agreements with State and local agencies. The agreements are spelled out in a Memorandum of Understanding, MOU, in which the scope, intent, responsibilities and procedures of the program are covered. These agreements allow State and local officials much-needed flexibility to shape and guide the program. ICE personnel then train the State and locals in a 5-week program—currently costing roughly $520 per officer trained—focusing on immigration law, civil rights, intercultural relations and issues and illegalities surrounding racial profiling. Once the training is completed and examinations are passed, the officers receive official ICE certification and authority to enforce certain immigration laws. Thereafter, ICE continues to provide supervision and support so that officers might respond appropriately when a suspect is found to be an illegal alien. Though this opportunity has existed in law since 1996, no State or locality took advantage of it until the Florida Department of Law Enforcement did so in 2002.

In practical terms, 287(g) training and certification gives local law enforcement a vital tool in combating a criminal class that grows with the illegal immigrant population. Many criminal illegal aliens who, given circumstances, might otherwise have to be released can be held and processed for deportation or Federal prosecutions. State and local officers can interview suspects and prison inmates to determine if immigration laws have been violated, process and fingerprint them for such violations, prepare documents for deportation and refer criminal aliens to ICE for potential Federal prosecution.

A recent case in California demonstrates the urgent need for expanded 287(g) training. On July 15, a notorious gang member in Los Angeles, one Mauricio Alejandro Jimenez, shot and killed a pair of 1 and 3-year-old brothers. Area law enforcement was well acquainted with him, having arrested him seven times for various gun and gang crimes.

He had recently been deported after serving a year in prison, but had immediately re-entered the country and returned to haunt his

old neighborhood. Had local authorities been trained under 287(g) and received authority to enforce immigration laws, they would have been able to immediately arrest and process him without having to wait for any Federal assistance or for him to commit further crimes under State law.

Many such criminals like Jimenez are able to thrive in their communities because of the reluctance of their victims to cooperate with police. Otherwise law-abiding illegal immigrants are fearful that any contact with authorities could result in deportation. But once officers, deputies and detectives obtain immigration-law authority, they can arrest gang members like Jimenez and remove them from the neighborhoods without the delays caused by having to painstakingly build trusting relationships with suspicious immigrants.

It is the constitutional responsibility of the Federal Government to protect the borders and regulate immigration. Given the scope of the problem of illegal immigration, the Federal Government should move quickly to provide 287(g) training and authority to the growing number of State and local jurisdictions that are requesting it. This hearing will explore the North Carolina experience with 287(g) and seek answers to the strengths and weaknesses of the program.

For the first panel, we are joined by Mr. Kenneth A. Smith, Special Agent of Immigration and Customs Enforcement's Atlanta office.

On our second panel, we are joined by Gaston County Sheriff Alan Cloninger, District Attorney Michael Lands of Judicial District 27A, Mecklenburg County Sheriff Jim Pendergraph and Ms. Emily Moose, who has a painful personal story about what happens when government fails to properly enforce its immigration laws.

Now I have a couple of additional points I want to make. There has apparently been some misunderstanding on a few points that we've attempted to clarify. This is a congressional oversight hearing; it is not a town hall meeting. We have brought two panels of witnesses here to answer questions and give us information that we as Members of Congress need to see that this program is being utilized as it should be and to be better informed is the purpose of our subcommittee under the Constitution and the laws of the United States. I thank all the audience members who have come here to observe us as we carry out our constitutional duties and we ask you all to help us by refraining from any interruptions about the rule of law and we need to follow the law. We allow people to observe because we represent you in Congress and people are allowed to watch our congressional hearings in Washington as they are in the field. It's good for us to get into the field where we can, one, not have bells go off and being—running around and actually focus our attention rather than, how do I say it, before ADD when we got elected to Congress and ADD shortly thereafter because of all the things that come at us.

Let me briefly explain for those who are not familiar with our committee. Congress is set up such that we have authorized committees. The best—a simple example would be education where we set out the No Child Left Behind.

Then we have an appropriations committee that would fund those decisions that are guidelines by the Education Committee. Then we have oversight committees to see that the executive branch is implementing the intent of what was authorized and funded and that also to see whether there need to be changes in those laws. This is part of a—an oversight committee. The oversight committees in Congress were created almost immediately even before the authorized committee because even back in George Washington's day Congress immediately became concerned whether the executive branch was implementing the programs that they did. So this committee is actually one of the oldest in Congress. Then we have—My subcommittee that I chair has oversight over all criminal issues. Drug policy in particular is where our primary focus is in Congress because we do the authorizing and the oversight on the drug czar's office and on narcotics. So about half of our hearings deal with narcotics. It's taken us into border issues and immigration issues.

The full committee, and you'll see today and I'll explain, we—we swear our witnesses in; that probably it used to be we were best known for doing many investigations on the previous Presidential administration under President Clinton but lately it's—I don't want to talk about the past, and Mark McGwire and Rafael Palmeiro who pointed his finger at both Patrick and I and said that—Patrick is vice chairman of our subcommittee, Congressman McHenry, and he said: I never used these steroids. And it was pretty amazing. Anyway, that's the genesis of our committee and what our subcommittee does and it's great to be here again in North Carolina and now we yield to the vice chairman of the subcommittee Congressman McHenry.

[The prepared statement of Hon. Mark E. Souder follows:]

Opening Statement
Chairman Mark Souder

"Empowering Local Law Enforcement to Combat Illegal Immigration"

Subcommittee on Criminal Justice, Drug Policy and Human Resources
Committee on Government Reform

August 25, 2006

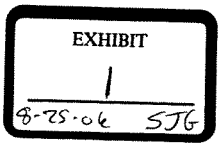
Good morning, and thank you all for coming. This is the third hearing our Subcommittee has held this year on the subject of illegal immigration. The first was in Winston-Salem in April on illegal immigrant gangs, and the second was just last month in Washington on the proposed expansion of the southwest border fence. I'd like to thank my fellow member and good friend, Sue Myrick, who has invited us here to her district. I hope that the information we gather at this hearing will help us achieve the goals of securing our border and enhancing Federal partnership with state and local officials in combating illegal immigration.

Since 2001, the illegal immigrant population in this country has been swelling by nearly 1,000,000 annually. After crossing the border, most illegal immigrants undoubtedly would prefer to quietly find work and earn money rather than participate in any activity that might draw the attention of law enforcement. However, some of them feel no such restraint, as many Federal, state and local police agencies will attest. As the illegal immigrant population swells, so too does the population of criminals among them.

To cope with this growing problem, drastic improvements in border security and internal enforcement of immigration laws are needed. Today's hearing will focus on what Federal law enforcement agencies can do and are doing to partner with state and local officials in enforcing immigration laws.

The main Federal agency tasked with internal enforcement of immigration laws is Immigration and Customs Enforcement, or "ICE," which is part of the Department of Homeland Security. The most recent estimate for our illegal immigrant population—from January 2005—is 10.5 million. Undoubtedly, then, it must be at 11 million by now, and over a 300,000 of these are in North Carolina. For this, ICE has approximately 3,500 agents. It is unable to adequately pursue all leads on immigration violations, even ones that involve serious criminal violations. As long as these violations can only be pursued spottily, there is little hope of building a genuine climate of deterrence of those inclined to violate immigration laws. Even deportation of criminal aliens released from prison cannot always be done, due to a lack of resources and coordination.

One solution to these dilemmas has been growing since it was first tried in 2002. This is known as the "287(g) cross-designation training" program. By the authority of



section 287(g) of the Immigration and Nationality Act, the Department of Homeland Security can enter into assistance agreements with state and local agencies. The agreements are spelled out in a "Memorandum of Understanding" (MOU), in which the scope, intent, responsibilities and procedures of the program are covered. These agreements allow state and local officials much-needed flexibility to shape and guide the program. ICE personnel then train the state and locals in a five-week program (currently costing roughly $520 per officer trained) focusing on immigration law, civil rights, intercultural relations and issues and illegalities surrounding racial profiling. Once the training is completed and examinations are passed, the officers receive official ICE certification and authority to enforce certain immigration laws. Thereafter, ICE continues to provide supervision and support so that officers might respond appropriately when a suspect is found to be an illegal alien. Though this opportunity has existed in law since 1996, no state or locality took advantage of it until the Florida Department of Law Enforcement did so in 2002.

In practical terms, 287(g) training and certification gives local law enforcement a vital tool in combating a criminal class that grows with the illegal immigrant population. Many criminal illegal aliens who—given circumstances—might otherwise have to be released can be held and processed for deportation or Federal prosecutions. State and local officers can interview suspects and prison inmates to determine if immigration laws have been violated, process and fingerprint them for such violations, prepare documents for deportation and refer criminal aliens to ICE for potential Federal prosecution.

A recent case in California demonstrates the urgent need for expanded 287(g) training. On July 15, a notorious gang member in Los Angeles, one Mauricio Alejandro Jimenez, shot and killed a pair of one and three-year old brothers. Area law enforcement was well acquainted with him, having arrested him *seven* times for various gun and gang crimes. He had recently been deported after serving a year in prison, but had immediately re-entered the country and returned to haunt his old neighborhood. Had local authorities been trained under 287(g) and received authority to enforce immigration laws, they would have been able to immediately arrest and process him without having to wait for any Federal assistance or for him to commit further crimes under state law.

Many such criminals like Jimenez are able to thrive in their communities because of the reluctance of their victims to cooperate with police. Otherwise law-abiding illegal immigrants are fearful that any contact with authorities could result in deportation. But once officers, deputies and detectives obtain immigration-law authority, they can arrest gang-members like Jimenez and remove them from the neighborhoods without the delays caused by having to painstakingly build trusting relationships with suspicious immigrants.

It is the constitutional responsibility of the Federal government to protect the borders and regulate immigration. Given the scope of the problem of illegal immigration, the Federal government should move quickly to provide 287(g) training and authority to the growing number of state and local jurisdictions that are requesting it. This hearing

will explore the North Carolina experience with 287(g) and seek answers as to the strengths and weaknesses of the program.

For our first panel, we are joined by Mr. Kenneth A. Smith, Special Agent of Immigration and Customs Enforcement's Atlanta office.

For our second panel, we are joined by Gaston County Sheriff Alan Cloninger, District Attorney Michael Lands of Judicial District 27A, Mecklenburg County Sheriff Jim Pendergraph and Ms. Emily Moose, who has a painful personal story about what happens when government fails to properly enforce its immigration laws.

We thank you all for joining us today, and we look forward to your testimony.

Mr. MCHENRY. Thank you, Chairman Souder. Thank you for coming to Western North Carolina once again. Thank you for coming back and I'm very grateful that you chose my native Gaston County to have this important hearing and I want to thank my colleague Sue Myrick for opening her wonderful office and hosting us here today. This is quite an important event for us to discuss the impact on illegal immigration; that impact that it has on local law enforcement. This is the discussion today. We're not going to go outside of that purview that we have here on this committee. As Vice Chair of the committee as Chairman Souder said we have oversight over criminal justice programs in the executive branch. We also have enormous oversight over drug policy; anti-drug policy, and that's where we have been very involved when Chairman Souder brought the committee down a few months ago to the northern part of my district to discuss how to curb meth abuse.

But today we have an important hearing, Mr. Chairman, about illegal immigration and the impact it has on our communities and local law enforcement. With an estimated 11 to 12 million of illegal immigrants in the country a number of congressional field hearings are being held at this August work period when Members of Congress are back in their districts for a full month in order to get a better understanding of the challenges facing our Nation as a result of this illegal flow of coming—of folks coming across our border. It's often said that America is a Nation of immigrants. While that is true I also believe that America is a Nation of laws and without the respect for law we cannot have a foundation for society. And what we are seeing with illegal immigration is a disrespect and a disregard for our laws that we have in place. And in—while North Carolina is not a border State it's greatly impacted on many fronts by those who choose to ignore our laws and enter this country illegally.

According to a March 2006 projection report by the Federation of American Immigration Reform, FAIR, there are an estimated 450,000 illegal immigrants in North Carolina. This increase in population makes the State one of the top five highest percentage of illegals. We have one of the top five illegals—illegal populations in the Nation. Now while we're not a border State we are being affected as if we were a border State and it's important now more than ever that we empower local law enforcement to deal with the rising tide of illegal immigration. This is a multi-tiered front that we have to face and while we need to certainly secure our border the discussion here today is how do we get the tools in place for local law enforcement to deal with this illegal population.

There has also been a growing interest in the 287(g) program which allows local law enforcement to assist Federal agents in performing immigration law enforcement functions. As the illegal population in the States grow we have witnessed a surge in crimes linked to illegal immigration over the past few years ranging from drunk driving accidents involving illegals to increased drug trade and interstate smuggling. While all of these are very important things we have to have the tools in place to curb them and stop them. And there's been a noted increase in trafficking of a more potent form of methamphetamine called Ice which is primarily manu-

factured in Mexico before it's distributed throughout Western North Carolina and throughout the Southeast.

I want to thank Sheriff Cloninger, my sheriff here in Gaston County. Thank you so much for agreeing to testify today and for your perspective. It's very important as someone—as you'll say in your testimony as someone who is going through the process of getting your deputies crossed over into the 287(g) program. We also have Sheriff Pendergraph from Mecklenburg County and he's going to discuss the tools that they currently have in place with the 287(g) program and the results they've been able to get already in Mecklenburg County. Additionally, my district attorney as well, Mike Lands. Thank you for being here and I'm looking forward to your testimony because of your unique perspective dealing in the criminal justice system in the courthouse. Also ICE Agent Ken Smith. Thank you so much for agreeing to be here. And, finally, Ms. Moose, I'm very grateful for your willingness to tell your story and to share with the community the pain and the suffering you've gone through because of illegal immigration.

While this is a larger national debate it's important that we not lose sight of the effect it has on local communities and local law enforcement and that's the discussion we have here today. And I want to thank Sue Myrick for her leadership in Congress dealing with this challenging issue; her innovative ideas to crack down on illegal immigrants that are committing heinous crimes here in this country. Your leadership has been noted in Washington, DC, and I certainly appreciate it as a colleague, neighbor and friend. And so with that, Mr. Chairman, thank you so much for agreeing to have this field hearing today. It's important that we get feedback from local folks and I appreciate you traveling down to our great State once again.

[The prepared statement of Hon. Patrick T. McHenry follows:]

CONGRESSMAN MCHENRY OPENING STATEMENT

Mr. Chairman, thank you for coming to western North Carolina again, this time in an effort to witness first-hand the impact of illegal immigration on our communities and local law enforcement. With an estimated 11.5 to 12 million illegal immigrants in the country, a number of Congressional field hearings are being held during this August work period to get a better understanding of the challenges facing our nation as a result of this flow. It is often said that "America is a nation of immigrants." While I agree with this, there is another important point that must not be ignored: America is a nation of laws. And although North Carolina is not a border state, it is greatly impacted on many fronts by those who choose to ignore our laws and enter the country illegally.

According to a March 2006 PROJECTION report by Federation for American Immigration Reform (FAIR) there are an estimated 405,000 illegal immigrants in North Carolina - this increase in population makes the state one of the top 5 with the HIGHEST PERCENTAGE of illegals (Pew Hispanic Report, June 2005). It is more important than ever to empower our local law enforcement to deal with the rising tide of illegal immigrants.

There has been an increased interest in counties in our area to institute the 287(g) program, which allows for local law enforcement to assist federal agents in performing immigration law enforcement functions. As the illegal population in the states grows, we have witnessed a surge in crimes linked to illegal immigration over the past years, ranging from drunk driving accidents involving illegals to increased drug trade and inter-state smuggling. There has been a noted increase in the trafficking of a more potent form of methamphetamine called "ice" which is primarily manufactured in Mexico before it is distributed throughout western North Carolina.

I want to thank Sheriff Alan Cloninger from Gaston County and Sheriff Jim Pendergraph of Mecklenburg for being with us today to discuss their challenges with illegal

immigration. Recently 12 deputies in the Mecklenburg County Sheriffs Office completed the 287 (g) program and signed a Memorandum of Understanding (MOU) with Immigration and Customs Enforcement (ICE) agents. So far, the massive number of arrests as a result of this program has opened our eyes to the dire need for empowered, effective local law enforcement. Also, Sheriff Cloninger and his department have applied for the program and I understand are close to gaining approval of their MOU with ICE. This is a great tool for our local law enforcement.

In addition to local law enforcement, I am happy to welcome Gaston County District Attorney, Michael Lands, to get a better understanding of how illegal immigration affects the courts and the local community. As more illegal immigrants are caught and given the choice of voluntary deportation or appearing before an immigration court, how wi11 this affect the court system? I look forward to your testimony to help us understand the possible impact of the 287 (g) program on our local legal system.

Also, ICE Special Agent In Charge Ken Smith, thank you for participating today to answer questions surrounding the 287(g) program and the need for a stronger relationship with local law enforcement. Ms. Moose, thank you for being here to share your story about your son Scott Gardner and the impact that illegal immigration has had on your family.

While the immigration reform debate begins at the borders, it by no means ends there as we have seen in North Carolina. There is the question of what to do with the illegal aliens who are already here. The simple truth is that if you break the law to come to this country, you wi11 not respect it once you're here. The Federal government and local law enforcement must work together to help secure our nation. Thank you Mr. Chairman and our witnesses; I look forward to a productive hearing.

Mr. SOUDER. Thank you. Before yielding to Congresswoman Myrick, it's been great to have both Congressman McHenry and Congresswoman Foxx on our subcommittee as Members of Congress and she'll be joining us hopefully soon is my understanding. But Congresswoman Myrick and I were elected the same year in 1994. She's been a very passionate advocate for North Carolina. One way you can tell this, this is my third time at a hearing in the Charlotte area that in—early on in our term because I'm a senior member of the Education Committee we did an education event in Charlotte. We did a—I said the authority of our subcommittee is broad. We did a series of hearings on faith-based and a few years ago we were in Charlotte looking at all the different faith-based programs and Charlotte is one of the centers in the country so we did a regional Southeastern U.S. area on faith-based in Charlotte. She's also been buttonholing people for many years before immigration—she was concerned about immigration laws before being concerned about immigration laws was cool, if that would be the correct country phrase, and very concerned about these issues and has been very passionate for multi- terms and it's great to be here today with both of my colleagues from North Carolina and now I'd like to yield to my distinguished friend and colleague Congresswoman Sue Myrick.

Mrs. MYRICK. Thank you, Mark. I appreciate it very much and we're grateful to you for being here and, Patrick, it's good to have a vice chairman of the committee from Gaston County. That's always very good. It gives us a little more clout up there as well. And I also want to thank all of you who took your time to come today. I know some of you took time off of work to be here because this is an important issue to you as well. This is not an issue that only affects the border States as we found out and the explosive growth that we've had in North Carolina with illegal immigration has really changed our State in the past decade and we're not, of course, the only one dealing with this new dynamic that's been presented. That's one reason we're finally able to get the attention of people in Congress to make something happen. It is a nationwide issue and it challenges the core beliefs of our country and has national security implications of grave importance.

We're a Nation of immigrants as has already been said. Most of you probably know your ancestral heritage. We all came from someplace, our grandparents or great grandparents did, and we know that there are economic and societal benefits to legal immigration but we're also a Nation of laws and immigrants who enter our country illegally have undermined the fundamental tenet of our society, that's respect for our law. We in Congress are largely responsible for the illegal immigration crisis that we're now trying to fix because for years as was mentioned by the chairman efforts to protect our Southern border were hampered by the Federal Government turning a blind eye to the ever-growing problem and, consequently, you know the stats; eight to 13 to 20 million people today in the country, and that doesn't include the children of illegal immigrants who are born here who become citizens; granted automatic citizenship. It strains our schools and our social services and our law enforcement.

State and local governments are bearing a great deal of the cost of this illegal immigration and they're fed up with the Federal Government, very frankly, not carrying out its responsibilities. I hear it every day from all of my constituents, I'm sure my colleagues do the same, that we aren't protecting our borders and enforcing our laws. And, you know, they have a right to be angry about the fact that we haven't done everything we should. Even more troublesome to me is the very real possibility Islamic fundamentalists have slipped into our country to commit acts of terror and this is a very important part of this whole problem. What's going on in the Middle East today with Iran and the funding and the training and the supporting of terrorists and the hate for America that's being generated by the Islamic fascists is no secret. They've made it clear they want to kill us and the images on TV of Iranian troops who are marching, the young people in the stands saluting was an image of 1938 Germany all over again and we all vowed that wouldn't happen and so, you know, when it comes to the big picture of terrorism worldwide when are we going to wake up in America and political correctness stop.

The Department of Homeland Security and Congress are currently working together in an effort to secure our borders and some progress is being made and, yes, the National Guard troops have helped but there is a great deal of work left to be done and I truly believe we can do this if we put the resources behind it that are needed and, unfortunately, interior States like North Carolina are still fighting an uphill battle to get the help that we need with illegal immigration. Immigration and Customs Enforcement, the agency charged with investigating, apprehending and deporting criminal illegal aliens, doesn't receive adequate resources to do their job. I mean, we've got phenomenal people here who are doing just unbelievable things with very limited resources in North Carolina. We're very blessed by good committed people who care but ICE is for the most part the only Federal agency—immigration agency working in the interior States and they face a monumental challenge in trying to enforce our laws.

So the 287(g) program which you've already heard we're going to talk about today with our sheriffs does give local law enforcement agencies the opportunity to help with criminal illegal aliens and to begin the deportation practice. And that's what we're talking about, criminal illegal aliens. The mission of law enforcement naturally is to provide public safety and a lot of times their hands are tied when it comes to this so Mecklenburg County entering into this has been a great help and you'll hear about that. Illegal immigration can't be addressed simply by law enforcement alone and that's why I and several of my colleagues have been working very hard to get an immigration court here in North Carolina because right now as Patrick mentioned 450,000 at least illegals here. When they're arrested and they are told to show up for court in a hearing they have to go to Atlanta 4 to 8 hours away. Fat chance they're going to show up. I mean, we know that.

They don't go. And that's been a really big problem. So there are a lot of States that are smaller than we are that have immigration courts and we feel that it's our turn now to get one. We're working on that and hopefully it won't be too long before that happens.

Emily Moose is going to testify today. I've introduced legislation that became part of the bill we passed through the House that very simply says that if you are arrested for driving drunk and you are illegal you're automatically deported, and then that the local people have to report that into a data base federally so everybody will know. That is part of the bill. We hope it's going to stay a part of—we hope we're going to get Congress support and an immigration bill done through Congress very soon. If it doesn't we'll still push to get that as stand-alone legislation because it needs to be enacted.

But I really appreciate again the chairman coming because this field hearing is important. It's important that they hear from people around the country who are actually doing the legwork and dealing with the problem and, you know, people in Washington and the agencies have different jobs but these guys are on the firing line every day and you'll hear some testimony today that's going to share—show a lot of insight into what the problems are they're dealing with and then hopefully this committee and Congress as a whole will be able to do what we need to do to help solve the problems that they're facing today. Again, Mr. Chairman, thank you for your consideration.

Mr. SOUDER. As many of you may be aware for the last 3 months we have been doing systematic multiple committees, immigration hearings. This will be the greatest collection of information and part of that group over a 3-month period totally embedded in the United States hopefully can lead to action. I needed to mention two other things that are very interesting at a personal level. One is I want to congratulate Congresswoman Myrick on this office. As a former mayor of Charlotte I know she shares a passion for historic rehabilitation like me. One of the things we're doing in this cycle in our committee as I said we have a broad jurisdiction. We've been doing a series of hearings on national parks and being able to preserve downtowns and old buildings like this is just really great. This is certainly the best district office I've been in.

I've been in a few nice ones.

Mr. MCHENRY. Actually, Chairman, I just turned around and saw the mayor of Gastonia and she nearly leapt out of her seat because she's been working for 6 years on an overnight success for Downtown Gastonia and she's getting there and certainly Sue Myrick's office here is a vital part of it.

Mr. SOUDER. Charlie Rich years ago when he had the Behind Closed Doors hit, they said: What's it feel like to be an overnight success? He said: Overnight success? I sang in bars for 30 years to get to my overnight success, and that's the way it is. The other thing is I feel a little like coming home. I grew up in the retail furniture industry and spent spring and falls here before half of it went to China which is another comment but our furniture—we sold North Carolina furniture; I have in my house North Carolina furniture so I need to make that note.

I have a couple of procedural things we need to do before we get started before we hear testimony to take care of these procedural matters. I first ask unanimous consent that all Members have 5 legislative days to submit written statements and questions for the hearing record.

Any answers to written questions provided by the witnesses also be included in the record without objection; so ordered. Second, I ask unanimous consent that all exhibits, documents and other material referred to by members and witnesses may be included in the hearing record and that all members be permitted to revise and extend those remarks without objection. It is so ordered. Finally, I ask unanimous consent that all members present be permitted to participate in the hearing. That objection is so ordered.

Our first panel as it is the custom of a Federal oversight committee is a Federal Government panel and it's composed of Mr. Kenneth Smith, the Special Agent in charge of the Atlanta office for the U.S. Immigration and Customs Enforcement [ICE]. If you'll stand and raise your right hand. As you know it's the standard practice of our witnesses to be sworn in as an oversight committee.

[Witness sworn.]

Mr. SOUDER. Let the record show that the witness responded in the affirmative. Thank you very much for coming and we look forward to your opening statement and any questions.

STATEMENT OF KENNETH A. SMITH, SPECIAL AGENT, ICE

Mr. SMITH. Thank you, Chairman Souder, Congresswoman Myrick, Congressman McHenry.

Mrs. MYRICK. Pull your mic back. We're having trouble hearing in the back so everybody needs to talk into the mic.

Mr. SMITH. Is that better.

Mrs. MYRICK. Yeah.

Mr. SMITH. Thank you very much for allowing me to testify before you today to discuss the 287(g) program. I appreciate your continued support for the Section 287(g) program, which allows the Secretary of the Department of Homeland Security to enter into formal written agreements with State and local political jurisdictions to train and authorize State and local law enforcement officers to perform immigration enforcement functions.

Among the DHS law enforcement agencies, U.S. Immigration and Customs Enforcement or ICE has the most expansive investigative authority and the largest force of investigators. Our mission is to protect our Nation and the American people by targeting the people, money and materials that support terrorist and criminal activities. The men and women of ICE accomplish this by investigating and enforcing the Nation's immigration and customs laws. ICE recognizes that combating terrorism and criminal activity is best accomplished through a multi-agency/multi-authority approach that encompasses Federal, State, local and tribal resources, skills and expertise. Sharing information with and providing assistance to our State and local partners in law enforcement is critical to the success of DHS and to ensuring the safety of our Nation.

Section 287(g) of the Immigration and Nationality Act provides for effective joint initiatives by allowing DHS to enter into written agreements with State and local jurisdictions for the purpose of training and authorizing State and local law enforcement officers to perform immigration enforcement functions. The Section 287(g) program involves rigorous, multi-week training that addresses the specific immigration authorities requested by State and local political jurisdictions. The training results in individual certification for

each selected law enforcement officer who successfully completes the program. It also establishes the supervisory structure over the officers with authority under 287(g) and prescribes an agreed-upon complaint process governing officer conduct during the life of the agreement. Properly constructed, 287(g) agreements are a dynamic and highly effective force multiplier for ICE and local law enforcement as we work to protect America's communities.

The first Section 287(g) agreement was established in 2002 in Florida, where officials were increasingly concerned about the number of terrorist-related cases in that State, many of which involved foreign nationals. This 287(g) agreement was established with the Florida Department of Law Enforcement for seven Regional Domestic Security Task Forces located throughout the State. The Florida task forces have initiated more than 200 investigative cases and recorded numerous arrests.

Building on the success of the Florida agreement, ICE and the State of Alabama signed a written agreement in September 2003 to provide immigration enforcement authority to 21 Alabama State troopers. These troopers have been certified through the program and now have the authority to perform immigration enforcement functions incidental to their normal duties as patrol officers and at driver's licensing station. They are also trained and certified to transport and detain aliens unlawfully present in the United States.

Most recently, ICE entered into agreements in California with the Los Angeles County Sheriff's Department, the San Bernardino County Sheriff's Department and the Riverside County Sheriff's Department. We have also entered into agreements with the Arizona Department of Corrections, and here in North Carolina with the Mecklenburg County Sheriff's Office. These agreements provide officers in each of these departments with statutory authority to perform the function of a Federal immigration officer in relation to identifying and processing for removal, under ICE supervision, criminal aliens incarcerated at their respective correctional facilities. These recent agreements bring the total number of 287(g) officers trained by ICE to 159 officers within seven distinct law enforcement agencies in five States.

These partnerships not only result in the removal of additional criminal aliens from the United States, but also allow the limited number of ICE special agents currently assigned to jail-related duties to focus on more complex investigations in the field.

Locally the Mecklenburg County Sheriff's Office and ICE entered into our agreement in February 2006. Ten deputies and two sergeants from the Sheriff's Office received Section 287(g) training in March 2006, graduated, and were certified in April 2006. This partnership has already proven successful. Since their certification, Mecklenburg County Sheriff's deputies have identified numerous criminal aliens arrested for violating laws within Mecklenburg County, and processed them for removal from the United States.

The ICE Law Enforcement Support Center, the LESC as it's known, is another long-established initiative that provides a wealth of information to Federal, State and local law enforcement personnel. The LESC allows all State and local law enforcement officers to request information electronically concerning foreign-born indi-

viduals that they encounter during their normal duties. The LESC is a 24-hour-per-day, 7-day-a-week law enforcement center that provides comprehensive immigration—comprehensive immigration status and identity information about aliens suspected of, arrested for, or convicted of criminal activity, as well as real-time assistance to State, local, tribal and international law enforcement agencies.

ICE has effectively used the LESC to consolidate and enhance its response to its law enforcement partners seeking assistance in immigration-related enforcement matters. Since June 2004 the LESC has placed more than 35,000 ICE immigration detainers with law enforcement officials in all 50 States and the District of Columbia.

Most of these immigration detainers were lodged against individuals with significant criminal histories.

ICE will continue to establish and augment effective partnerships and information sharing with State and local law enforcement agencies. Such partnerships are essential to our mission of deterring criminal alien activity and threats to national security and public safety. We are grateful for the many State and local law enforcement officers who assist ICE daily in our mission and we are pleased to assist them. I'd like to emphasize that in my three-State area of responsibility which includes North Carolina, South Carolina and Georgia we cannot effectively accomplish our mission without the daily interaction of our State and local partners. Thank you again for inviting me and I will be glad to answer any questions you may have.

[The prepared statement of Mr. Smith follows:]

U.S. Department of Homeland Security

STATEMENT

OF

KENNETH A. SMITH
SPECIAL AGENT IN CHARGE, ATLANTA, GEORGIA

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
U.S. DEPARTMENT OF HOMELAND SECURITY

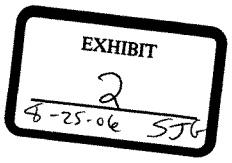
REGARDING A HEARING ON

"EMPOWERING LOCAL LAW ENFORCEMENT TO
COMBAT ILLEGAL IMMIGRATION"

BEFORE THE

HOUSE COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY AND HUMAN
RESOURCES

Friday, August 25, 2006, @ 10:00AM
197 West Main Avenue,
Gastonia, North Carolina



CHAIRMAN SOUDER AND DISTINGUISHED MEMBERS OF THE SUBCOMMITTEE, thank you for inviting me to testify before you today. I appreciate your continued support for the Section 287(g) program, which allows the Secretary of the Department of Homeland Security (DHS) to enter into formal written agreements with state and local political jurisdictions to train and authorize state and local law enforcement officers to perform immigration enforcement functions.

Among the DHS law enforcement agencies, U.S. Immigration and Customs Enforcement (ICE) has the most expansive investigative authority and the largest force of investigators. Our mission is to protect our Nation and the American people by targeting the people, money and materials that support terrorist and criminal activities. The men and women of ICE accomplish this by investigating and enforcing the nation's immigration and customs laws. ICE recognizes that combating terrorism and criminal activity is best accomplished through a multi-agency/multi-authority approach that encompasses federal, state, local, and tribal resources, skills, and expertise. Most broadly, border security and enforcement of our immigration laws can be guaranteed most effectively through enactment of comprehensive immigration reform that includes not only border security and employer enforcement measures but also takes pressure off the border by adopting a temporary worker program, brings the 11 million illegal immigrants in the country out of the shadows, and helps immigrants assimilate. With respect to ICE's own mission, ICE recognizes that this collaborative approach is also superior. Thus, in addition to direct enforcement actions, ICE firmly believes that sharing information with, and providing assistance to, our state and local partners in law

enforcement is critical to the success of DHS and to ensuring the safety of our Nation.

I would like to share with you what ICE is accomplishing in partnership with state, local, and tribal law enforcement agencies, which often encounter foreign-born criminals and immigration violators during the course of their daily duties. There are varied joint initiatives that increase the overall effectiveness of the entire law enforcement community.

Section 287(g) of the Immigration and Nationality Act (INA) provides for particularly effective joint initiatives by allowing DHS to enter into a written Memorandum of Understanding (MOU) with state and local jurisdictions for the purpose of training and authorizing state and local law enforcement officers to perform immigration enforcement functions. The Section 287(g) program involves rigorous, multi-week training that addresses the specific immigration authorities requested by state and local political jurisdictions. The training results in individual certification for each selected law enforcement officer who successfully completes the program. It also establishes the supervisory structure over the officers with authority under Section 287(g) and prescribes an agreed-upon complaint process governing officer conduct during the life of the agreement. Properly constructed, Section 287(g) agreements are a dynamic and highly effective force multiplier for ICE and local law enforcement as we work to protect America's communities.

The first Section 287(g) agreement was established in 2002 in Florida, where officials were increasingly concerned about the number of terrorist-related cases in that state, many of which involved foreign nationals. This Section 287(g) agreement was established with the Florida Department of Law Enforcement for seven Regional Domestic Security Task Forces located throughout the state. Initially, 35 task force officers participated in, and graduated from, the extensive training program. These officers were certified to perform the duties of immigration officers. Since the inception of this successful and productive MOU, ICE has trained and certified an additional 23 officers in Florida. The Florida task forces have initiated more than 200 investigative cases and recorded numerous arrests.

Building on the success of the Florida agreement, ICE and the State of Alabama signed a written agreement in September 2003 to provide immigration enforcement authority to 21 Alabama State Troopers. Like their Florida counterparts, the troopers received extensive training in immigration and nationality law at the DHS Center for Domestic Preparedness in Anniston, Alabama. These troopers have been certified through the program and now have authority to perform immigration enforcement functions incidental to their normal duties as patrol officers and at driver licensing stations. Of course, this enforcement is exercised with the ongoing agreement of, and in consultation with, the Federal government. They are also trained and certified to transport and detain aliens unlawfully present in the United States. An ICE Supervisory Special Agent or team leader is responsible for overseeing and coordinating all immigration-related investigations

conducted by the troopers. Since the inception of the Alabama MOU, an additional 27 troopers have been trained and certified.

Most recently, ICE entered into agreements in California with the Los Angeles County Sheriff's Department, the San Bernardino County Sheriff's Department, and the Riverside County Sheriff's Department. We have also entered into agreements with the Arizona Department of Corrections, and here in North Carolina with the Mecklenburg County Sheriff's Office. These agreements provide officers in each of these departments with statutory authority to perform the function of a federal immigration officer in relation to identifying and processing for removal, under ICE supervision, criminal aliens incarcerated at their respective correctional facilities. These recent agreements bring the total number of Section 287(g) officers trained by ICE to 159 officers within seven distinct law enforcement agencies in five states. These partnerships not only result in the removal of additional criminal aliens from the United States, but they also allow the limited number of ICE special agents currently assigned to jail-related duties to focus on more complex investigations in the field.

The Mecklenburg County Sheriff's Office and ICE entered into their agreement in February 2006. Ten deputies and two sergeants from the Sheriff's Office received Section 287(g) training in March 2006, graduated, and were certified in April 2006. This partnership has already proven successful. Since their certification, Mecklenburg County Sheriff's deputies have identified numerous criminal aliens arrested for violating laws within Mecklenburg County, including two aggravated felons.

The ICE Law Enforcement Support Center (LESC) is another long-established initiative that provides a wealth of information to federal, state, and local law enforcement personnel. The LESC plays an important role in the Section 287(g) program by allowing all state and local law enforcement officers to request information electronically concerning foreign-born individuals they encounter during their normal duties. ICE Law Enforcement Technicians at the LESC quickly search multiple DHS immigration and other databases and electronically return identity and immigration status information to the officers. The most egregious criminal aliens identified are immediately referred to ICE special agents assigned to the LESC, who determine whether an ICE immigration detainer is appropriate. If so, LESC agents can immediately lodge an ICE immigration detainer with the law enforcement agency that has custody of the criminal alien. This detainer notifies the law enforcement agency that upon completion of all judicial/legal proceedings, the alien is to be released to ICE custody.

ICE has direct access to a broad array of immigration-related information, and we are committed to sharing that information with our partners in other law enforcement agencies. The LESC is a single, national 24-hour-per-day, seven-day-a-week law enforcement center that provides comprehensive immigration status and identity information about aliens suspected of, arrested for, or convicted of criminal activity, as well as real-time assistance to state, local, tribal, and international law enforcement agencies.

The LESC routinely gathers information from multiple DHS immigration databases, the National Crime Information Center (NCIC), the Interstate Identification Index (III), and state criminal history indices. Access to the LESC is fully electronic and uses the same telecommunications system – National Law Enforcement Telecommunication System (NLETS) – familiar to, and used by, law enforcement entities for more than three decades. Responses to requests for information sent to the LESC are routinely received and returned within an hour. Since the LESC was established in 1994, the primary users have been state or local law enforcement officers seeking information about an alien encountered in the course of their daily duties. The volume of electronic queries, submitted to and answered by the LESC, clearly demonstrates its effectiveness and utility for the law enforcement community. Over the last three fiscal years--2004, 2005, and 2006 (through June 30)--the LESC has responded to more than 1.7 million electronic queries from its law enforcement partners in all 50 states, the District of Columbia, two United States territories, and the country of Canada.

The LESC is also the focal point for the ICE National Crime Information Center (NCIC) Program. ICE utilizes NCIC as a way to inform state and local law enforcement about criminal and fugitive aliens wanted by ICE or other law enforcement agencies. There are currently more than 200,000 ICE records in the NCIC Immigration Violators File (IVF), comprising previously deported felons and fugitive aliens. By the end of calendar year 2006, ICE expects to have more than 250,000 records in NCIC and to continue increasing that number by 8,000 or more each month.

There is significant value in the records that ICE enters into NCIC. The ICE NCIC information assists state and local law enforcement officers in making real-time decisions every day. ICE also uses NCIC to identify, and take custody of, criminal and wanted aliens by lodging an ICE immigration detainer on every confirmed hit on an ICE NCIC record.

ICE has effectively used the LESC to consolidate and enhance its response to its law enforcement partners seeking assistance in immigration-related enforcement matters. Since June 2004, the LESC has placed more than 35,000 ICE immigration detainers with law enforcement officials in all 50 states and the District of Columbia. Most of these immigration detainers were lodged against individuals with significant criminal histories. LESC agents also help to coordinate the response of local ICE special agents at investigative field offices throughout the United States when ICE is notified of ongoing criminal activity within its enforcement jurisdiction.

Additionally, the LESC trains federal, state, and local officers to efficiently access its information through computerized inquiries. Since the creation of ICE in 2003, LESC agents have trained federal, state, and local law enforcement officers in Alabama, Arizona, Arkansas, California, the District of Columbia, Florida, Georgia, Idaho, Maryland, Minnesota, Mississippi, Nevada, New Hampshire, New York, Pennsylvania, Texas, Vermont, and Virginia. Next month, training is planned here in North Carolina and in Oregon.

ICE and DHS coordination with law enforcement agencies around the country has expanded significantly since September 11, 2001. The LESC will continue to provide information assistance nationwide to the law enforcement community.

Our responsibility at ICE is to do everything we can to enforce our laws, but enforcement alone will not solve the problem. Accordingly, the President has called on Congress to pass comprehensive immigration reform that strengthens border security, ensures a comprehensive interior enforcement strategy, establishes a temporary worker program, and addresses the population of illegal immigrants already in the United States. ICE is committed to continue to establish and augment effective partnerships and information sharing with state and local law enforcement agencies. Such partnerships are essential to our mission of deterring criminal alien activity and threats to national security and public safety. We are grateful for the work of the many state and local law enforcement officers who assist ICE daily in its mission and we are pleased to assist them. In the FY06 Emergency Funding Bill, $50 million is being provided for the expansion of training for these authorities, including the training of additional local law enforcement officers to bolster border security efforts.

Thank you for inviting me. I will be glad to answer any questions you may have at this time.

Mr. SOUDER. OK. I will yield to Vice Chairman McHenry to start the questioning.

Mr. MCHENRY. Thank you, Mr. Chairman. Thank you, Mr. Smith, for your testimony. I appreciate your perspective. You mentioned the Law Enforcement Support Center. Can you give us more details on what exactly you do there and how that's being utilized.

Mr. SMITH. Sure. The Law Enforcement Support Center is just that. It's a support center located in Burlington, Vermont. It's staffed 7 days a week, 24 hours a day.

It is available to not only ICE agents but to all State and local law enforcement officers that would like to query an individual to determine if they're in immigration data bases. That system is available to them for electronic—electronic query through the NCIC system.

Mr. MCHENRY. So all law enforcement are able to access this.

Mr. SMITH. Yes, sir.

Mr. MCHENRY. And do you have some statistics on how it's being utilized.

Mr. SMITH. It's—It's greatly utilized. I believe approximately 600,000 queries are made to the LESC every year from both ICE—ICE agents and State and local officers. In North Carolina there has been a tremendous increase in the use of the LESC. I believe to date this fiscal year we had about 2,700 queries from North Carolina law enforcement agencies.

Mr. MCHENRY. 2,700.

Mr. SMITH. 2,700. Out of those 2,700 roughly 300 detainers have been filed by the LESC with those departments on individuals that they've queried through the system.

Mr. MCHENRY. Is there an outreach program to law enforcement to let them know that this is available to them.

Mr. SMITH. There is. Actually the LESC works very closely with various State agencies responsible for the IT infrastructure system, the criminal history queries that are made by each State. I know that there is a training opportunity coming up in North Carolina. I believe they're doing a presentation to about 300 operators of that system in North Carolina this fall.

Mr. MCHENRY. I also know that North Carolina recently signed a Fugitive Operations Team or Fugitive—yeah—Fugitive Operations Team if my memory is correct. Can you describe the function of that and how that works.

Mr. SMITH. Yes, sir. There are two Fugitive Operation Teams in North Carolina. Those are managed under the control of our Detention and Removal Section. There is a team in Charlotte that is fully operational now. There is a team being formed in Raleigh that is partially operational; will be fully operational this fall. Their focus is to identify and apprehend aliens that have an outstanding order of removal from the United States. Those that are—are immigration fugitives that have been here already.

Mr. MCHENRY. And how many folks are on that team? How is that staffed.

Mr. SMITH. I'm not responsible for those teams but I believe each team is—is eight individuals.

Mr. MCHENRY. OK. Are there any additional resources that you need in order to perform your—your job? It's an obvious question. The answer is yes. If you could elaborate——

Mr. SMITH. Thank you.

Mr. MCHENRY [continuing]. On the yes.

Mr. SOUDER. But I would like to hear it. I have a similar question; that it seems like an obvious question but although we can't get that information directly that's partly why we go out in the field because in Washington the official answer is no. We don't think that's true. We would like to hear what your needs are.

Mr. SMITH. Obviously our workload is overwhelming and I think that any Federal, State or local law enforcement official that you'll ask will always say that they could use more resources. We do the best that we can with what we have and we feel that we do a very good job of prioritizing the work that we are confronted with every day.

Mr. SOUDER. So will you clarify that.

Mr. MCHENRY. Yes. That sounds like a Washington answer.

Mr. SMITH. Certainly, Congressman, we have plenty of work and we could keep a large number of individuals very active in our work. There is no question about that.

Mr. MCHENRY. Go right ahead.

Mr. SOUDER. We're not—One of the awkward things in these kind of hearings is we're not trying to get people in trouble with their Washington office. Another way to ask the question is if you had more resources what would you do with them.

Mr. SMITH. We—We would continue to prioritize the work that we do. Our—Our greatest concerns are attacking the organizations that facilitate illegal immigration, the smuggling organizations, the trafficking organizations, working with the county facilities to identify the criminal aliens that are present in their facilities. We would fully employ all the resources that were provided to us.

Mr. MCHENRY. How many folks do you oversee.

Mr. SMITH. Approximately 200 in a three-State area.

Mr. MCHENRY. 200 in a three-State area.

Mr. SMITH. Yes.

Mr. MCHENRY. How many approximate numbers from North Carolina.

Mr. SMITH. Congressman, if I could I would like to address that after the hearing if we could. Typically for operational concerns we don't release the number of agents that we have in any one particular area.

Mr. MCHENRY. Certainly. So you could use additional resources.

Mr. SMITH. Certainly.

Mr. MCHENRY. All right.

Mr. SMITH. I think we do a good job prioritizing work with what we have.

Mr. MCHENRY. Thank you.

Mr. SMITH. Thank you.

Mr. SOUDER. Congresswoman Myrick.

Mrs. MYRICK. One question, you know, I don't know if you can answer or not but I know that 287(g) was signed into law about 10 years ago and it wasn't until 2002 that the program started to be utilized and I guess my question is for historical background do

you know why it took so long for it to get to that point of being used and then since then what's been happening across the country?

Mr. SMITH. I don't. I can speculate that there was significant changes made obviously after the events of September 11th in the creation of the Department of Homeland Security and actually the creation of my agency on Immigration and Customs Enforcement——

Mrs. MYRICK. Right.

Mr. SMITH [continuing]. And I think when that occurred we immediately with Congress's help began looking at ways to do our job to be as effective as we could possibly be in a variety of areas and I think 287(g) was one of those things in the law that had not been, quite frankly, utilized with full success before that time and after the merger with the Immigration and Customs Service cross-designating officers—local officers was nothing new for the Customs Service. We had cross-designated officers for years to enforce customs laws, Title 19 laws, and I think it was something we're very comfortable with and I think part of that also played into the expansion of the 287(g).

Mrs. MYRICK. I know that we were recently told that ICE nationally is doing a contract study on what the needs really are across the country so I suppose that will give us more information relative to what needs to be done but, you know, Congress did authorize a lot of money just recently for 287(g). I've got $15.5 million for training; $23.1 million for the Law Enforcement Support Center; $11.4 million for more bed space for detainees. I guess part of the question is do you think that's really going to be adequate for the needs? I mean, what we're seeing all the time is that no matter how much is being done there really just seems to be more need constantly and now it's nationally in the interior States as well. You know, are we ever going to get ahead of this game? And that's part of what we are trying to find out, you know, from you as to what the needs are. I mean, you know, where can we go with this because the public is totally frustrated, we're totally frustrated, I know you all are totally frustrated and something has to be done to hit the nail on the head.

Mr. SMITH. Well, I can say I believe that the 287(g) program that has been implemented in Mecklenburg County by Sheriff Pendergraph and our office here is a model that will be used around the country. It is a very good program, they've done an outstanding job of establishing it and I think it will be mirrored in jurisdictions throughout the country. This program really is—is in its infancy and I don't think we know yet how it will be embraced by law enforcement agencies throughout the country. There are different points of view from different departments whether or not they will seek the authority or not and I think we will be prepared to respond to those agencies that are interested in pursuing the 287(g) authority.

Mrs. MYRICK. You don't have anything to do with the detention part of—I mean, the bed space part of this issue.

Mr. SMITH. No, I don't. We work very closely with Detention and Removal Operations because their ability to detain aliens certainly impacts our operational work——

Mrs. MYRICK. Right.

Mr. SMITH [continuing]. And so we work very closely with them to coordinate the detention of individuals that we arrest on criminal investigations or those who have criminal aliens in the jails.

Mrs. MYRICK. Well, that is one of our biggest problems as you probably know for this area. I just have one more question, if I may, Mr. Chairman, and I know that Sheriff Pendergraph is going to testify but he's had cases—I know of one particular case of an illegal that has been deported 22 times and back in the country. How many times does an illegal have to be deported before we take criminal action against them.

Mr. SMITH. Well, I believe a minor point of clarification, oftentimes we will encounter aliens that have been removed and it's a legal difference really; expedited—I'm sorry—a voluntary departure. Somebody who is arrested on the Southwest border and voluntary—voluntarily returns under the law, that is not a deportation, but we will make a referral to the U.S. Attorney's Office on each and every re-entry case that we come across. So every time that we encounter an alien that has been deported and enters the United States that's a Federal felony and we make those referrals to the U.S. Attorney's Office.

Mrs. MYRICK. Thank you. Thank you, Mr. Chairman.

Mr. SOUDER. I wanted to pursue a little more in depth about the questions and let me see if I can sort this through. As Special Agent in charge in Atlanta you oversee North Carolina, Georgia and South Carolina? Did I——

Mr. SMITH. Yes, sir. The Office of Investigations.

Mr. SOUDER. And so in your—your regional office you're in charge of investigations and there is a separate special agent in charge of deportation.

Mr. SMITH. In Atlanta my counterpart is the Director of Field Operations for Detention and Removal Operations.

Mr. SOUDER. And that when—This falls directly under the last question. When somebody is—enters illegally and then convicted of another crime and then they go back across and come back in is there a cumulative penalty that's building? In other words, if—if you investigate a case where somebody has committed the crime of illegal entry then got arrested on a DUI, deported, they come back in again on an illegal entry and then either you pick them up in a—one of your divisions on a detention and removal or a drug case, a DUI for some reason, do we have a law of building a cumulative penalty or each time do they just get penalized for the crime that is in front of us? In other words, when you have a multiplicity of crimes is there a disincentive to continue to build your criminal record.

Mr. SMITH. I would—I wouldn't be able to respond to the committee on—specifically to that question. It certainly plays into the—the decision of the U.S. Attorney's Office on whether to pursue that case criminally based on the number of re-entries that an individual may have, the type of crimes they were previously convicted for and that sort of thing. Re-entry after deportation again is addressed by the U.S. Attorney's Office and I'm not sure that the number of previous removals, whether that factors into the sentencing guidelines that would be used or not but I can clarify that.

Mr. SOUDER. Because I understand because there are—underneath your question—underneath your answer which I believe also to be accurate from other hearings is that what you have in effect said is that the U.S. Attorney is relatively overwhelmed already and, therefore, really can't take all of these kind of cases so one of the decisions of whether to prosecute and what level to prosecute is often determined by how many violations. At hearings, you know, in El Paso multiple times they don't even detain someone or they weren't detaining someone until they caught them the 17th time that they've since had to—they basically gave up for a while, now they're once again tracking that and it makes it a very difficult problem for local law enforcement if, in fact, they even go through this whole process and then we don't have a secure border and they come back in again and that one of the things we need to look at legally in addition to as we work through whatever we do work through on—on work permits or some type of way to work through with here, clearly your previous record needs to be part of that and—as well as speaking English; that there are certain things that need to be part of this negotiation and it's very troubling that, in fact, that in effect to the earlier question of you could use more resources, in fact, if—that suggests probably the U.S. Attorney could use more resources, we're trying to get—at least we've authorized but not necessarily appropriated yet adequate resources for detention facilities because what you're facing here is an incredible challenge and we're basically shooting with a peashooter which is what we're talking about, local law enforcement.

Now let me ask another question. Of the—If you had—You said you have 200 people working——

Mr. SMITH. Yes, sir.

Mr. SOUDER [continuing]. In three States. If you had another hundred could they be busy.

Mr. SMITH. I believe we could keep another hundred special agents busy, yes.

Mr. SOUDER. 200.

Mr. SMITH. Impossible for me to say but as you're well aware the workload can be overwhelming and at what number we would be—would not be busy any longer, you know, it would only be an estimate.

Mr. SOUDER. And in your experience in working—looking at investigations if there are—anybody who has ever been on the border knows that we're just wild guessing that there are 10.5 or 12 million. What we know is who we pick up; not who we're missing. But that's as good a wild guess as there is and if it's 300,000 to 500,000 in North Carolina basically with whatever percentage of 200 agents that we're using we're talking here a focus on—your investigation is focused on presumably criminal investigations beyond just illegal entry to the United States, thresholds of drug crimes, other crimes for deportation, would that be true.

Mr. SMITH. Yes, sir. We are responsible for immigration enforcement as well as enforcement of the customs laws from our agencies and that would include drug trafficking, drug smuggling, human trafficking, illegal exports of equipment out of the United States to other countries. A wide variety of responsibilities.

Mr. SOUDER. So, for example, we're not really talking here about deportation——

[Ms. Foxx enters the room.]

Mr. SOUDER [continuing]. For illegal immigration because to get 500,000 people you would need a lot more—even more than 200 agents when they come back. We're really talking here of how many agents for crimes in addition to illegal entry of what you need, would that be a fair statement? That when I said another hundred, another 200 you were talking about a workload, not just trying——

Mr. SMITH. Investigations of criminal aliens, yes, sir.

Mr. SOUDER. And investigations of criminal aliens by your definition ICE is not just—is not even predominantly illegal entry in the United States, it's criminal investigations of illegal entry plus other things, is that fair to say.

Mr. SMITH. It would be a wide variety of things. Our first concern, obviously our No. 1 priority is national security. Anything that we can do to deter acts of terrorism is first and foremost on our agenda. We're very active with our—the Joint Terrorist Task Forces in all the areas in the three-State area, we play a key role in that task force, and then public safety. Those criminal aliens who pose the greatest public safety threat to the public would be a second part of that.

Mr. SOUDER. Secretary Chertoff working with Congress has finally aggressively gone to detainment of OTMs when caught other than Mexicans. That—Is this being implemented by the internal part of the Nation as well as the border that there is a—that if you get an OTM that they're detained as a priority and not released on their own recognizance to show up of which 92 percent don't show up; the 8 percent who do show up you wonder about; that the OTMs we understand at the border are now being held. Is that true in your region if you get tipped off of an OTM and do you—do you differentiate between an OTM which would include Guatemala say and the Middle East.

Mr. SMITH. It's my—my belief that the differentiation is based on the underlying—the underlying reason for their arrest, how they—did they come to our attention; the other factors, gang members; are they a public threat, are they visa overstay concerns. Those individuals would be detained. I would say that over the past 60 days or so there has been a tremendous effort by not only my office but by the Office of Detention and Removal or the Office of Investigation in our area to detain all aliens that we encounter and we've worked very hard at that over the last 60 days and have detained very large numbers of aliens.

Mr. SOUDER. Obviously my question came very close to profiling which legally is—is hard; however, we do have countries on a watch list; if you're on a terrorist list, OTMs from those countries would presumably be a priority. Also people on watch lists would presumably be a priority and I wondered as an internal inside the U.S. policy if you get a tip that there is an OTM in the region and they for whatever reason have been picked up even if it's just illegal immigration, if they're an OTM from the country on the watch list or a person on the watch list presumably we detain them and hold them and don't release them on the street.

Mr. SMITH. We refer to that as—to those individuals as special interest aliens——

Mr. SOUDER. People of special interest.

Mr. SMITH [continuing]. And that would be accurate.

Mr. SOUDER. And do you have adequate detention facilities for those.

Mr. SMITH. Yes, sir.

Mr. SOUDER. And have you had many persons of interest in your region.

Mr. SMITH. Certainly in our three-State area with the population that we have we often encounter special interest aliens.

Mr. SOUDER. And do you sense that most of those come through the Southwest border.

Mr. SMITH. I would have to—I couldn't respond directly to that for my area but certainly the Southwest border isn't the only threat. Visa overstays, individuals that come here legally but overstay their visa would be another problem.

Mr. SOUDER. In the higher-risk population what percentage would you say are visa overstays? Half? Just ballpark. I'm not going to—We're not going to hold you to it because a lot of people think of this as just a border question. The visa overstays are emerging from these hearings as a major problem particularly in higher-risk areas where they're not in direct employment questions.

Mr. SMITH. I feel comfortable in saying without having those numbers immediately available to me that the majority would be overstays.

Mr. SOUDER. And the—I think at this point our Congress—another member of our subcommittee, Congresswoman Virginia Foxx, is—is here. She had when she was first introduced to the Republican Conference my favorite introduction of any member that there ever was from Cass Ballenger from North Carolina as a spirited mountain woman. Would you like to make any comments.

Ms. FOXX. I have a statement but you're doing such a good job, Chairman Souder, that I think you ought to continue and I just want to say thank you for coming and it's obvious from the crowd here that there is a great deal of interest in this area and I want to thank Congresswoman Myrick and Congressman McHenry for organizing this meeting.

I do have a statement I'll give a little later but you're doing a great job and I think you ought to continue.

Mr. SOUDER. Thank you. Let me just ask a few more questions but first I understand that basically——

Mrs. MYRICK. Mark, you need to use the microphone.

Mr. SOUDER [continuing]. That I—There is a little feedback, too, so it's kind of a double——

Mrs. MYRICK. Yes. That's true.

Mr. SOUDER [continuing]. That—and I appreciate very much the work ICE is doing. You're in an incredible politically difficult situation because here in North Carolina like Indiana it's not clear where we even meet our employment—so you're getting pressure from both ends, pressures on profiling, lack of adequate staff, lack of detention beds, a frustration among agents that if you actually make your case and get somebody deported they come right back

in. It's an incredibly frustrating process. Nevertheless, it's something that clearly you cannot have security in the United States until we do this. We have a huge change of individuals in the United States that we don't know who they are, we don't know what it means in our political system or economic system and it's a huge challenge and that's what we're trying to sort through. This isn't meant to be critical of ICE but we're trying to zero in——

Mr. SMITH. Absolutely.

Mr. SOUDER [continuing]. On your particular needs that—I'm still—Of the—How often do you when you work a deportation case through an ICE investigation on narcotics, on other criminal activity that—how often do you see after the person has served that you run into the same person again and they're an illegal.

Mr. SMITH. That's difficult—difficult to say and obviously it does occur but we've been very active, for example, in—in the entire three-State area but particularly here in North Carolina with our Community Shield Program where we've aggressively addressed the transnational gang problem and I think we have arrested and removed somewhere near 400 gang members since the initiation of the program in May 2005 and using that as a—that program as a gauge I know that we have encountered some gang members that have re-entered but it—surprisingly it is not a tremendously large number. We have not seen a great deal of that in that particular segment of our work.

Mr. SOUDER. Now in the particular State and local law enforcement training do you find that there is more demand for this program than you are able to have trainers at this point.

Mr. SMITH. The—The expansion of the program to—to areas such as Mecklenburg County there is no question it is a great force multiplier; it's a great program. It does add additional responsibilities to our current staff in our office. So, yes, the program does add additional work—an additional workload to our office. We believe that workload is—is time well spent by our—by our agents and managers because of the return on the investment.

Mr. SOUDER. So there is two questions here. Actually my question is more related to if more departments wanted to train personnel do you have adequate staff to train them but you also said the additional part of this is when you train them they detain more people and then you have more detention and removal work and the U.S. Attorney has more work as well, which we need to make sure we address in Congress but if you could also answer the question if every county in North Carolina suddenly said that they wanted to be cross-trained how would you meet that need.

Mr. SMITH. That would be difficult. The—The—Really two issues. The training for the program is a separate issue and handled centrally, if you will, coordinated by our headquarters. They provide the trainers and the material and the dates for classes would be coordinated by—by our headquarters and done centrally, not—not by our individual offices. The—Where it does impact us is the oversight role that our agents play and our supervisors play working jointly with the local and county officers that are involved in that—that program.

Obviously if we encounter more aliens and process more aliens for deportation the workload goes up and, again, that—as you men-

tioned that goes to everyone involved in the process, the Deportation and Removal Division, the U.S. Attorney's Office, the Immigration Court.

Mr. SOUDER. And I know this is a dicey question and I hope will ask—this will be my last and see if any of my colleagues would like to ask any additional questions—that—that presumably you have—certainly the U.S. Attorneys have to have thresholds of cases that they'll say—you alluded to that earlier—we don't particularly want to announce precisely what those thresholds are because what we have found is that when the threshold is announced on how much narcotics then everybody gets like one pound less, that—that you—but there are thresholds here but when State and local law enforcement which is already financially strapped make these cases I'm sure one of the frustrations that we're going to have is increasingly people hear this heavily in Arizona and increasingly in Texas and New Mexico as well when we hold hearings in those areas that local law enforcement will take the initiative and then the Federal agents won't do anything about it. That given the fact that your thresholds are going to be very high and that while you didn't say you were underfunded because you're being as efficient as you can with the resources that you have suggested that you could use double even, keep your people busy, and that would still be a threshold question with the U.S. Attorney's Office, is do State and local law enforcement get any reimbursement for detention? Do they get any reimbursement if the local prosecutor—can the local prosecutor handle this type of thing? Do we need a supplementary strategy that if—a legal strategy that if a local community wants to impose a lower threshold than the Federal strategy guidelines that somehow we address some kind of assistance with that because you're unlikely—if you only have a few communities around the United States that are tapping into this depending on their local politics those communities are going to disproportionately influence the regional office. For example, Georgia around Atlanta has—the district has at least the same pressure that's in this area but if his local political situation hasn't done that you could have all your ICE investigations in someone over here and the question is do we need a supplemental strategy for things that don't meet the Federal threshold?

Mr. SMITH. As it develops I certainly think that is an area that will need to be looked at. I think the goal of the program really is—is two-pronged. One certainly would be to identify those criminal aliens that would be subject to additional criminal prosecution but as we are doing in Mecklenburg County the real beauty of the program is that it identifies and provides an encounter with a trained cross-immigration official to every formal individual that enters that facility so it allows us to begin that process which would not have necessarily a huge impact on the criminal system, the legal system; it certainly would on our Detention and Removal capabilities, but really two-pronged, but I think you're correct in that the more individuals that we encounter the greater pressure we're going to place on—on criminal leads also.

Mrs. MYRICK. I know you said you don't want to answer this publicly but I do afterwards want to talk to you because I want to know how many agents are in North Carolina. We continually ap-

propriate money in Congress for North Carolina for people and they are routinely kept in the Atlanta office and we don't get them so just if you will be so kind as to share that with me privately I would appreciate it and thanks for being here.

Mr. SMITH. Thank you.

Ms. FOXX. I would like to—I have an interest in what you're saying about—and I like to use the word education instead of training in terms of educating local law enforcement people to help expand what you're doing and I—I appreciate what the chairman said. We hear a lot of criticism of the agency not doing all that it should be doing but we realize there are many frustrations that you all have in trying to get your job done. I have some ideas I think on ways that we could expand the programs that you have for educating local law enforcement people and one question that came to my mind that hasn't come up before, it seems to me that the ICE folks have certain kind of education that they go through. Do you see that there are skills that the local law enforcement people have that are particularly valuable in the work that you need to do? It would seem to me that the combination of the two but aren't they having some skills particularly in dealing with the criminal element that perhaps aren't there in the education programs that the ICE people have.

Mr. SMITH. Well, absolutely, there is no question that we rely heavily on our day-to-day partnerships with local law enforcement and it's critical to—to our work. I have been in Federal law enforcement for over 20 years and developed just such outstanding relationships with—with State and local officers because they are what—what we depend on to get our job done whether it be in an investigation of criminal immigration investigation or—or customs, we—we rely very heavily on them. They're key partners certainly.

Ms. FOXX. Mr. Chairman, I don't know—I'm sure all of you all have done opening statements and I have an opening statement to make but I want to share an idea that I've—has come to me as a result of reading over the material and preparing for today's meeting that I want to explore in some depth not just with Mr. Smith today but I hope that the chairman and others will work with me on. I'm a former community college president and as I was reading the material and talk—thinking about this issue of how we can do a better job of collaboration and coordination between and among local and State law enforcement people and the ICE folks it occurred to me that we are not utilizing a fabulous system and resource that we have particularly in the State of North Carolina that I'm familiar with but it's really a resource throughout the country and that's the community college system.

Our law enforcement agents in the State of North Carolina and especially—are primarily getting their education and their training through the community colleges and I—I'm proposing that we utilize our community college system to expand the program accessibility. You mentioned that the program now is a central program and it's not a very expensive program in the sense of it costs now about $520 for the materials for somebody to go to the program but it's a 5-week program and if people have to go to a central location and either stay there 5 weeks and travel back home during that time it's got to be a very expensive program. And it would seem

to me that we could really expand our capabilities for a fairly small amount of money in the grand scheme of things by being able to provide certified educators from ICE to go into the community college system and provide this curriculum to what—to do a trainers program or an educate-the-educators program and then be able to offer those programs through the community college system and it would seem to me that even could be integrated into the criminal justice programs that exist and every community college I believe in the State of North Carolina does some form of basic law enforcement education and it either has a criminal justice program or is affiliated with one of the community colleges that does, and I think that we need to investigate how we might be able to present a model program in the State of North Carolina that could then be used by community colleges all across the country but I'd like for my colleagues and I to explore this possibility of doing that. It is bound to be useful as a possibility but particularly, again, to provide that certification close to home and help us be able to help you more than we're able to do that and also, again, make it very affordable. So I'm going to make a formal proposal to the chairman again and to—to my colleagues that we look into that possibility and work with the community college system in North Carolina and with the people who administer your centrally administered program to see what we might be able to do.

Mr. SMITH. Yes, ma'am. And I should clarify for the committee. The program is managed centrally by—administered at the local level near where the department is located but certainly, I think you're right, it's interesting and we can pursue that.

Mr. SOUDER. I want to—I have spent an incredible amount of time on this issue on the border as narcotics chairman then last fall we did so-called community hearings for 8 weeks in a row arguing about how we planned to do this policy and I'm an aggressive border enforcement, aggressive English, aggressive secure I.D. but struggling with the work permit question because Indiana, my district, would dry up and blow away right now if we actually ordered that done but if we actually get—companies would just move to Mexico—that—before losing their business to China—and working this out is a huge challenge but I have been very troubled as we get in to talk about how we would actually do work permits because most companies who are hiring illegals are not doing direct job hires. It's often day bidders for dry wall, motels increasingly contract out their cleaning services, those cleaning services then do temp services. Much of this is in the underground economy; people who work as plumbers' assistants who aren't being reported as income in the first place.

Now if Congress somehow under pressure from the President in the next 30 days would pass a work permit bill you are the agency that would have to enforce this and there are all of a sudden 200,000 people here in North Carolina with work permits and you are already telling me that over half of the people here that you deal with in investigations are visa overstays. How in the world without an incredible number of agents would you ever enforce work permits?

And—And I don't think we've even raised this subject.

I'm on the Work Force Committee and Subcommittee in Energy and Work Force; I've never even heard anybody address this question because we've all focused on the border. But if your No. 1 challenge is visa overstays what—how would you do this? Are you—Have you even been having an internal discussion at ICE in Investigations and in Detention and Removal of what you would do if suddenly Congress in the next 30 days gives you 10 or 12 million people with work permits with the promise to the American people that it's going to be a limited time period and once their permit is over you're going to deport them?

Mr. SMITH. I know that issue is of significant concern to Assistant Secretary Myers who at the headquarters level and policy level has been looking into different scenarios of how we would support the program and what challenges we would face potentially as a result of that. I have not been involved in any of those meetings but can certainly pursue that for the committee. I think as——

Mr. SOUDER. Because that would in effect Federalize all the crime. In other words, a visa overstay is a Federal crime, not a local crime. A work permit overstay would be a Federal crime and you would be dealing with hundreds of thousands. How many—Do you do right now in investigations 500 a year.

Mr. SMITH. I don't have that number available, sir, but I would certainly——

Mr. SOUDER. Like how many investigations currently could you even handle, and we'll ask a similar question to Detention and Removal for the hearing record, because the scale of this would have to be done exponentially and this would need to be calculated or a budget calculation—I've seen all kinds of budget estimates but never this question of work permit overstay or how you enforce it because I have been talking to my RV manufacturers and others and saying: Look, if you get a work permit here, you know, how are the employers going to know if a person goes to North Carolina from Indiana on the work permit; somebody has to track that because you could do—if it's a 5-year work permit it's 5 years in North Carolina and 5 years over in Indiana that—how do we do this? Because this potentially in your department—I mean, 200 people. My lands.

Mr. SMITH. As a law enforcement officer, sir, I certainly agree that any movement in that direction significant consideration has to be given to counterfraud measures; how we anticipate responding to the attempts to subvert the program.

Mr. SOUDER. Are coyotes a current priority because that would become a bigger problem here, too. Coyotes would be the people who put the packages together who recruit the people who come across to provide the transportation from the border. A lot of the businesses in the United States are actually willing to pay back the people who—sometimes $8 to $12,000 for a full package into the job site which the $8 to $12,000 which we have testimony from Julie Myers as well as former Assistant Secretary Garcia, that was $8 to $12,000 for a Mexican, up to $30,000 for someone from a Middle Eastern country; that's all been testimony, not classified, that would include the full thing, including an illegal green card and the transportation and overnight to make sure he got in. Testimony at a hearing recently in the Southwest suggested it was like $300 if

you got yourself to the border, $300 to $500 to get yourself to the other side of the border and then sometimes you contract then, sometimes then you have a separate agent who is giving you a green card and providing you with a job and housing as you line that up. Is that a primary part of your investigation right now, creating networks?

Mr. SMITH. Yes, sir, it is. And it is one of the areas that we've worked I think very creatively in and that is following the money trail which we have done for years in our drug investigations, money laundering investigations but we're now applying that to our immigration, alien smuggling investigations, that sort of thing; it's been very effective. So following the money is key to any criminal activity and we're certainly applying that in this area. I would like to clarify one thing. I think I responded to the question about—regarding special interest aliens saying that I believe or it was my opinion that the majority of special interest aliens that we encounter are visa over- stays. Not all of the individuals that we encounter. I limit that to the special interest aliens.

Mr. SOUDER. Yes, sir. That was my understanding it was a special interest which is obviously the highest target but what we—what my understanding is from our Washington testimony is a fair percentage of others are also visa over- stays, often day-visit overstays along the border, student visa overstays, vacation overstays. Looking at the desk in Venezuela, looking at narcotics issues in those areas that often they're coming to Disney World and we have to make adjustment. Are they really coming to Disney World and then jumping visa or are they coming to Disney World? It was amazing. One day at the Venezuela desk 40 percent of the people that day coming for a visa had an invitation to an insurance conference at Disney World and many were turned down but a number of them came with kids and they were let in and they thought they were really going to Disney World. Of course, you can get kids for hire, too. It is a huge—And we have these people that are literally in U.S. protection, is based on that visa desk to the degree that they come in legally. Now in Mexico as Jay Leno says: Just follow the person in front of you. So it's a little bit different type challenge but as we look at even the formal process that's why we get visa overstays, we've seen a drop in our college attendance; we try to tighten this and it's hurt us because many of these students from around the world who would go back home now are less supportive of America in their countries because they're not spending time here.

There are consequences if we tighten too close. On the other hand, the visa jumps are a huge challenge to us right now and the OTMs are the highest risk part of that. Any other questions? Thank you very much for your time. Thank you for your willingness to come today and field our questions. We may have some additional written questions and obviously the members have some questions about regional things that they would like to talk to you about privately.

Mr. SMITH. Thank you very much.

Mr. SOUDER. If our second panel could come forward we're going to take a very quick break. My family is going to need to figure out where they are.

[Recess.]

Mr. SOUDER. The subcommittee will come to order. We're going to try holding the microphone so that the people upstairs can hear better and if each of the witnesses could do that, too, when you testify, if you hold that the feedback problem that we had, it will help everybody hear better. Our second panel is the Honorable Alan Cloninger, sheriff of Gaston County; the Honorable Michael Lands, district attorney of Gaston County; the Honorable Jim Pendergraph, sheriff of Mecklenburg County and Ms. Emily Moose. As you heard as an oversight committee it is our standard practice to swear in all of our witnesses so if you'll each stand and raise your right hands.

[Witnesses sworn.]

Mr. SOUDER. Let the record show that each of the witnesses responded in the affirmative. It would be really embarrassing if we had to prosecute anybody here for perjury so—It's a little interesting footnote, Mark McGwire would have been the third one in I believe. He didn't want to talk about the past but in an oversight committee that's what we do, we talk about the past, and try to figure out how to address the future. It took us—you'll appreciate this—3 days to serve his subpoena because he wouldn't come voluntarily and he moved cities to try to avoid coming before Congress to give testimony. Rafael Palmeiro isn't being prosecuted for perjury, although he spent 2 months trying to—when he said he didn't use steroids and then we found out that he flunked his test. The only reason he isn't sitting in jail is that we couldn't establish precisely whether he was on a steroid at the time that he said it or whether the—because he only had to test and apparently that was post hearing but hopefully we won't run into that with sheriffs and U.S. (sic) Attorneys and Ms. Moose so—but it makes our committee interesting from time to time.

You've heard from our first panel and some of our concerns at the Federal level and now one of the unique things that we get in the field hearing is to be able to hear from people right on the front lines who are dealing with this day to day in their home environments and at length which is really unusual today and we have four Members of Congress here and I appreciate the North Carolina delegation being here and we look forward to each of your testimony. We'll start with you, Sheriff Cloninger.

STATEMENT OF ALAN CLONINGER, SHERIFF, GASTON COUNTY

Mr. CLONINGER. Thank you, sir. On behalf of Gaston County, welcome to all of you being here today.

Mr. SOUDER. If you can pick up your mic. One other thing I should say, we have a clock for 5 minutes. You knew that the—there is a 5-minute—it's a take-down——

Mr. CLONINGER. Yeah. It's——

Mr. SOUDER [continuing]. That we—in a field hearing we won't hold you close to it but it gives us some—some idea when we—particularly when we come to the South we do the 5-minutes for the Southern drawl so we'll be very flexible with that clock but it kind of gives us an idea.

Mr. CLONINGER. I promise I won't be that long-winded. Here in Gaston County last year we booked 640 nationals from 45 different

countries into the Gaston County Jail. Last November I met with Sheriff Pendergraph and we discussed the very issues that are coming up today and at that time we discussed this program, the 287(g) program, and he informed me that he was in the process of obtaining it with the help of Representative Myrick. I also talked to Ms. Myrick and expressed my interest in this; that we were going to wait until after Jim got it through to get it started. Then in February I applied for the program and finished the application and we—with the chairman's permission I would like to deviate from my statement to make a little announcement. Representative Myrick, thank you for attending the hearing. Thank you because as of yesterday the Gaston County Sheriff's Office has been approved for the 287(g) program and we will be starting it within the next 60 to 90 days. So I appreciate it.

We look forward to this partnership with ICE and I have to be—I would be remiss if I didn't compliment Jeff Jordan—he said he was going to leave—the ICE agent from Charlotte. With his help and guidance we were able to do this. So thank you. It will make a difference here in Gaston County because I understand from Sheriff Pendergraph it has already made a difference in Mecklenburg. And so in that deviation I'll just drop on down because I was talking about needing the program and I've already got it. But the two issues that remain after that I think we have to be aware of is the cost and expense. I don't know what the cost and expense of operating a program in Gaston County would be and I haven't asked for any money there yet. We've got to see it first before that. But there may be a cost and expense that you may—not may but you should help us with because it is our taxpayers who are helping enforce this Federal law.

Also the other side is the jail side. In Gaston County right now our jail is pretty much getting full and when we start getting these folks we're going to have to hold them; hold them somewhere. So you may look at ways, as I said in my statement, of maybe helping us fund expanding the Gaston County Jail so we have more bed space for these people; how to get the space locally. We don't have some other jail that you can use. We will need financial assistance particularly with the detention side because after talking with Sheriff Pendergraph his numbers are rather high already. So those two areas I think will be something that we will come back to you in this partnership with you which will do great good in this county and I think across the country. It's not only the illegal alien issue but the Homeland Security issue we have to be aware of so thank you for partnering with us and I'll turn it over to Mr. Lands.

[The prepared statement of Mr. Cloninger follows:]

Empowering Local Law Enforcement to Combat Illegal Immigration
Government Reform Hearing
August 25, 2006

Memorandum Sheriff Alan Cloninger
Reference: Immigration issues in Gaston County

The Gaston County Sheriff's Office in 2005 booked in a total of 610 foreign nationals. Booked in refers to these individuals being arrested in Gaston County for a variety of charges and brought to the Gaston County Jail to be processed through the jail system. They were either admitted to the jail or released after making bond. This large number of individuals is evidence of the need for Gaston County Sheriff's Office to have a partnership with Immigration Custom Enforcement Agency to have delegation of authority through the 287g program. By establishing and having this partnership with ICE Gaston County Sheriff's Office will be able to more efficiently identify those individuals who are in our country illegally, therefore enabling us to take the appropriate actions to see that their presence is documented as well as the proper enforcement is taken.

Our local ICE office does an outstanding job with their limited number of personnel. This partnership gives the Gaston County Sheriff's Office authority under the ICE through the 287g program. We anticipate that this will increase ICE's ability in identifying and deporting those individuals who are in our country illegally.

With this partnership under 287g, the Federal Government needs to be prepared and willing to monetarily support these actions. The cost and expense in operating the 287g program in the Gaston County Sheriff's Office is unknown at this time. Once we have been approved and once we have the opportunity to document the findings we may discover additional personnel and equipment are needed which should be funded by the Federal Government.

Another area of concern is the housing of the deportees in the Gaston County Jail. Presently the Gaston County Jail is operating at near capacity. It is our hope with the implementation of several programs we will be able to reduce our population. With the possibility of the increasing number of illegal aliens to be, being held in the Gaston County Jail we might experience a greater overcrowding problem. It is my opinion that Federal Government should be willing to monetarily support any expansions within the Gaston County Jail so that we maybe better able to hold any illegal aliens who are waiting deportation. My opinion the Federal Government should be prepared to assist us in this expansion.

The Gaston County Sheriff's Office has applied in February 3, 2006 for participation in the Delegation of Authority Program of pursuant to 287g. The application was completed and submitted on May 12, 2006. It is our hope and desire that our approval would be soon and forth coming in order to begin this program immediately for the protection of the citizens of Gaston County.

Mr. SOUDER. Thank you very much. Mr. Lands.

STATEMENT OF MICHAEL LANDS, DISTRICT ATTORNEY, GASTON COUNTY

Mr. LANDS. I am Michael Lands. I'm the elected District Attorney for Gaston County and I'm responsible for prosecuting all the criminal cases in Gaston County. Thanks for the opportunity to come and address you. What are some of the issues and problems that illegal immigrants charged with criminal offenses cause for a local court system.

Well, one is the issue of identity. Is the person arrested who he said he is. Without proper identification and birth dates it's hard to know a defendant's true identity. Jails are not big enough to hold all the immigrants arrested without valid identification. We have numerous cases where an arrestee uses another person's name and does not appear in court. The warrant for arrest goes out in the original name and it's hard to know whether we'll ever arrest the true offender in those cases. Another identity issue is the fact that many illegal immigrants have several last names or hyphenated names that make it difficult to run record checks to see if an immigrant has a prior criminal record. And a final identity issue occurs because illegal immigrants move around so often it is difficult to know if a conviction in one State is for the same defendant charged in this State.

A different issue is the fact that illegal immigrants will owe the person who helped them get into this country and that may mean that they get involved in criminal activity such as transporting drugs for them. Next you have the issue about the fact that increased illegal immigrants in the State impact the State court system economically.

It means the jail is overcrowded, it means that there needs to be more State-appointed attorneys, it means there needs to be more translators for the court system. And then there's what I call the psychological issue, particularly when you're dealing with drunk driving deaths. All drunk driving deaths could be avoided if there is no alcohol consumption by the driver. Everybody understands that.

When an American-born drunk driver kills someone in a crash the public feels the death could have been avoided. I believe the public has greater outrage when an illegal immigrant drunk driver kills because people believe the death would have been avoided. They believe if the illegal immigrant was not in this country they would not have drank and driven and killed in this country.

And a final issue is the problem of the illegal victim of crime. They are targeted by criminals who know the illegal immigrant will not report the crime to the police.

If someone is actually charged in that case then they don't cooperate with the prosecutors in order to prosecute the person and so then this—these actions allow criminals to go free and waste valuable court resources. Most of this non-cooperation can be traced to a fear of deportation and a cultural distrust of police.

On the issue of the 287(g) training I believe it certainly would help local law enforcement to be able to determine who was an illegal immigrant and be able to start the process of deportation. It

would be a great help to local law enforcement to be able to get a known immigrant criminal out of the community without having to wait for an overworked ICE agent to begin the process. As long as the Federal Government does not make the 287(g) authority an unfunded mandate for local law enforcement agencies, then I believe more and more local agencies may seek to have their officers trained. North Carolina also needs an immigration court here to be able to timely and effectively have deportation hearings for illegal immigrants found in North Carolina.

But ultimately—and I mean no disrespect—this is a Federal problem. You have to address it. Illegal immigration is Federal—is a Federal Government problem. Why are we talking about having 287(g) authority? Because the Federal Government has not employed enough ICE agents to do the job. And what is the Federal Government's policy on deportation? That's going to have to be communicated to the officers who are trained under the 287(g) authority. For instance, as I understand any illegal alien in this country would be subject to deportation but it seems like the policy of the Federal Government is to wait until they create—commit a State crime and then determine if that State crime is serious enough for deportation before any action is taken. If a local law enforcement agency has 287(g) authority is everybody going to be equally deportable if they determine who they are? And that's something you'll have to decide.

Finally, it strikes me as strange that we're having all of this discussion about enforcement and giving authority for deportation and what crimes will be deportable when we all know, and this was stated earlier, we go through all the work of deportation, send them to their home country and 2 weeks later they're back. So the Federal Government is going to have to address that issue. Is the Federal Government going to decide that's going to be an offense that they're willing to imprison people over for substantial periods of time or are we just going to go through a revolving-door deportation process again? Thanks for this opportunity to address you and I appreciate it.

[The prepared statement of Mr. Lands follows:]

Written Testimony for "Empowering Local Law Enforcement to Combat Illegal Immigration" Hearing, Gastonia, N.C., August 25, 2006.

I am Michael Lands, the elected District Attorney for Gaston County, which is a position I have held for sixteen years. As District Attorney, I supervise the office that is responsible for prosecuting all the criminal charges in Gaston County. Thank you for the invitation to address this Subcommittee about local law enforcement and illegal immigration.

At the beginning, I want to make clear that I do not want and do not intend for any of my comments to suggest that only illegal immigrants commit crimes or fail to cooperate with police and prosecutors. There are certainly too many American – born citizens who commit crimes or fail to cooperate with police and prosecutors. Illegal immigration just presents different issues for law enforcement, with a major difference being the fact that the person is breaking the law simply by being here.

What are some of the issues and problems illegal immigrants charged with criminal offenses cause the court system? One area is identity. Is the person arrested who he said he is? Without proper identification and birth dates, it is hard to know a defendant's true identity. Jails are not big enough to hold all immigrants arrested without valid identification. Then there are numerous cases where an arrestee uses another person's name, then does not appear in court. The warrants for arrest issued for the failure to appear go out in the wrong name, with little chance of arresting the true offender, since the State does not know the true name of the offender. Another identity issue is the fact that many illegal immigrants have several last names or hyphenated names that make it difficult to run record checks to see if the immigrant has a prior criminal record. A final identity issue occurs because illegal immigrants move around so often it is difficult to know if a conviction in one state is for the same defendant charged in this state.

A different issue is the fact that some illegal immigrants become involved in criminal activity because they "owe" the individuals who helped them enter the country. Often, this means the illegal transports illegal drugs. If they are arrested for possession of the drugs, they do not identify the drug suppliers to police. This is often because the true drug traffickers threaten harm to their family members back in their home country.

Next, increased illegal immigrants have impacted economically on the court system. Increased numbers of illegals in jail lead to overcrowding. Large numbers of immigrants arrested for criminal offenses qualify as indigent and receive attorneys paid for by the State. Then add the expense of translators for court. Several years ago the North Carolina Administrative Office of the Courts imposed a hiring freeze of up to four months when court personnel left their jobs. I was told later a large position of the lapsed salaries was used to fund translators for court hearings, because not enough money had been budgeted for the increased demand. So for that time period, District Attorney Offices could not hire prosecutors so the court system could pay for translators, for criminal defendants who could not speak English.

Another issue is a psychological issue, particularly when dealing with drunk driving deaths. All drunk driving deaths could be avoided if there was no alcohol consumption by the driver. When an American born drunk driver kills someone in a crash, the public feels the death could have been avoided. I believe the public has greater outrage when an illegal immigrant drunk driver kills, because people believe the death would have

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been avoided. If the illegal immigrant was not in the country, then he would not have drank and driven and killed in this country.

The final issue is the problem of the illegal victim of crime. They are targeted by criminals who know the illegal immigrant will not report the crime to the police. If a criminal is actually charged for a crime against an illegal, the immigrant simply will not cooperate with police or prosecutors, often move away, or do not appear in court. All of these actions allow criminals to go free and waste valuable court resources. Most of this non-cooperation can be traced to a fear of deportation and a cultural distrust of police.

Those are some of the issues local law enforcement face when dealing with illegal immigrants committing crimes. The letter sent to me inviting me to testify here said this hearing was "to explore how the Federal government can partner with local enforcement in dealing with the problems of criminal aliens, specifically through the application of 287 (g) training." On the issue of 287(g) training, it certainly would help local law enforcement to be able to determine who was an illegal immigrant and be able to start the process of deportation. It would be a great help to local law enforcement to be able to get a known immigrant criminal out of the community without having to wait for an over-worked ICE agent to begin the process. As long as the Federal Government does not make the 287(g) authority an unfunded mandate for local law enforcement agencies, then I believe more and more local agencies may seek to have their officers trained. North Carolina needs an immigration court here to be able to timely and effectively have deportation hearings for illegal immigrants found in North Carolina.

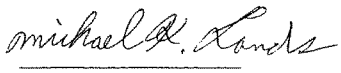
But ultimately there needs to be more done. As I have thought about this issue this week, I have come to the conclusion, and I mean this with no disrespect, that the Federal Government has to be reminded that illegal immigration is a Federal Government problem and the Federal Government is not addressing the problem. 287(g) authority for local law enforcement officers is a means to allow local law enforcement officers to do Federal law enforcement officers' jobs. Why is 287(g) authority needed? Because the Federal Government has not employed enough ICE agents to do the job. I talked with a local officer this week who praised their relationship with our local ICE agents, but stated he felt bad to contact them to work on a case because it would mean the ICE agents would have to stop working on the 10 other cases they were working on at the time, between here and Asheville.

Until the Federal Government gives local law enforcement the authority to load vans and drive illegal aliens to the border, then this is a Federal Government problem that has to have a Federal Government solution. What is the Federal Government's immigration policy? I suggest that illegal aliens can be divided into five groups as they relate to the criminal justice system. Group One are the illegal immigrants who commit serious felonies under state law. Federal agents have been cooperative in trying to get these illegals deported. Group Two are the illegals who commit crimes (mostly Driving While Impaired) that the Federal agents have not made a deportable offense because of lack of resources, that the State wants deported. They should be deported and they need to be deported. Group Three are illegals who commit a minor infraction of the law (traffic offenses) and come to the attention of law enforcement. Group Four would be illegals who have been the victim of a crime and come to the attention of law enforcement. Group Five are the illegals, who have committed no state law crime and are unknown to local law enforcement. Each and every illegal in each of these five groups can be deported for

breaking federal law for being in this country illegally. But the Federal Government decides who to deport based on what state law violation has been committed. The push is being made for the Federal Government to consider Driving While Impaired cases as serious (they are), because the Federal Government has not decided that the act of being here is serious. What is the Federal Government going to communicate as its policy to the officers receiving 287(g) training in dealing with illegal immigrants in each of the above five groups? Are all equally deportable if found by local law enforcement officers with 287(g) training and authority?

Finally, it strikes me as strange that we are discussing equipping local law enforcement with authority to help in the deportation process and discussing how to make Driving while Impaired offenses deportable, as if deportation was some great cure for the problem. The Government goes through all the expense and work to send an illegal back to their home country, just to have the illegal came back into the United States in a matter of weeks. When will the Federal Government give serious prison sentences to illegals who come back to the country after deportation? Will the Federal Government commit the resources to imprison these offenders or will the Government just start the deportation revolving door process over again?

The 287(g) training for local law enforcement will definitely help them help the Federal Government detect illegal immigrants. Ultimately, what will the Federal Government do about illegal immigrants?



Michael K. Lands
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Gastonia, N.C. 28052

Mr. SOUDER. Sheriff Pendergraph.

STATEMENT OF JIM PENDERGRAPH, SHERIFF, MECKLENBURG COUNTY

Mr. PENDERGRAPH. Thank you. Thank you for the opportunity to speak to you today and Sheriff Cloninger had a couple of minutes left over, I may need those, but please don't be too hard on me. My name is Jim Pendergraph, Sheriff of Mecklenburg County, North Carolina for the past 12 years. I have been in law enforcement for the past 36 years. First, again, let me express my appreciation for the opportunity to appear before this Commission on Empowering Local Law Enforcement to Combat Illegal Immigration. I probably will never have another opportunity to address Members of Congress on this very serious and controversial subject. It is with all due respect that I make my comments, so please excuse me for being blunt.

I strongly support the Office of the President of the United States and President Bush. However, I, and many others, strongly disagree with President Bush's policy, or lack of, on illegal immigration. The Congress of the United States has let us down by the lack of action on the illegal immigration issue for decades, leaving those of us responsible for local law enforcement to deal with not only the fall-out of the criminal element, but the ire of the public for their perception of our inaction on a Federal issue.

Mine is one of the few sheriff's offices, and thank goodness Sheriff Cloninger has his approved, in the United States that has signed a Memorandum of Understanding with Immigration and Customs Enforcement for the 287(g) program. After extensive training, 12 of my deputies are certified under this program to screen illegal immigrants arrested in Mecklenburg County. This certification gives us access to ICE data bases of fingerprints and photographs, which is the only real method of positively identifying a person and their immigration status. Most law enforcement agencies in this country are trying to identify the legal status of an individual by telephoning the Law Enforcement Support Service Center in Vermont and submitting the name of a person in question. This is virtually worthless and a waste of time. I know it is shocking, but people lie to law enforcement about their names and use names of persons who are in this country legally. This past February I had lunch in Washington, DC, with a group of chiefs and sheriffs from the largest law enforcement agencies in the United States.

I informed one of the chiefs of police of my recent agreement with ICE to screen illegal aliens and deport them if they fit the criteria. His comments to me were: Congratulations and best of luck. I envy what you are doing but I'd have to turn in my resignation the same day I signed such an MOU. It is not politically correct to cross local business that uses the cheap labor. Ladies and gentlemen, this political correctness will eventually be the downfall of this country if someone doesn't wake up.

Mr. SOUDER. I've tried to be a little flexible. We do not have demonstration support. You are invited to observe; not to participate. It's not a statement whether I agree or disagree with that but we need to have order in the hearing.

Mr. PENDERGRAPH. I didn't mean that.

Mr. MCHENRY. You did mean that.

Mr. PENDERGRAPH. Well, I didn't mean them to do that.

My office started the immigration screening for persons arrested on May 1, 2006. My jail population for illegal immigrants has grown from 2 percent to over 15 percent in the last 3 years. We have so many new arrestees to process, we have not been able to process the 350 inmates suspected of being illegal, that were already in the jail on May the 1st. As we suspected, the vast majority of immigrants arrested and processed are in this country illegally. Infrequently, we find a legal resident arrested, but they are rare since they are very protective of their legal status. More than half of the screened illegals have detainers for deportation placed on them immediately, either for past removals from this country or for the seriousness of the crime they are accused of. The first week we were processing, we came across an individual who had been removed from this country 22 times. His last deportation was from the Arizona Department of Corrections back to Mexico, and he was arrested a short time later in Charlotte for trafficking methamphetamine. Again, the majority of the people detainers are placed upon have been deported multiple times. The ones not held for deportation are cited for an immigration hearing in Atlanta which they—most of them never show up for any immigration court and that's why we need one in Charlotte.

So many illegal immigrant criminals have been identified through my 287(g) program, it is causing me a jail space problem. One of the agreements with ICE in the beginning was for their removal of the identified offenders as soon as possible. I don't think even they foresaw the numbers we would be dealing with. The Removal and Detention Division of ICE is overwhelmed by the numbers we are generating for removal in Mecklenburg County alone.

In the last year I have come to know and work very closely with the ICE employees in my area. I suspect the public would be outraged to know how few ICE agents are assigned to North Carolina. Assistant Special Agent in Charge Jeff Jordan, and SAC Ken Smith that was just here from Atlanta, have literally bent over backward to make this 287(g) program work. They are as dedicated and professional people as I've ever worked with in my 36-year law enforcement career. However, they are as frustrated as I am with their lack of resources, and the frequent dealings with the same people they just removed from this country only a few days prior.

I attended a meeting at the White House 2 months ago on June 21st with Attorney General Alberto Gonzales and ICE Director Julie Myers. The IACP, Major County Sheriffs' Association, National Sheriffs' Association, Major City Chiefs and other groups representing local law enforcement, stressed that border security was the No. 1 issue that needs to be addressed by Congress. Another issue that I brought to the Attorney General's attention is the common practice by State and Federal prosecutors to dismiss criminal cases if an illegal immigrant agrees to voluntary removal. The illegal criminal immigrants know our system and how it works better than most of us do. This in effect wipes the slate clean for a criminal, gives him or her a free ride home at taxpayer expense to visit family, and then begin the journey back to the United

States to victimize other citizens. Think of the frustration we feel when a group of illegals leaves my jail for deportation and they smile and say: We'll see you next week. One of the main purposes for our meeting with the Attorney General was for him to promote the 287(g) program and to request everyone to become part of it. Most Chiefs of Police are not interested in this program for various reasons; the main one being it is not politically correct and is viewed as a Federal problem. Most sheriffs, because they are elected, would like to be part of the 287(g) program but ICE administrators admit they have nowhere near the resources to support that many MOUs. ICE agents in North Carolina could not handle the workload if one-fourth of the North Carolina sheriffs signed an MOU with ICE for the 287(g) program. I can tell you for a fact that had it not been for Representative Myrick that I talk with more than my own sister I probably would not have my program operating now. She's been wonderful helping me with my problems.

I firmly believe we are just seeing the beginning of problems surrounding illegal immigration. This country was built on laws and I took an oath many years ago to enforce the law and protect our citizens from all enemies, foreign or domestic. I take that oath seriously.

The average citizen has no idea what illegal immigration issues costs us in infrastructure tax dollars. These include the criminal justice system, hospital emergency rooms, County Departments of Social Services, schools, etc. A recent report from the Mecklenburg Health Department stated that the County spent $400,000 last fiscal year for interpreters for people who could speak little or no English that were seeking health services. The County's Health Director predicts that in less than 5 years, fully 20 percent of the children starting school in Mecklenburg County will be children of illegal immigrant parents with little or no English skills.

I have nothing against immigrants and this country was built with and by immigrants looking for a better way of life. The flood of illegal immigrants crossing our southern border expecting citizenship and all the privileges that come with it is a slap in the face to every other immigrant who went through the legal process and did it the right way. Even though I have great concern for the flood of illegals coming here looking for a better way of life, my bigger concern is for those crossing our porous borders looking to cause harm and commit acts of terrorism against the United States. This is a serious Homeland Security issue.

I have just scratched the surface of issues we face every day just dealing with illegal immigrants committing crimes in our community. Thank you for the opportunity to testify before this Commission and may God bless America and help Congress come to a quick resolution on this issue.

Thank you.

[The prepared statement of Mr. Pendergraph follows:]

Office of the Sheriff

JIM PENDERGRAPH
SHERIFF OF
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Written Testimony for "Empowering Local Law Enforcement to Combat Illegal Immigration"

August 25, 2006

My name is Jim Pendergraph, Sheriff of Mecklenburg County North Carolina for the past 12 years. I have been in law enforcement for the past 36 years.

First, let me express my appreciation for the opportunity to appear before this Commission on "Empowering Local Law Enforcement to Combat Illegal Immigration." I probably will never have another opportunity to address members of Congress on this very serious and controversial subject. It is with all due respect that I make my comments, so please excuse me for being blunt.

I strongly support the Office of the President of the United States and President Bush. However, I, and many others, strongly disagree with President Bush's policy, or lack of, on illegal immigration. The Congress of the United States has let us down by the lack of action on the illegal immigration issue for decades, leaving those of us responsible for local law enforcement to deal with not only the fall-out of the criminal element, but the ire of the public for their perception of our inaction on a Federal issue.

Mine is one of the few Sheriff's Offices in the United States that has signed a Memorandum of Understanding (MOU) with Immigration and Customs Enforcement (ICE) for the 287(g) program. After extensive training, twelve of my deputies are certified under this program to screen illegal immigrants arrested in Mecklenburg County. This certification gives us access to ICE databases of fingerprints and photographs, which is the only real method of positively identifying a person and their immigration status. Most law enforcement agencies in this country are trying to identify the legal status of

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an individual by telephoning the Law Enforcement Support Service Center in Vermont and submitting the name of a person in question. This is virtually worthless and a waste of time. I know it is shocking, but people lie to law enforcement about their name and use names of persons who are in this country legally. This past February I had lunch in Washington D.C. with a group of Chiefs and Sheriffs from the largest law enforcement agencies in the United States. I informed one of the Chiefs of Police of my recent agreement with ICE to screen illegal aliens and deport them if they fit the criteria. His comment to me was "congratulations and best of luck. I envy what you are doing but I'd have to turn in my resignation the same day I signed such an MOU. It is not politically correct to cross local business that uses the cheap labor." Ladies and gentlemen, this 'political correctness' will eventually be the downfall of this country if someone doesn't wake up.

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So many illegal immigrant criminals have been identified through my 287(g) program, it is causing me a jail space problem. One of the agreements with ICE in the beginning was for their removal of the identified offenders as soon as possible. I don't think even they foresaw the numbers we would be dealing with. The Removal and Detention Division of ICE is overwhelmed by the numbers we are generating for removal in Mecklenburg County alone.

In the last year I have come to know and work very closely with the ICE employees in my area. I suspect the public would be outraged to know how few ICE agents there are assigned to North Carolina. ASAC Jeff Jordan, and

SAC Ken Smith from Atlanta, have literally bent over backwards to make this 287(g) program work. They are as dedicated and professional people as I have worked with in my 36 year law enforcement career. However, they are as frustrated as I am with their lack of resources, and the frequent dealings with the same people they just removed from this country only a few days prior.

I attended a meeting at the White House two months ago with Attorney General Alberto Gonzales and ICE Director Julie Myers. The IACP, Major County Sheriffs' Association, National Sheriffs' Association, Major City Chiefs and other groups representing local law enforcement, stressed that border security was the number one issue that needs to be addressed by Congress. Another issue I brought to the Attorney General's attention is the common practice by state and federal prosecutors to dismiss criminal cases if an illegal immigrant agrees to voluntary removal. The illegal criminal immigrants know the system and how it works better than most of us. This in effect wipes the slate clean for a criminal, gives him/her a free ride home at tax-payer expense to visit family, and then begin the journey back to the United States to victimize other U.S. citizens. Think of the frustration we feel when a group of illegals leaves the jail for deportation and they smile and say "we'll see you next week." One of the main purposes for our meeting with the Attorney General was for him to promote the 287(g) program and to request 'everyone' to become part of it. Most Chiefs of Police are not interested in the program for various reasons; the main one being it is not politically correct and is viewed as a federal problem. Most Sheriffs, because they are elected, would like to be part of the 287(g) program but ICE administrators admit they have nowhere near the resources to support that many MOU's. ICE agents in North Carolina could not handle the work load if one fourth of the North Carolina Sheriffs signed an MOU with ICE for the 287(g) program. I can tell you for a fact, had it not been for Representative Myrick, I probably would not have my program operating now.

I firmly believe we are just seeing the beginning of problems surrounding illegal immigration. I have often heard that these illegal immigrants are just trying to feed their families and provide themselves a better life. I have seen some sad cases in my career of people resorting to bank robbery and other crimes to provide for their families. Can we afford to pick and choose the laws we enforce? This country was built on laws and I took an oath many years ago to enforce the law and protect our citizens from all enemies, foreign or domestic. I take that oath seriously.

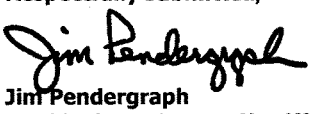
The average citizen has no idea what illegal immigration issues costs us in infrastructure tax dollars. These include the criminal justice system, hospital emergency rooms, County Departments of Social Services, schools etc. A

recent report from the Mecklenburg Health Department stated that the county spent $400,000 last fiscal year for interpreters for people who could speak little or no English that were seeking health services. The County's Health Director predicts that in less than 5 years, fully 20% of the children starting school in Mecklenburg County will be children of illegal immigrant parents with little or no English skills.

I have nothing against immigrants and this country was built with and by immigrants looking for a better life. The flood of illegal immigrants crossing our southern border, expecting citizenship and all the privileges that come with it, is a slap in the face to every other immigrant who went through the legal process and did it the right way. Even though I have great concern for the flood of illegals coming across our southern border looking for a better way of life, my bigger concern is for those crossing our porous border looking to cause harm and commit acts of terrorism against the United States. This is a serious Homeland Security issue.

I have just scratched the surface of issues we face every day just dealing with illegal immigrants committing crimes in our community. Thank you for the opportunity to testify before this Commission. May God bless America and help Congress come to a quick resolution on this issue.

Respectfully submitted,



Jim Pendergraph
Mecklenburg County Sheriff
700 East 4th Street
Charlotte, North Carolina

Mr. SOUDER. Thank you very much. Ms. Moose, it's great to hear from you directly. Sometimes I think—you can pass that microphone.

Mr. PENDERGRAPH. Excuse me.

Mr. SOUDER. Sometimes you wonder—people say that we're doing all of this illegal immigration stuff because it's a political year and you always—anybody who is in political life people wonder about your motives, whether you just say one thing and do another, but Congresswoman Myrick started to buttonhole members about your case immediately. You just need to know it wasn't just back here and it wasn't just that she was moving a bill. Quite frankly to be honest I heard probably more about your case than I wanted to hear about your case that—because we all have variations of this but it was such an emotional thing in how it affected her that she immediately started talking to a number of us, introduced a bill, worked that bill and had a passion with it and that's why I say it's of special interest to me because I—I heard about your case so many different times in a short form that I'm looking forward to hearing from you directly so we can get it into the official record of the United States what happened, what it means at a personal level in this rather than just the hypothetical level with lots of numbers and in general. So thank you for being willing to share a very difficult and personal story with us.

STATEMENT OF EMILY MOOSE, MOTHER OF SCOTT GARDNER

Ms. MOOSE. Thank you. The Charlotte Observer headlines on July 20, 2005, read simply: Scott Gardner did not have to die. My name is Emily Moose and following Sheriff Pendergraph here I've been a mother for 35 years and a grandmother for 7 years. But more importantly who was Scott? Scott Gardner was a husband, a father, a son, a brother, a teacher, a coach and a friend. He taught and he inspired. He was a devoted husband and a father and he was definitely the anchor in his family. Scott was a tall, good-looking fellow with blonde hair and intense brown eyes. He was a gentle giant with a soft voice. He loved his children with abandon and the game he loved was baseball.

He was steadfast and loyal, freely giving unconditional love. Scott was a proud man. This pride was in who he was and what he stood for. Scott was a devoted Christian. His evangelism was a live by faith example which drew people to him and in this drawing he made clear his faith in his God and his acceptance of Christ as his personal Savior.

On July 16, 2005, Scott and his beautiful wife Tina were traveling on Highway 130 in Brunswick County, North Carolina on their way to the coast for a long overdue family vacation. Their two small children were safely secured in the back seat of the family station wagon and all of a sudden out of nowhere they were hit head-on by a truck. Nine hours later my precious son lost his life and his wife Tina was seriously injured. Tina remains in a vegetative State today. She is being cared for in a nursing facility in North Carolina. Scott Gardner was 33 years old and his wife Tina is 32.

It has been 13 months since that horrible day and our family has never overcome this nightmare. As the time goes on our pain and

our loss grows greater. Our questions as to why have never been answered. Our disbelief that something like this could happen in our country and our frustration with a failed and broken system that cost us the ultimate price is mounting. Since my son's murder I have studied and I've read, and I suffer the personal pain of the tragic ramifications caused by the illegal invasion of my country. In the last several months I've travelled to Raleigh, I've been to Columbia, I've been to Washington. I have written and e-mailed thousands and thousands of letters, made hundreds of telephone calls looking for answers to this deadly problem.

There were four young men in the truck that day that struck Scott and Tina head-on and every one of them were in this country illegally. After the crash happened, in spite of my babies crying and my son screaming to get out of the car, these men fled the scene in order to elude the police. They removed their clothing and they buried it in order to escape possible DNA that might prove who the driver of that truck was. They all claimed not to speak or to understand English even though a lot of people in their own community said that they do speak and understand the language. Investigators later found out that the truck that was involved in this accident—or accident—crime was owned by another Hispanic fellow in their community. This particular man owns 30 such vehicles. He provides little to no insurance on these vehicles and he leases them to undocumented and unlicensed drivers. The man that was driving the truck was described to me by his sister as a good man. This good man ignored the screams of my children and my son and ran away from his car. After the fact our family learned that man had been arrested five times in 5 years prior to that horrible day. One of the prior charges resulted in another head-on collision.

The man that murdered Scott crossed into our country on our southern border in Arizona in 1998 per immigration officials. He travelled to Michigan at that time and obtained a driver's license on June 30, 2000. Fifteen days later he was charged with drunk driving in Monroe, Michigan. Authorities in Michigan notified Immigration and he was sent back to Mexico. Six months later in January 2001, the U.S. Border Patrol caught him again and again they sent him home. He was back in the States again 2 months later in March and he moved to North Carolina to work as a roofer. In February 2002 he was arrested for speeding 88 miles an hour in a 55-mile-an-hour speed zone and tests showed that his blood alcohol level was twice the legal limit. That DUI was still pending when 3 weeks later he was nabbed again for DUI. He was sentenced to 20 days in jail. In the summer of 2002 this man skipped his court date for the third offense and the statistics tell us that 27 percent of drunk driving charges against Hispanics are dismissed because they don't show up for court. You see, if you don't have a conviction your record is clean.

In late 2002 he was busted again. This time he was sentenced to 7 days in jail and supervised visitation (sic). By now this fellow, still in my country illegally, had earned himself a felony for DUI, but if you don't have any records you don't serve detention. In January 2004 he again was charged with DUI and his blood alcohol level was three times the legal limit. Results of that arrest, 30 days in jail and supervised visitation (sic). A spokesperson with the De-

partment of Homeland Security says that she couldn't explain why this particular repeat offender was not in their data base.

On July the 16th after a whole day of drinking and just having fun this illegal took my son's life and he has darkened the life of Tina forever. For all intents and purposes he has orphaned my two grandchildren. One Charlotte reporter last month wrote that he, however, was not an example of the problems of illegal immigration. This article also stated that most illegals respect the U.S. laws. I believe that the facts speak for themselves. This country has 630,000 criminal illegal felons or a full 29 percent of our total population in prison today at a cost annually to taxpayers of $1.6 billion. Recent reports tell us that 25 American citizens die every day in this country at the hands of an illegal. In addition to those horrible numbers 624,000 illegal fugitives are hiding in my Nation. The Latino community leaders have told us that extreme culture differences and the lack of knowledge of the laws of this country are the reasons that this death rate is spiraling upwards but our border is still open as we speak.

We have all read and heard of the economic devastation that this invasion is causing the American taxpayer.

Experts in this area are reporting to us crippling numbers. Our family's personal experience with the unfairness of this financial outrage: Scott and Tina were air lifted and treated at a medical facility in Wilmington, North Carolina that deadly day. Two passengers in the truck were also treated for their injuries at this same excellent hospital. Our family received a bill in excess of $89,000 for the 7-hours of treatment that my son received there. The other two people left this hospital owing no money and now have vanished into the fabric of my country. We are a Nation of laws and our laws are not just for some but for every single person here. The statement that most undocumented respect the U.S. laws is a joke. The mere fact that they smuggle themselves into our home, they consume our resources, they kill and hurt our citizens, they protest and demand more rights than they give their victims is unacceptable and it is a crime.

As this Nation is fighting a war on terror, Homeland Security should be the No. 1 priority of every citizen and every government official, but we still have that open door. We have immigration laws on our books already and for decades they have not been enforced. Because of the lack of enforcement Scott and millions of other innocent citizens have lost their lives. I believe that the cost of human life is just too high a price to pay for cheap labor. Our communities and our highways wreak of more terror than the war zones do in Iraq. We must put a stop to this misery.

We have to protect this Nation. We must give America back to its citizens. A Nation in chaos is still a governed society, it's just by the wrong people, for the wrong purposes, and the results are disastrous. No family should have to suffer the preventable, unacceptable heartache that this American family is suffering because our Nation is not enforcing our laws. I want to thank you for asking me to be here today and one more comment. I think that if the 287 program had been in place in Brunswick County, North Carolina my son would still be alive.

[The prepared statement of Ms. Moose follows:]

Charlotte Observer Headlines on July 20th, 2005:

"Scott Gardner did not have to die."

Good morning, my name is Emily Moose. I am a Mother and a Grandmother------More importantly, who was Scott Gardner? Scott was a husband, father, son, brother, teacher, coach, and a friend. Scott taught and he inspired. He was a devoted husband and father, and he was the anchor in our family. Scott was a tall blonde with intense brown eyes. He was a gentle giant with a soft voice. He loved his children with abandon and his game was baseball. Steadfast and loyal, freely giving unconditional love. Scott was a proud man. This pride was in who he was and what he stood for. Scott was a devoted Christian. His evangelism was a "live by example approach," which drew people to him. In this drawing Scott made clear his faith in God and his acceptance of Christ as his personal Savior.

On July 16th, 2005 Scott and his beautiful wife Tina were traveling on Hwy 130 in Brunswick Count, North Carolina on their way to the coast for a long overdue family vacation. Their two small children were safely secured in the backseat of the family station wagon when out of nowhere a pick up truck struck their car head-on. Nine hours later, my precious Son lost his life and his wife Tina was seriously injured. Tina remains in a vegetative state and is being cared for in a nursing facility in North Carolina. Scott was 33 years old and Tina is 32.

It has been 13 months since that horrible day. Our families will never overcome this nightmare. As time passes, our pain and our loss grows greater, our questions as to why have never been answered, our disbelief that something like this could happen in our country, and our frustration with a failed and broken system that cost us the ultimate price is mounting. Since my Son's murder, I have studied and read, and I suffer the personal pain of the tragic

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ramifications caused by the illegal invasion of our country. In the last several months I have traveled to Raleigh, Columbia, and Washington, and I have written thousands of letters and emails, seeking answers to this deadly problem.

There were four young men in the pick up truck that struck Scott and Tina, and all were in this Nation "illegally". After the crash happened, in spite of children crying and Scott screaming to get out of the car, these men fled the scene in an attempt to elude the police. They removed and buried their clothing in order to escape possible DNA from the truck that might prove who the driver was. They all denied being the driver. All claimed not to speak or understand English, even though many in their community told investigators later the man that was the driver does in fact understand and speak some English. Yet another Hispanic man in their community owns the vehicle involved. He owns 30 such vehicles with little to no insurance and he leases them to undocumented and unlicensed drivers. The man driving the truck has been described by his sister as a "good" man. That "good" man ignored the screams and cries from the car and ran away. After the fact, our family learned that this driver had been charged with drunk driving at least five times in five years prior to this terrible afternoon. One of the prior charges resulted in another head-on collision. The man that murdered Scott crossed our Southern Border into Arizona in 1998, per immigration officials. He traveled to Michigan and obtained a drivers license on June 30th, 2000. Fifteen days later, he was charged with drunk driving in Monroe, Michigan. Authorities in Michigan notified immigration and he was sent back to Mexico. Six months later, in January 2001, the US Border Patrol caught him again and sent him home. He was back in the states again by March 2001 and moved to North Carolina to work as a roofer. In February 2002, he was arrested for speeding 88 MPH in a 55 MPH and his blood alcohol level was twice the legal limit. That DUI was still pending when 3 weeks later, he was nabbed again for DUI. He was sentenced to 20 days

in jail. In the summer of 2002 this man skipped his court date for the third offense. More than 27% of drunk driving charges against Hispanics are dismissed because these criminals do not show up for court. ----No conviction----Clean record. Late in 2002 he was busted again. This time he was sentenced to 7 days in jail and supervised probation. By now this man, still in this country illegally, had earned himself a felony for habitual DUI, but No records means No detention. In January 2004 he again was charged with DUI and his blood alcohol level was 3 times the legal limit. Results, 30 days in jail and supervised probation. A spokesperson with the Department of Homeland Security stated that she could not explain why he was not in their database.

On July 16th, after a whole day of drinking and just having fun, this illegal took Scott's life and has forever darkened Tina's life. For all intents and purposes he left my two precious grandchildren orphans. One Charlotte Observer reporter wrote last month that "he was not however an example of the problems of illegal immigration". This same article also stated that most "illegals" respect the US laws. I believe that the facts speak for themselves. This country has 630,000 criminal illegal felons or a full 29% of the total population in our prisons today at cost to the American taxpayer of 1.6 billion dollars. Recent reports states that 25 American citizens die every day at the hands of those in this nation illegally. There are over 624,000 illegal fugitives hiding in our country and studies inform us that this year 3 million more will walk into this country. The Latino Community leaders have explained to us that culture differences and lack of knowledge of the laws of this land are the reason that this death rate is spiraling upwards, but the border is still open.

We have all read and heard of the economic devastation that this invasion is causing the American taxpayer. Experts in this area are reporting crippling numbers. Our family's personal experience with the unfairness of this financial outrage: Scott and Tina were

air lifted to and treated at a medical facility in Wilmington that deadly day. Two passengers in the truck were also treated for their injuries at the same excellent hospital. Our family received a bill in excess of $89,000 for the seven hours of treatment that Scott received. The others recovered and left the hospital owing no money and have now vanished into the fabric of this nation. We are a Nation of laws; our laws are not just for some but for everyone here. The statement that most undocumented respect the US laws is a joke. The mere fact that they smuggle themselves into our home, consume our resources, hurt and kill our citizens, protest and demand more rights than their victims have is unacceptable and it is a crime.

As this nation is fighting a war on terror, Homeland Security should be the number on priority of every citizen and every government official, but we have an open door policy on our Southern Border. We have immigration laws on our books already, but for decades they have not been enforced. Because of lack of enforcement Scott and millions of other innocent citizens have lost their lives. I believe that the cost of human life is just to high a price to pay for cheap labor. Our communities and our highways wreak more terror than the war zones in Iraq. Put a stop to this misery, protect this Nation, and give America back to its citizens. A nation in chaos is still a governed society—it just by the wrong people, for the wrong purposes, and the results are disastrous consequences.
No family should have to suffer the preventable, unacceptable heartache that this American family is suffering because our nation is NOT enforcing our laws.

Thank You for inviting me to speak here today,

Mr. SOUDER. Thank you. Vice Chairman.

Mr. MCHENRY. I'll be happy to yield to Congresswoman Myrick.

Mrs. MYRICK. I want to thank you very much. The one thing I want to say about you is that you have turned tremendous, tremendous grief into a huge advocacy that is helping lots and lots of people and we thank you for that because what you're doing is unbelievable research and speaking and literally changing this fabric we're talking about and thank you for doing that and I know you'll keep it up because you're committed and that's why we're here today is to try and figure out what we can do to stop this so other people don't go through what you and your family are still going through. We can't relate because we haven't been there. Sheriff Pendergraph, I wanted to ask you a question. How often do you see returns after deportation? What would you say your percentages are.

Mr. PENDERGRAPH. That's hard to estimate and a rough guess would be 10 percent. The quickest we've seen is 3 days but frequently it's a week and, in fact, we don't run into them unless they commit another crime.

Mrs. MYRICK. I understand that.

Mr. PENDERGRAPH. They could cross back into this country and not commit a crime and they wouldn't come in contact with my 287(g) program or they could be in another surrounding county or another part of the country; we wouldn't know. The ones that we see—the small percentage that we see return, have come back, have been rearrested for some reason.

Mrs. MYRICK. For criminal reasons.

Mr. PENDERGRAPH. Yes.

Mrs. MYRICK. That was my point.

Mr. SOUDER. Sue, might I interrupt you for a technical question.

Mrs. MYRICK. Yes.

Mr. SOUDER. I don't mean to disrupt your flow of questioning. Because we have—we have—one of our most difficult things in drug intelligence and in now Homeland Security is we collect all kinds of data and it's very hard as a member of the Homeland Security Committee and chairman of this committee to figure out how this is used. When you get a case, Congresswoman Myrick just asked you what seems to be in the computer age a not hard question but we don't generally get the answer no matter who we ask, so I wanted to ask you a technical question of what happens; that when you get a—an illegal who has been convicted and you said one—the least is 3 days, do you—who do you report that crime to? What centers would get that information? Would it go into the Department of Homeland Security? Does it go to your regional Law Enforcement Center? Where does the raw data go? Does it go beyond your county.

Mr. PENDERGRAPH. Right. We fingerprint everyone now that has not declared that they're a U.S. citizen and tells us on the initial interview that they are not U.S. citizens or at least they're not born in the United States. They're fingerprinted through the ICE data base and the Federal Government has wonderful data bases and information systems, they're just not sharing them with anyone that's not affiliated with this program. They have a photo recognition system, we fingerprint and photograph and within 2 minutes

we get the information back. If they've ever had contact with Immigration anywhere in the United States whether it's on the border or another State, California, once we finger- print someone and find they're a return that information does go to ICE. They pick up on that and it also goes to the U.S. Attorney, Western District of North Carolina prosecution, as a return. So we store that and we are keeping very specific records and we do keep good data. I just don't have that in front of me right now. But we are keeping good information. The problem is if you don't have that program and, again, thank goodness that Alan is about to get on board with this. We can keep statistics that no other agencies can do right now.

Mr. SOUDER. So with your fingerprint program in your county——

Mr. PENDERGRAPH. Yes.

Mr. SOUDER [continuing]. It goes in and you can now tell because the names are still a problem; they're almost irrelevant——

Mr. PENDERGRAPH. The names are irrelevant.

Mr. SOUDER [continuing]. And the false green cards and Social Security numbers are more or less irrelevant and without a fingerprint it doesn't work. Now let me ask something that came up in the district in Winston-Salem. There a local prosecutor and sheriff said one of the problems when you pick up somebody on—on the road that the police cars themselves may not have a fingerprint machine in them with which to read the I.D. which means you're back to the name again unless the person is hauled to us at a central place. Can you explain the challenges of how—what funding challenges we're looking at because fingerprints are the only way to do this but if we don't have agencies that can read it how does that work.

Mr. PENDERGRAPH. My—I'm the wrong person to ask technical questions. I can't turn my computer on without something happening to it but a fingerprint data transmit, it takes a lot of space on a server. That is capable—you know, that is a possibility. It's very expensive to transmit fingerprints. Ultimately I'd like to see that done but you can take them anywhere in this State and fingerprint them and if you don't have that ICE data base like I have in my jail in my processing center you won't find out if they're here illegally or what their immigration status is.

Mr. SOUDER. But if somebody had been picked up at the spot on the DUI and the policeman in the car, would they have had to bring the person into the jail or had them in the——

Mr. PENDERGRAPH. Yes. Yes. They can't do that from the vehicle right now.

Mr. SOUDER. Thank you.

Mrs. MYRICK. Would you know whether that's possible to do from a vehicle simply because you're saying it's very—the data base is so big.

Mr. PENDERGRAPH. We are—We just purchased a mobile command center to use for drunk driving checkpoints——

Mrs. MYRICK. OK.

Mr. PENDERGRAPH [continuing]. And one of the things that we do is—we have is an AFIS system—an AFIS system and we are trying to work out the technical problems of finger- printing drunk drivers and transmitting that data back to my data base; it goes to the

State and FBI. And it is a very difficult issue—expensive issue through microwave technology to transmit the data that you need to transmit a fingerprint.

Mrs. MYRICK. So we would be looking at a lot of money to try and have something in the cars——

Mr. PENDERGRAPH. Especially—We have mobile laptop computers in most——

Mrs. MYRICK. Right.

Mr. PENDERGRAPH [continuing]. Patrol cars now but we don't have access to fingerprints that we can check in the cars.

Mrs. MYRICK. I wanted to ask you about what additional costs this has brought to your department. Have the costs outweighed the benefits; benefits outweighed the cost? You know, where do you stand and what is it that we need to be doing along those lines.

Mr. PENDERGRAPH. Well, it has brought added cost and some sheriffs' offices probably wouldn't be able to afford what I've done. I house a lot of Federal inmates and I have a contract with the U.S. Marshals' Office that they pay us to have inmates and we have as everyone else has an excess of unprojected revenue coming from the Marshals' Service that we were able to fund this program with and we're having—even though ICE paid for the equipment and the computer system that they put in for me we're having to pay for the DSL and the information systems lines that go back to them. And then I have 12 employees that after this year that the County is going to have to pick up the funding for their salaries and benefits so—but any person we identify that's a criminal, and we've found murderers, drug traffickers and everything else through our system, is worth whatever cost it is to get those people out of our community. The frustrating thing is that we can look for them back because there is nothing there to stop them from coming back.

Mrs. MYRICK. Sheriff Cloninger, since you've just gone through this Memorandum of Understanding process with 287(g) where do you see problems or challenges that we need to straighten out that would make it easier, simpler, quicker, whatever it may be, for other agencies to go through this process, because I understand it's a bit cumbersome.

Mr. CLONINGER. Well, the application process wasn't difficult in my opinion but it's the fear—I've talked with many sheriffs in this area—because you have to look at it another way. When Sheriff Pendergraph started, well, that pushed the illegals away from Mecklenburg County.

Mrs. MYRICK. So they go to other counties.

Mr. CLONINGER. The funding is in Mecklenburg County so they've come to Gaston, Cabarrus, Union. And I've talked with other sheriffs and they have fear of the cost and I think that's—it's—money runs a lot of things but like Sheriff Pendergraph said why do we want a murderer in our community just because it costs us a few thousand dollars to have them out of our community; you have to make a determination of what the—the proper expenditure to fund and the other sheriffs that I've talked to want to come on board but they are afraid of the cost and expense. I don't know what the cost and expenses are. Like Sheriff Pendergraph I'm pres-

ently able to house some Federal inmates that will help deter some of the cost but——

Mrs. MYRICK. Well, if both of you could—if you could think about the fact of how we could simplify this process from the standpoint of not just the cost but I'm talking about the actual process of getting on board, I would appreciate it if you would share that information because——

Mr. CLONINGER. I'd be happy to.

Mrs. MYRICK [continuing]. Because we do want to encourage more people to do this. Sheriff, did you have a comment.

Mr. PENDERGRAPH. I guess one comment, and trying not to be too critical in meeting with the Director in Washington, Julie Myers——

Mrs. MYRICK. Right.

Mr. PENDERGRAPH [continuing]. I think that the information that the Attorney General and some of the folks in Washington get is so sanitized and cleaned up before they get it, they have an opinion that things are working well——

Mrs. MYRICK. Um-hum.

Mr. PENDERGRAPH [continuing]. And I had to inform them that it is not working well; that it's a very difficult process to get involved and, again, had it not been for you I wouldn't be operating this now because I applied, never heard anything and there were roadblocks and reasons we couldn't do things every turn I made, and I know a sheriff in Tulsa, Oklahoma that has tried for 3 years to get a telephone call returned from ICE about this program and until I told her about it he didn't get a telephone call returned. There's a frustration across the board with there's a stonewall somewhere that somebody is saying: I don't want you to do anything about this. That's just the feeling.

Mrs. MYRICK. Well, that's why the chairman is here today to—to figure out what it is that we can do to change this and I appreciate all of you testifying. I—Also, Mr. Chairman, we had 200 people here today. You can see the interest in our community for this program and I did want—this is a little aside but I know one of our State senators is here, Robert Pittinger, and he just told me that the bill that they have been working on in the State legislature which he authored in the Senate and it passed through the House to stop issuing licenses in North Carolina with taxpayer I.D. numbers, the Governor hasn't signed it yet but it will go into law Monday if it isn't signed. So I just wanted to pass that on because that's one of the reasons we figure we're getting so many people in here, Mark, in North Carolina because it's so easy to get driver's licenses here compared to other States. You don't have to prove who you are. So I just wanted to put that in the record and thank you all.

Mr. MCHENRY. Thank you all for agreeing to be here. I think it's important that we hear from folks that are affected by illegal immigration and let's say this. Let's make sure that we're very clear about that there is no misunderstanding here. When you—When you come to this country illegally you're breaking the law to get here.

That's to start your process of being a part of America. You break the law to get here. Once you're here illegally you've already bro-

ken the law once so it's not much of a leap to break the law again. So the condition I would make is that if you break the law to get here you are not going to respect the law once you're here. What we're—we're discussing here today is not simply illegals in the community but those illegals that are committing horrible acts and encounter law enforcement. Personally I have not had any problem with my sheriff, Alan, because I haven't broken the law and so I don't have opportunity to encounter you, thankfully.

Mr. CLONINGER. That's good.

Mr. MCHENRY. So I want this to be clear to the media and to the public at large, we're not anti-immigrants.

Mrs. MYRICK. Right.

Mr. MCHENRY. We're talking about illegals in the community; not just illegals in the community but those illegals that commit acts such as drunk driving, such as drug trafficking, such as assault and battery, or worse and so let's talk about this, this 287(g) program. This is fantastic feedback we've gotten from you—from you, Sheriff Pendergraph, and this is a good indication of what we'll be going through in Gaston County because of the leadership of Alan Cloninger. We're very grateful for that. This is a wonderful program, a great opportunity for Gaston County. And what I've found from Lincoln County which I also represent is the sheriff there has a desire to be involved with the 287(g) program because you are so effective in Mecklenburg County that they've seen an enormous rise in illegals committing crimes in Lincoln County because they don't want to be in Mecklenburg County——

Mr. PENDERGRAPH. That's good.

Mr. MCHENRY [continuing]. Because you're effective.

Mr. PENDERGRAPH. That's good.

Mr. MCHENRY. That is fantastic. So this coordinated effort has to go across county lines and we have to have the resources in place. Now how long—Sheriff Pendergraph, how long have you had the program in place.

Mr. PENDERGRAPH. We started processing May the 1st, this year.

Mr. MCHENRY. May the 1st. So since May the 1st your 12 deputies, how many folks have they encountered.

Mr. PENDERGRAPH. Around 1,100 that have been arrested that we have processed and over half of those have been detained for deportation immediately because of some prior deportation or some felony that they have—If I might make an example, this lady got arrested Monday. She had been in this country 30 years from Trinidad. She has 18 aliases, seven Social Security numbers, five dates of birth and she's been arrested in five different States for felonies——

Mrs. MYRICK. Good heavens!

Mr. PENDERGRAPH [continuing]. And we're the only ones that have picked up on her and she is detained for deportation right now. And I've got multiple examples of the same thing and they're in every county in this country, I can assure you.

We can find it because we have the 287(g) program.

Mr. MCHENRY. That is amazing. Absolutely amazing.

Mr. SOUDER. Why wasn't she in the data bases.

Mr. PENDERGRAPH. She was. She was in the ICE data bases but——

Mr. SOUDER. But local law enforcement didn't have a way to get to the ICE data bases.

Mr. PENDERGRAPH. No. Huh-uh.

Mr. MCHENRY. So this is a question linking Federal data with State and local law enforcement.

Mr. PENDERGRAPH. Right.

Mr. MCHENRY. This is not—This is absolutely frightening what you just told me and we're talking about illegal immigrants; we're not even talking about terrorist plotters. This is absolutely amazing. Alan, do you have a comment.

Mr. CLONINGER. Well, I think what you also have to look at, there is another element out there, child molesters that we have to identify also. We have—just those in our country who are molesters, we're having difficulty tracking them down.

Mrs. MYRICK. They can't hear you, Alan.

Mr. CLONINGER. Excuse me. I'm going to yank this out of here in just a minute because——

Mr. SOUDER. Snuggle close. We won't make any Ricky-Bobby kind of——

Mr. CLONINGER. That would be a good idea. But we've got the—the child molesters that we have to arrest—two sheriffs—and we have difficulty keeping up with those citizens that are here legally. So the illegal ones that are roaming across the country we have to worry about those also. So it's just not somebody to deal with the DUIs. We have to be aware that we have to identify those people who are preying on our children also. So it's so important that—and it comes down to money if the funding is there because we're going to push them out of Gaston County into York County and Cleveland County and Lincoln County. It's got to be that type of way across the country, push them all the way across the border.

Mr. MCHENRY. Well, I see the sheriff of Rutherford County, Philip Byers, is here, it's a county I represent, and based on conversations with him he foresees it affecting Rutherford County which is two counties over from us.

Mr. CLONINGER. That's the reason I worked so hard to get it here with you all's help because I knew when Jim started it, and Jim's program is an excellent program; we're going to model ours after his, but that was the effect we were going to have in Gaston County and to protect Gaston County I've got to have it. I believe all the other sheriffs feel that way also.

Mr. MCHENRY. District Attorney Lands, in terms of your case loads do you have any statistics about illegals coming through the Gaston County Courthouse.

Mr. LANDS. No, sir, I don't have any statistics on that, and I think it needs to be said and I think we all know illegals are not the only ones committing crimes. There's certainly plenty of crimes by American-born citizens so that's—that's there but it just seems like the illegal stands out because you can very easily start out with it being the language problem. I mean, I can deal with, you know, meeting people in the public with five no operator's license by American citizens but the time it takes to try to communicate with someone who is not speaking English with you and trying to understand that and trying to communicate what you need to do in that situation, you—it just stands out more. So it just seems

that it's there and it creates a greater problem. But there is no question about the fact that—that the numbers are increasing. I don't think there is any question about that. And, as I said in my written statement, it has a negative impact on the court system when you have to use all your resources in trying to deal with people who are the victims of crime and you send out investigators to try to reach them and trying to get them to come in and they won't come in and you've got their children who have been molested and the parents won't bring in the kids to talk with the prosecutor to try to prosecute the case because the fear is they'll be deported or the fear is that the minute they do anything then their family back home can be injured or they'll be injured and the crime problem is just there, it's an undergrowth and it's increasing.

Mr. MCHENRY. Well, additionally, Sheriff Pendergraph, you mentioned—I asked this question to the agent from ICE that—the head of ICE for our region and he talked about the Law Enforcement Support Center and heralded this as a positive thing. Certainly I think it's good to have information out there, yes. You mentioned in your testimony, you used the term worthless. Can you give some more details here? How can this be improved? Should we scrap it and use the funds to get the 287(g) program spread out? I mean——

Mr. PENDERGRAPH. I think—I think you should do exactly that because we've tried many times to call and phone in a name of someone if they give us a name, they don't have any identification, to the Law Enforcement Support Center. You might get an answer back in a couple of hours; it might be tomorrow. By then this person made bond and they're gone and you don't know where they've gone. Somebody made a comment to me today that there was a Latino arrested in York County and the trooper bought him in and he said: What's the guy's name? And he told him. He said: There's three of those already in there——

Mrs. MYRICK. Three.

Mr. PENDERGRAPH [continuing]. In the jail now. But they're using names that they know people that are legal and when you phone that name in to the Law Enforcement Support Center, I'm not trying to be flippant about this, I don't have time for this. You go to the resource that you have and you know to be accurate. The 287(g) program with the fingerprints, the photographs is very accurate and very good and the rest of it to me is worthless and a waste of time.

Mr. MCHENRY. Well, thank you for your testimony. Thank you all for your testimony. Mrs. Moose, thank you so much for telling your story. I know it's not easy to share but it's very important that the policymakers in Washington hear your story and I know that Congresswoman Myrick is working so very hard in your son's honor and thank you for working hard on this important issue.

MS. MOOSE: We appreciate really what she's trying to do very much.

Mr. MCHENRY. And thank you all for agreeing to testify today. It's very important and we're grateful for the input.

Mr. SOUDER. Congresswoman Foxx.

Ms. FOXX. Thank you, Mr. Chairman. I wanted to pay a compliment also to my former colleague, Senator Pittinger, who is here

and I thank Congressman Myrick for bringing him to our attention. He's sitting right over here. We sat pretty close to each other on the back row in the North Carolina Senate my last term there. In addition to the legislation which you got passed in terms of the taxpayer I.D. he did something which I think is taking North Carolina in a—in a big leap and something that many of us tried to do for a long, long time and that is to force North Carolina State government agencies to check data bases to see if people are here legally or illegally and I think some of the issues you all have brought up make us realize we've got to do a better job of making sure those data bases are reliable. But Senator Pittinger is really working at the State level and in thinking about what he's done and what some of us are trying to do in the legislature it appears to me that our Federal Government has failed in so many ways to do what we should be doing in terms of illegal immigration and I was thinking about what Mrs. Moose said a little bit ago. The press is constantly touting the number of people who are killed in Iraq every day and yet very little is said about the number of people who die as a result of illegal immigration and illegal immigrants and the impact that they're having on our country. Our Constitution says that the Federal Government will protect us from invasion and I believe that's the No. 1 role of the Federal Government is to protect us and defend us. So it seems to me that where the Federal Government fails it's our responsibility to help local law enforcement and State law enforcement to pick up the gap and it's obvious that the 287(g) program can help us. And I'd like to followup on what Congresswoman Myrick was asking a little bit ago about how we can stream- line the processes for this program and it seems to me that we need to find a way again to work on our systems. I guess I think—I think very much on an individual level but I also think on a systems level and believe that we need to do all we possibly can to establish systems that will make things easier. And it's clear the Federal Government is burdened and doesn't have enough money. We could never create enough personnel or money at the Federal level to enforce our laws so it's clear to me that we have to make this system easier to use and more accessible to local law enforcement. So I would urge you all to give us any information you can give us or people we should contact, other folks. Mr. Pendergraph, you've heard it said that—you spoke to Ms. Myers who took care of the person in Oklahoma but if you have colleagues who were running into problems you need to let us know and if there are sheriffs out across the State whose own Member of Congress will not help them I can tell you that these Members of Congress will help and I am—I am more than a feisty mountain woman. My husband says I remind him of a little ant who once—they take on big tasks and—and get them done and I—I like to make systems work so I hope you will help us make the system work at the local level if we can't make it work at the Federal level.

I think the people of this State are fed up, frankly, with the Federal Government and what we're not doing and that's why you're seeing these Members of Congress at least doing all they can to make it work. Mr. Pendergraph, go ahead.

Mr. PENDERGRAPH. Representative Foxx, if I could just make a comment. I know one of the—the holdups of the 287(g) program as far as granting that request to other sheriffs' offices in North Carolina particularly is resources our local ICE agents have here. SAC Ken Smith who was here earlier wouldn't divulge and I won't either; I know how many ICE agents are in North Carolina and I know that since we started our program that they've had to reassign ICE agents to deal with the numbers that we're seeing. They can't support many more because they are flooded with work.

I don't know where the resources are going once they're appropriated in Washington but they're not getting to the local field offices because they can't handle what they have now. If more sheriffs in this State got on board then there would be no ICE agents to deal with what they normally do.

Ms. FOXX. Mr. Lands, may I ask you a question.

Mr. LANDS. Yes.

Ms. FOXX. What could we do to authorize the State courts to handle more of these cases? Is there—Is there something that we can do to allow more being done at the local level so we don't require more ICE agents? Can we change our system in such a way to do that? Could—Do we need to write Federal laws that devolve some of that responsibility to State courts.

Mr. LANDS. I guess that addresses what I said earlier, what's going to be the immigration policy of the Federal Government. My understanding right now is this is a Federal Government issue and the States can have local law enforcement say this is an immigrant and then they'll designate—I mean, this is an illegal immigrant and they will designate and ICE takes over and we have to go to Atlanta and an immigration judge in Atlanta decides whether they get deported or not. I guess it would be the authority of Congress to decide that a State judge could have people who make the authority but that would be a complete change of the law and, you know, that would be creating a jurisdiction for State courts that doesn't exist now and that's something that I guess you all certainly would be able to look at but that would be a total—total difference in the way things are carried out.

Ms. FOXX. But, you know, Congressman McHenry pointed this out and I've mentioned this comment with many people. The rule of law I believe is what sets this country apart from every other country in the world in addition to our Judeo-Christian beliefs and those two go intimately together in my opinion and it seems to me that in our rule of law we should think of these people who break the law first as criminals; second, as illegal immigrants, they're tied together. It seems to me we ought to find whatever mechanism we can find to process them as criminals and give them the—the results—the effect of their criminal activity and think of them as illegal immigrants next and that's—that seems to me a frustration that everybody is having now and—and they are I think—many of them are prone I think to break the law a second, a third and a fourth time because they came here first by breaking the law.

Mr. LANDS. Well, this sort of touches on my—my written statement there but you were saying that they ought to be viewed as a criminal first and then the illegal immigrant second, and I guess my written statement was saying that the Federal Government has

to decide whether being an illegal immigrant is deportable or not because you're—the way the system works now is we're having to wait for them to commit a crime—a State crime and become a criminal before they even show up for being as—as deportable and I referenced—of course, this was me trying to figure it out—I referenced that there's—you could place illegal immigrants in five categories. Group 1 is the illegal immigrant who commits a serious crime that everybody designates as serious. Well, there is mechanisms in place to try to have that person deported. Group 2 is the illegal immigrant who commits a crime that the Federal Government right now has been designating over the lack of resources as not serious but the State government says is. A classic example, driving while impaired. That has not been deportable before but efforts are being made to say that is serious enough. That is Category B. Category C is the illegal immigrant who runs a red light and now comes to the attention of law enforcement. Category D is the illegal victim who now has been the victim of a crime but because of that victimization is now known to law enforcement. And Category E is the person who is out there, hasn't had any influence—hasn't impacted as—the law enforcement hasn't come across them. Now they've all committed the same Federal crime that they're here illegally and as I understand the Federal law they all could be deported but that's not happening. The Federal Government says we've got to wait until they commit a serious crime or we'll have an argument now whether they commit drunk driving and now create this second category of crime but are we going to—if we get 287(g) authority, you know, what's going to happen when these sheriffs say, OK, you know, this person here we think is in a gang. We haven't seen them committing a crime, we haven't gotten the evidence that they've committed a crime but we know they're in a gang; we want to write them up and have them deported and it goes to Atlanta and the judge says: That's not in our category yet. You know, is that going to happen? And, you know, you're right. I think—I think everybody says we want to get the criminals out, the ones who are committing crimes, but then, you know, are we—does that create an amnesty program that if you don't commit the crime you're staying and that's—you all are going to have to come up with that—that designation. What's the immigration policy? Because once you give 287(g) authority to allow the local law enforcement agents are you telling them, OK, you come across an illegal alien who runs a red light, do you write them up or not, you know? Are you going to make it where they have to commit a serious, however you want to define it, State crime before they ever get deported? And, you know, that's—you're waiting around for them to victimize people in this State before you ever decide whether you're going to deport them or not, and I don't know that's something people want to wait around for.

Mr. SOUDER. Let me—I have some questions, Mr. Lands. Is it illegal in North Carolina to have a false I.D.?

Mr. LANDS. Yes.

Mr. SOUDER. Isn't that something you could prosecute.

Mr. LANDS. You can prosecute. That's State law. That's correct.

Mr. SOUDER. Do you prosecute for a false I.D.

Mr. LANDS. If we determine that and we do the best we can in prosecuting it.

Mr. SOUDER. Don't almost—Doesn't almost every illegal who works at a place in North Carolina have a false I.D.? In other words, couldn't theoretically your local sheriff go with your local district attorney and go into every workplace and actually arrest people.

Mr. CLONINGER. We could but we'd have nowhere to put them. I mean, that's—that's what you're saying here.

Mr. SOUDER. Well, let me ask another question then.

Mr. LANDS. Well, it's probably—in the vast majority it's a misdemeanor. You're talking about under North Carolina structured law getting a suspended sentence. Law enforcement has to decide whether they're going to go and determine that and—and probably at this point it comes to their—it comes to their attention. They're not going to go out and look for everybody.

Mr. SOUDER. I want to make a point of this. So—But the State of North Carolina could, in fact, make it something other than a misdemeanor if they felt there was a crime problem here in North Carolina from illegals; North Carolina could make it, if they chose, a felony to have a false I.D. because it's—in other words, this isn't just a Federal question here. You can theoretically go in now—Isn't it a State crime to not pay taxes—North Carolina taxes.

Mr. LANDS. That's correct.

Mr. SOUDER. And couldn't the sheriff theoretically working with the local district attorney go into every business where there is an illegal who hasn't declared under their actual name and pick them up? Because what we're really struggling with here is—First off, we don't have control of our borders. None of us here believe that the Federal Government is doing their job. But to some degree in this country nobody wants—I'm a Republican, I heard Ronald Reagan's speech, Barry Goldwater, one of those people, but the fact is nobody wants to raise their taxes at the township level, city level, county level or Federal level and this is going to cost a lot of money and it isn't—and our debt is greater than all State and local and township debt combined in the United States times 10. Only we can print money and you can't. That's a big difference. So we inflate it and we charge interest rates. We sell off our Nation to foreign entities because we run up the Federal debt. Now the fact is that they can't just in this massive question, nothing in front of us—quite frankly nothing in front of us even begins—as I mentioned earlier a work permit—due to the scale of this we're going to have to go out with this thing together. You're going to have to go. It isn't just enough to say to the Federal Government: You guys don't have the will to do this, because it's the businesses here in North Carolina and in my district that are—that are saying, look, we're going to—the manufacturing will shut down without these workers, a lot of the service industries, then all the people, the doctors, attorneys and others who will be—because there is this income there. Another question I have is have you been sitting down with your local chambers and trying to talk through it because this isn't just a matter of saying go fix it because the question is are you helping fix it in North Carolina in addition to us at the Federal level because we're going to have to jump on this together. This is

going to be like crystal meth and meth that we—we had some States starting to control the pharmacy stuff then we realize that it just rolled over to another State then it moved to the Internet. In a hearing earlier this summer on meth the DA is now saying 80 percent of it is coming across the border; it's now becoming a problem, precursors are coming across. And somehow we've got to figure out how to do this together because we're never going to have enough ICE agents. We need a lot more. But we're also going to have to have the States saying: Look, there's a whole bunch of State laws being broken. You don't have to sit back and wait for us to do it. And if you don't have tough enough State laws, pass some.

Mr. LANDS. And they can be passed. I would certainly say the legislature can do that. The question becomes is that a serious enough crime—State crime for the Feds to decide they're going to deport the person. Drunk driving hasn't been considered serious enough by the Federal Government to deport. They haven't given the resources to deport. Now there is being efforts to try to do that. Do you think if we come in there with a State misdemeanor that they didn't pay taxes that at that point the judge down in Atlanta says deportation? You know, we don't know. We don't know what the policy is. And what I was saying with 287(g) training you're going to have to let this law—these law enforcement officers know. Is—You find an illegal alien who sped and ran a red light. Is that going to be deportable? Is it?

Mr. SOUDER. I was kind of building on Congressman McHenry's comment that they broke the law. They didn't break the law—they probably broke the law on immigrating, the law on I.D., the law on taxes, they've broken a series of laws in that and that one of the questions is deportation, another—are they going to be in prison for breaking that because if you were in prison for breaking it, particularly if you stepped it up from a small misdemeanor to a greater one, the word of mouth on the street is going to change as well and we need to be working this—this process up because it also buys us time to make more Federal cases on that. You're absolutely right. We've got to decide what's a deportable offense and if we start to make this—this change, that we're going to have a two-tiered system. In fact, one group with Hispanics I meet with in my district off the record with no media, they were making the case that there are two kinds of laws and it's part of their culture and tradition because Mexico, in fact, doesn't enforce the laws, they've been—and there are kind of serious offenses and small laws that you can ignore and we're developing this process in the United States that we have double legal standards. There are laws you can get out of. You can drive 68 but if you cross 70 and you kind of have still some—that's an unofficial written rule, stay within five, occasionally at the end of the month it varies, you learn that as a citizen, but that you look at this and we have a little bit of that but this is a wholesale change in this kind of process.

Now what I've seen—what I—what I am incredibly frustrated with is I don't see any realistic discussion quite frankly in Washington, DC, on how hard this is going to be and how many billions of dollars and how long it's going to take. Everybody wants to just do a magic thing and say we're going to do work permits and we

do—or we're going to do—seal the border. I was just—I mean, I go down to the wall a few times a year. Fencing this border is going to take forever and when I met with the Mexican ambassador just before break and he was trying to give me this big shtick about how they're improving things and all of that, that there is an area, Neely's Crossing, just east of El Paso where the Mexican police can't even go into and they have a bulldozer there. When I was there with the border patrol it started out they told us we needed to clear out; it wasn't safe. They have a bulldozer to knock down the fences and I asked the Mexican ambassador: Why don't you stop by removing the bulldozer. That would be a start. Take out the bulldozer or give us like an F16 permission to go over there and take out their stupid bulldozer because this is—this is going to be a long process of doing the fence. Then the whole nature of how to figure out how to secure these I.D.'s as we've learned without fingerprints, secure I.D.'s is a joke because they get different names.

By the way, Sheriff Pendergraph, if you have any more great examples I'd love as many of them for the record as many as you want to say because that helps make our case of how stupid this is, but how hard it's going to be because then we need things to read the fingerprints all over the country. Then we've got all these Federal agencies. What I was asking Scott, my ICE detail, is how come this information is—why doesn't the local law enforcement have this, and he gave me two more—we use every letter of the alphabet. We have so many intelligence agencies that we use every letter of the alphabet, at least three or four variations of it, that—because this is a RIS system. You all don't use the RIS system. Why is that? Well, immigration law has a confidentiality. Yes, you can find a felon but not if they've violated immigration law unless you get into the 287 program. I mean, we've got a mess in trying just to sort that out. Then that—employers are calling in; they can find out, they can be told by Social Security that the number is doubtful, but if they make a mistake they can be sued and that—that we have—we're looking in my opinion if we go at this seriously on a border and I.D. question 2 to 4 years if we do massive infusions of funds to try to make it because otherwise we'll deport them and they'll be back, deport, be back, deport, be back, and in that we're looking at two to 4 years. That's where the question of—State and local question. If you can put some of these people in prison and areas, will you do it? Buy some time and as we add more agents and as we get the border secured behind and as we get a better I.D. system we're going to have to have some sort of thing. Every police agency in my district—first off, the rural districts have been overwhelmed with meth. They have officers that are burned out in overtime. They don't have prison space. Part of it is they need to go to their county commissioners and say that, too. They can't just come to us because if we get the choice—I have supported the Cops Program. I have been trying to fund the different—we go in there with different grant structures that have been hammered. We're going to lose all of our drug task forces in the Nation if we don't get more—different grants and all of that type of stuff. I battle for local law enforcement dollars but we're under tremendous budget pressures and if you say our first respon-

sibility is let us get the fence and the border secured and let us work on the I.D. system and intelligence systems, we need some help from the State and local law enforcement to buy us some time and in detention facilities because there isn't enough money to do all of that and the worse disaster, and I hope we can make this case here, because if we go back to Washington and pass some kind of a new system we're going to have such a result of a classic thing all over again where at the end of the day what we've done is amnesty and we're going to start the process all over again. So that's kind of a little—and I'll like to hear some of your reactions.

Mr. LANDS. For people accused of State crimes I think you're buying your time. They are in his jail and we're waiting around to try them because of all the number of cases and whenever the Federal Government decides to look into these cases we're waiting around for it to be determined whether the Federal U.S. Attorney's Office will get involved in the case so you get some time.

Mr. SOUDER. But do we have anybody in jail for false I.D. or failure to pay their taxes?

Mr. LANDS. No. I would say not at this point. But let me bring up this fact. I forgot about the case and I may not be able to give all the correct details on it but I did have an assistant who was trying a false identification case and because of the way the statute is written when he subpoenaed the Federal employee to come in and talk about the Social Security number he was told: We don't have to honor your State subpoena.

Mr. SOUDER. Can you provide some details? That's exactly what we're looking for. If you can't enforce your State laws, because we've heard this on tax and immigration questions, we need the specifics because——

Mr. LANDS. We had to send the letter and beg and plead please come down here and help us prosecute this case because that's the way the statute is written. The U.S. Attorney has to give permission for the Federal employee to come to State court to honor our subpoena.

Mr. SOUDER. That's very helpful. Any other comments.

Mr. CLONINGER. I'd love to comment. When you start talking about cooperating that's what the 287(g) program is and we're—myself, we're looking at trying to fund that ourselves without outtasking for money. But when you start talking in the nature of wanting to enforce all of these laws and I'm sitting there and the jail is almost full, where am I going to put all of these people that you want arrested? They're here because they came across illegally. We charge under State law; Mr. Lands' criminal justice system right now is overburdened with a number of cases pending because we don't have sufficient funds and judges, prosecutors to prosecute all the cases. We're just getting into—You're just adding more to this vicious cycle in a criminal justice system that is neglected and overburdened as it is. Now you have infused 400 false I.D. cases. How many of the pending State cases; crimes that occurred in North Carolina by citizens are going to be that much further put behind; continued that much longer trying to do. It's a lot more complicated than just say State prosecutors, State law enforcement officers, you enforce your own laws and it will be all right. That

is not the answer, you know, because we're already at the end of our ropes for money.

Our people holler about the taxes and to sort of say, well, we'll do this but you've got to pay for it, it only comes down to the cop on the street, the sheriff running that jail wondering where is he going to put this body? So it's not as simple—and I don't—don't mean to read your mind but it's not as simple as saying, well, enforce your own laws, State; you'll be all right. They wouldn't be here if they hadn't violated Federal law in the first place.

Mr. SOUDER. I will point out, however, that if we raise the taxes in order to pay for it we'll pay a Federal finder's fee, our bureaucracy will be about four times as big as your bureaucracy and it will be less efficient and you've got all kinds of things behind. I'm not suggesting—and we're more broke than you are and we've all got to tax the same people. The people of North Carolina will be taxed in one way or another to pay for this. This is a—This is—Now the question is how much—and this is what I have been raising to my employer is you're going to get a tax on this. If there are going to be visas one of the things we need to be talking about in the U.S. Government, it's not like a $50 visa. A work permit would be something along like $2,000 because who is going to pay for the enforcement of the overstays? Who is going to pay the local law enforcement for this? Who is going to pay the U.S. Attorney's Office? Who is going to pay the U.S. Marshal Service? They're supposed to be transporting them in many cases. Then there has to be some kind of a system to figure out how we're going to fund this at all the levels so that—Ms. Foxx had a short comment.

Ms. FOXX. Well, I just want to say that I agree with what the chairman is saying here and I think that by saying that, no, we can't do this at the local or State level then—then we're throwing up our hands and giving up and I don't think we can do that. I think what has to be done is we have to do what we can do at each level of the government and I think what the chairman is pointing out are really very important points. Somebody is going to pay for this somewhere along the line and we are so much better off pinning it to where it belongs and making the visas more expensive, doing those kinds of things, but it's not all going to be done at the Federal level, yet the Federal Government has abrogated a lot of its responsibility and I think the people of the State can demand that it be done at the State, toughen up its laws and say we're going to do some of this. We realize that some of the problem has been created by lack of enforcement at the Federal level but you all are paying for it one way or the other and we're so much better off if we enforce the laws. That—That's where the money seems to me ought to be spent instead of in Social Services and in the human tragedy and human cost that Ms. Moose is talking about, and that's where we ought to do it and if folks understand that then eventually I think the people of this State are going to say to their local county commissioners and to their State legislators we want you to do what you can do and then we're going to demand also at the Federal level that our Federal folks do that. So I completely agree with you—with the chairman and I think from his experience it instructs us all.

The other thing I want to say is I read a couple of articles about this hearing today and I don't know if the chairman saw them or not but they said this was a dog and pony show we were having done for political purposes. Well, a lot—the media will not report this but a lot of good comes out of these hearings and a lot has been learned today and even if it doesn't get reported in the media I count on the citizens who are here today; I count on Senator Pittinger to take some of what he's learned here today, any county commissioners who are here, to take these ideas back to them because we won't get this reported in the media and there won't be credit given to the chairman for doing what he does to go out and learn these things because we can't learn them in Washington. You can't hold enough hearings in Washington to learn the kinds of things that we've learned here today so I hope those of you that are here today will go out and say, yes, good was accomplished by this because we've learned some things we didn't know before and we'll act on those things. I want you to know we will act on those things and I'm getting sick and tired of the media making this look like it's a nothing issue.

Mr. SOUDER. Mr. Pendergraph.

Mr. PENDERGRAPH. Just a comment. You asked about additional examples and I could give you multiple examples of people that have been convicted and served time in jail in other States that are illegal immigrants in this country and were never checked through any immigration data base and we ended up with here or in Mecklenburg County. The bottom line is, and I know in my sheriff's office if I suggest to my staff that something get done they'll find a way to do it. If I told them I want a door put in that hallway I'll come back tomorrow and they've cut a door in that hallway. The tone has to be set at the top and the tone at the top is not to get something done. If the President of the United States decided he wanted something done about this he would get it done and it's not being done and until that tone and that mission is set and if we can—we're chipping away at an iceberg here that we're making little bitty pieces of ice then it makes no difference across the country. It's got to be a nationwide thing that's addressed just like it is here with the Federal Government on board and if you want the borders secured—and I'm not being funny about this—send a sheriff down there. We'll go down there and secure those borders. But that's what's got to be done is to put something there to keep the ones we do get out from coming back. The only thing that is going to change is for Mexico to improve—and they're not all Mexican and Latinos that we're checking at the border. We've got 17 different countries we've identified that we deported people to already. It's to improve the economy in those countries that they don't need to leave for a better life, to enforce our Federal laws and to make it a felony to employ someone in this country where they can't get a job easily.

Mrs. MYRICK. That's right.

Mr. PENDERGRAPH. That's what they come here for and I can't hold that against them. They're looking for a better life but I've arrested people in my career that have robbed banks because they're trying to feed their families, too, and which laws are we going to

enforce? Which Federal laws? They didn't get a break because they were trying to feed their family and it's just frustrating.

Mr. SOUDER. With all due respect and fairness in El Paso we've heard this, at Nogales we've heard this, San Rosita, San Diego we've heard this. The local sheriffs and prosecutors at one of these locations, the threshold for the Federal marijuana is 700 pounds. They don't even take it under 700. At local it's 200. And when I challenged them with that they said we're tired of our jails being so full of people running drugs to Indiana and to North Carolina because if your drug appetite is overrunning and jamming our prisons, people coming here illegally aren't coming to work in our towns, they're coming to work in North Carolina and Indiana, and you guys then come to us and say why aren't the sheriffs on the border securing it? Why aren't the prosecutors handling it? It's your problem and our towns are paying for it at the border because you won't handle your problems in Indiana and North Carolina. It is—It is a multi-task where we all need to work together and there's going to be tiers of this in limited budget. It's hard and, you're right, there hasn't been a clear leadership from the top. I'm afraid that this pressure to get some kind of a bill is going to wind up with a bill that's worse than no bill; that if we do a window dressing that results in an unenforceable provision and then results in—in effect authorizing what's here with no plans for what to do with it, no—then we back off and we're right back to where we were that started us with it.

Mrs. MYRICK. That's right.

Mr. SOUDER. So we need to do a bill but we need to do a right bill and we need to do it in steps, not in one big ball here because we don't have the funds; we don't have the ability to do it in one big ball. We got into this over decades and it's going to take us a while to get out.

Now—But we all have to work together and I can—I hear your passion; I hear your frustration. I mean, here we have a mom who is saying I gave the ultimate sacrifice with this because you guys didn't do your job and it's a challenge to us to try to address that.

I have a couple of very more technical questions. This may be the only hearing that Congress conducts on 287 so I want to make sure I get a couple of things in. Mr. Pendergraph—and—first let me ask you. Aside from first getting returned calls like Tulsa wasn't, what in the process do you think we could streamline and improve for counties being able to get this? Is it an awareness question, is it the time it takes to do it, do we need more people training? What in the process of the 287 provision do we need to do?

Mr. PENDERGRAPH. I think—I'm the treasurer of the Major County Sheriffs' Association which represents the largest sheriffs' offices in the United States and we've discussed this frequently at our meetings. I think the majority of the sheriffs—and I think police chiefs, too, because we have joint meetings with the major city chiefs—I think they're aware of the program. What shocked me is when I learned of it by accident from one of my cohorts from California I came back and requested information from a local ICE office and they didn't know what I was talking about. ICE didn't know what I was talking about. And I don't fault them for that but they got right on it and then said, hey, there was a law passed in

1996 that authorized the certification and—of local and State law enforcement officers. I think once the application is filed and we kind of have that down pat about what needs to be said and done as far as actually applying for this, they don't know what to do with it apparently in Washington because they're overwhelmed with work now that they say to me privately: We can't support any more because we don't have the resources in the field. I think that's where it needs to be addressed is how much support is local law enforcement going to get once they apply to see this 287(g) program. And I'll tell you on the record that I got my people trained and ready to go to work fully 2 months before my equipment was installed and had it not been for Representative Myrick, I mean, pounding on someone's head in Washington I'm not sure we'd have it installed now because there was no one there that could make a decision about who is going to do what. We're standing here trained, ready to go and work on this problem and the equipment is not installed. There is just—There is something there in the road blocking everything that there's an attempt to be done to improve and I certainly hope Alan doesn't face this problem but—he'll deal with it but——

Mr. SOUDER. I have a specific request for you——

Mr. PENDERGRAPH. Yes.

Mr. SOUDER [continuing]. And it will tell us a lot about the attitudes of your association and others whether we can do this. Clearly meth was something that came up from local law enforcement, local counties up to the Federal and took forever and the drug czar is still trying to figure it out—a cheap shot deserved a cheap shot—and simply are blind to the meth problem. That—Will at least the big county sheriffs' association, if you could raise it with the national sheriffs' association, would you first see if the association could find basic data and we'll have our staff check this, too. It would be helpful coming inside and outside. How many sheriffs have asked this: What's the standard process of doing it; this Tulsa type thing? The second thing is will your association go on record saying that there needs to be more agents devoted to this because those of us who are in the program are finding we don't have adequate support. In other words, generally speaking every association advocates directly for things that help them; in other words, we need more cop grants and so on but, in fact, it doesn't do us any good to give you more authority if the support groups don't have——

Mr. PENDERGRAPH. I understand. That's absolutely true.

Mr. SOUDER. And also I'm talking to the attorneys' association because it's fine for us to do that and the U.S. Attorney's Office can't or the local attorneys can't if there's not jail and bed space but to give us a whole listing thing on the record because if we can say in Congress this is—the national sheriffs are saying they're willing to do this and they could do their part but what they're running into is lack of funds in these areas because there isn't this kind of support that would be helpful in us making the particular case with that. Mr. Cloninger, do you believe you would have been cleared if you hadn't had this hearing today?

Mr. LANDS. He still has some paperwork they need to sign.

Mr. CLONINGER. My intention today was to sit in here and go why do you all—have I not been cleared but, no, this hearing has—I don't believe it had an effect on it.

I think that just chipped that along but I have been questioned why it's been taking——

Mr. SOUDER. How long did it take you?

Mr. CLONINGER. Well, we finished in May—our final application process in May and June, July, August—4 months.

Mr. SOUDER. And when did you—so had you started a process before May?

Mr. CLONINGER. February. February we made the request and when we received forms to fill out as to what we're willing to do, what we're willing to spend, sent that in and received new information and the program was evolving. If I can take a second, the time we had started we had to get a T2 line for communication purposes for your computers and I'm going to need. That's a lot of money. So when Jim was going through that and they would develop it to a DSL line so there was a change even in the middle of our process. I think I'm correct in that.

[Mr. Pendergraph nods affirmatively.]

Mr. CLONINGER. So it's a developing—It's in a State of flux and I think it will change again before I even get started but I think that change is what delayed it some- what. But I agree that our local agents here—ICE agents did everything in their power to get this through as fast as they can with the block which——

Mr. SOUDER. What other major costs are you looking at that will be the major burden of this?

Mr. CLONINGER. The personnel issues. The DSL line, that's going to be minimal, but personnel issues and then bed space issues. A bed in the Gaston County Jail will cost the citizens here $49 a day; U.S. Marshals are paying me $60 a day to hold their Federal prisoners. We have already talked with the ICE deportation team about how we would hold them. Supposedly under the agreement if we—if one of my deputies decides to deport someone then we're on—that's the way it's supposed to be—going to have to hold that person 72 hours before he or she is deported or sent down to a line or some other long-term facility and after talking with Jim today I'm not sure that will happen but that's what we're looking at.

Mr. SOUDER. One of our big challenges here is how to and it was alluded to earlier and Sheriff Pendergraph said you have Federal prisoners to help share some of that cost and as we've watched illegal narcotics and other contraband, certainly we have to watch this with terrorists, is that just like as we're spending more money, certain things at airports and move to other things, New York City, there's been an argument that all the fund moneys spent out of New York, Boston and Washington, DC, on terrorism but if you don't do your second group while you're hardening your first group and then your rural areas the terrorists—clearly there are A targets, B targets, C targets and D targets but the danger here is that even if most people were working in Mecklenburg County they're going to go where the resistance is least and the smaller departments are the ones, for example, the one in meth as well, and that's why it probably took us so long to respond and that the costs that you're talking about are going to get more and more difficult

as we move out which is why clearly we're going to have to figure out in rural areas, suburban areas as well as the urban areas and then depending on the urban areas your tax base may or may not be big enough to handle it; in the declining city as opposed to a growing city is a huge challenge be it in Los Angeles in about a month looking at the rerise of gangs in Los Angeles and Compton and the huge problems they have with the suburbs getting the tax base and the city with a lesser tax base or a suburb like Compton how in the world do you deal with it? So we're going to continue to look at it. Anybody else have any comments you want to make?

Ms. FOXX. One more quick comment. You asked a great question about getting the sheriffs from the larger cities to do something. Would it be possible to do a survey of the areas that have received the 287(g) approval to ask them for what could be done to make the process better in a general way so that—I don't—something done on e-mail, I don't mean a massive job, but if we could do something and maybe Sheriff Pendergraph and Sheriff Cloninger could get some general idea. I'm just thinking about an evaluation that could be done and then be given to ICE to say here are some ways that this process could be made better or could we force ICE to hire an independent person to look at their process and do an evaluation to see what's there that doesn't have to be done or some ways that they could do that. It seems to me again that moving the system quicker is one of the things that needs to be done and—and I think the answer to your general question is something is blocking it; it's generally called bureaucracy.

Mr. SOUDER. And dollars.

Ms. FOXX. And dollars. But sometimes it's just a clerk mentality that people can't break through and I'm just thinking about doing an evaluation that could speed it up.

Mr. PENDERGRAPH. I can speak to North Carolina because this has been discussed in the North Carolina Sheriffs' Association. All 100 sheriffs in this State would join this program tomorrow if they could afford it and they could get acceptance in the program. They've made that very plain in our annual conference in Charlotte.

Mr. SOUDER. Well, thank you very much for your testimony, Ms. Moose. This won't bring your son back but maybe it will help move the cause and thank you for sharing your testimony today. Thank you all for your work. Almost all of our crime solutions in America start with a local policeman working hard on the beat that gets us information to move up and then the dedicated attorneys who are upholding the law. So thank you very much for being a part of this hearing. If you have additional comments, additional information for the record we'll keep it open for a period of time. With that the subcommittee hearing stands adjourned.

[Whereupon, at 1:25 p.m., the subcommittee was adjourned.]

[The prepared statement of Hon. Virginia Foxx and additional information submitted for the hearing record follows:]

Rep. Virginia Foxx (NC-5) Statement and Questions
Subcommittee on Criminal Justice, Drug Policy and Human Resources Field Hearing
entitled "Empowering Local Law Enforcement to Combat Illegal Immigration"
August 25, 2006

As we all know, legislation is under consideration in Congress which could alter our nation's immigration policies. While there are some major disagreements about certain provisions contained in this legislation, most people agree that our nation's immigration laws have been neglected for far too long. By some estimates, in 2005 there were 405,000 illegal aliens living in North Carolina, with that number expected to grow to more than 13 million, representing an increase of 32 times, within the next 20 years. Concern regarding this issue has grown in such magnitude that it now threatens the availability of social services and jobs for American citizens. For instance, in California alone, illegal immigration costs taxpayers an estimated $10.5 billion annually on education, health care, and incarceration. Illegal immigration allows for human trafficking, including sex slavery, into the United States and permits criminals to smuggle tons of narcotics into the United States annually. More dramatically, however, failure to enforce immigration laws compromises our nation's sovereignty, security, and our commitment to the rule of law.

The first step in immigration reform must be securing our borders. I am proudly one of only six original co-sponsors of H.R. 4437, the House version of the immigration reform legislation. Provisions in this bill include increased funding for the Border Patrol and building 700 miles of a triple-layered physical barrier at strategic points along the U.S.-Mexico border to stop illegal entry. To help dry up the jobs magnet, the bill would sanction employers who knowingly hire

illegal aliens and expand the authority for law enforcement officers nationwide in enforcing immigration laws.

Unfortunately, S. 2611, which is the Senate-passed immigration reform legislation, differs greatly from the House version in many ways. Perhaps most harmful is the inclusion of amnesty provisions, which would reward illegal aliens with a direct path to citizenship. Additionally, with so-called "guest-worker" provisions, the bill would also legalize many of the millions of aliens illegally working in the United States.

The threat posed by illegal immigration can no longer be ignored. Throughout my service in public office, I have witnessed the harmful effects of neglecting immigration laws. Recently, six teenage illegal aliens were sentenced after a three-month crime rampage including vandalism and auto-break ins. While a loophole in North Carolina law kept local officials from full prosecution of these felons, local officials notified U.S. Immigration and Customs Enforcement of the immigration violations and the criminals are now slated for deportation. While it is unfortunate the criminals did not receive full prosecution for their offenses, this is one example of how the local and federal levels can share the tools necessary for keeping criminals off the streets.

To illustrate the problem on a broader scale, in less than three weeks, our nation will remember the fifth anniversary of the most horrendous terrorist attacks in our nation's history. On September 11, 2001, America awoke to a series of terrorist attacks which have changed the world forever. We all knew then that major reform would be needed to help protect our country from anything like this ever happening again. While there were a number of mistakes which

compromised the lives of thousands on that fateful day, it is true that had our immigration laws been properly enforced, three of the hijackers would have been unable to carry out their deadly mission.

Fortunately, there are legislative proposals which could dramatically alter the endless tide of illegal aliens streaming across our border daily. Congress is considering policies which would bolster security at the border, sanction employers who hire illegal aliens, and enhance the framework for effective law enforcement. Changes such as these are long overdue.

Policy changes should empower officials to utilize all the tools available to ensure effective law enforcement. On the federal level, we must cut through the bureaucracy and red tape which hampers the ability of local and state law enforcement from carrying out their mission to serve and protect. The federal, state, and local governments all share the responsibility for protecting American citizens, and authority should be shared among all levels, as well.

The "287(g) cross-designation" program does all of these things. This certification program demonstrates an important, but so far underutilized, tool in enhancing cooperation and enforcement capabilities on the local level. Through this program, Immigration and Customs Enforcement (ICE) personnel educate state and local authorities on immigration law, civil rights, intercultural relations, and other legalities. With this certification, local law enforcement can enforce certain immigration laws, under ICE supervision.

While this program was created by statute in 1996, it was not utilized until 2002 when the Florida Department of Law Enforcement was the first to begin participating. Since that time, the program has proven highly successful. For the cost of $519.98 per attendee, the five-week program has certified 159 officers with seven agencies, including the Mecklenburg County Sheriff's Department.

While these results are encouraging, more must be done. We must continue to build on the successes of the "287(g)" program and continue to encourage cooperation and dialogue with local officials who witness the problem firsthand everyday. They know the problem intimately and they should have a voice in shaping policies which will allow them to do their jobs. We must expand, promote, and streamline the program to encourage more local law enforcement agencies to participate.

To help expedite the certification process and improve cost efficiency, I propose utilizing our country's community college system to expand program accessibility. We could deploy ICE agents to local community colleges to certify more instructors and bolster program capacity, which would allow for a quick and dramatic increase the number of certified officers which our country so desperately needs. I will work with other Members of Congress to pursue this proposal and make the most of the criminal justice programs already in place at local community colleges nationwide.

Illegal immigration is on the minds of many North Carolinians, some of whom you will hear from today. Our responsibility is to listen and become informed on how to shape the policies

which can defend American sovereignty and the rule of law. I look forward to a constructive dialogue and thank the Chairman and our panelists for joining me today in this very important discussion.

State of North Carolina
General Court of Justice
Twenty-seven A Prosecutorial District

MICHAEL K. LANDS
DISTRICT ATTORNEY

GASTONIA, N.C. 28052

October 10, 2006

Representative Mark Souder, Chairman
Subcommittee on Criminal Justice, Drug Policy and Human Resources
Committee on Government Reform
2157 Rayburn House Office Building
Washington, DC 20515-6143

Re: "Empowering Local Law Enforcement to Combat Illegal Immigration" follow up Questions

Dear Representative Souder:

Please find enclosed my answers to the list of questions you sent for the record regarding my testimony on August 25, 2006, in Gastonia, NC., before the Subcommittee on Criminal Justice, Drug Policy and Human Resources. I hope theses answers are satisfactory and meet your needs. Thank you for the opportunity to address the concerns and questions.

Sincerely,

Michael K. Lands

Michael K. Lands
District Attorney
Gaston County

1. How often are criminal charges dismissed in your courts in conjunction with deportation?

   a. When this happens, are these *dismissals without prejudice*, which would enable the charges to be reinstated if the defendant returns to your jurisdiction? If so, how often does this happen? If not, why not?

   b. Does the criminal history of a deported defendant continue to reflect his original arrest?

2. In what ways has the influx of criminal aliens into the court system affected the machinery of justice? For instance, what are the difficulties and annual costs of providing interpreters for the defendants?

3. How much has the problem of illegal alien defendants grown in your district since you became D.A.?

4. Have you established a policy of notifying ICE when a known illegal alien is arrested in your jurisdiction for a criminal offense? Do you routinely attempt to check on the immigration status of defendants?

5. From your testimony, you are obviously aware of the fact that ICE is far too under-staffed to handle all the cases worthy of deportation. Do you then often find yourself not referring cases to them that you otherwise would?

6. When you have a defendant who is potentially an illegal alien, does that question influence the bond status of the defendant, or is there simply too little space in the county jail to take that into account?

7. Do you often find that immigrant defendants fail to show up for court? What kind of offenses are such absconders typically committing?

8. Do you find that illegal aliens are *more* likely to be victims, given reluctance to cooperate with the authorities?

9. In your testimony, you stated that you have in the past attempted to prosecute for false identification, only to be informed by a federal witness that—according to the U.S. Attorney—he did not have to honor your subpoena. Could you please provide us with the basic facts of this case and any similar cases (indictment/warrant, subpoena, etc.)?

State of North Carolina
General Court of Justice
Twenty-seven A Prosecutorial District

MICHAEL K. LANDS
DISTRICT ATTORNEY

GASTONIA, N.C. 28052

"Empowering Local Law Enforcement to Combat Illegal Immigration"
Answers to Follow Up Questions Regarding Testimony of August 25, 2006.

1. My office does not dismiss criminal charges in conjunction with deportation.
   a. If they were dismissed, the dismissals would be without prejudice.
   b. Yes, the criminal history of a deported defendant would continue to reflect his original arrest.

2. As I stated in my written testimony, the influx of criminal aliens into the court system has caused problems with proving identity. The influx has also impacted economically by increasing jail overcrowding and the need for more court – appointed attorneys to defend them. As for the cost of interpreters, Gaston County's Trial Court Administrator informed me that North Carolina spent over 2 million dollars for all interpreters last year. The largest majority of interpreters would be for Spanish-speaking persons. Gaston County needed over $85,800 last year from the State to pay for interpreters, with the vast majority of that amount spent on Spanish-speaking interpreters.

   The Trial Court Administrator also informed me that illegal aliens impact the number of potential jurors who actually appear in court to answer a summons for jury duty. In North Carolina, the names of people who have driver's licenses go on the list for potential jurors. If an Hispanic with a driver's license is summoned for jury duty, the Hispanic most often does not appear. This causes a problem of the court system not having the required and necessary number of potential jurors showing up for trials.

3. I do not have statistics, but it is clear that the number of illegal alien defendants has grown steadily each year, particularly in driving while impaired cases, traffic offenses, and drug offenses.

4. Yes, there is an established policy to notify ICE if my office knows a defendant is an illegal alien. The office does not routinely check on immigration status. The office checks on immigration status on felonies, drug offenses, and driving while impaired cases if questions about the defendant's status arise.

5. Yes. We have been told in the past that driving while impaired convictions were not deportable offences, so we may not have referred as many convictions in the past as we would have liked to refer.

6. The question of whether a defendant is an illegal alien does influence the bond on serious felony charges, and some driving while impaired cases. There is probably too little jail space to use the issue of whether a defendant is an illegal alien to influence bond on most misdemeanor charges.

7. Yes, immigrant defendants often fail to show up for court, typically on driving while impaired, traffic, drug, assault, and fraud cases.

8. Illegal aliens are very frequent victims and reluctant to cooperate. Some of the reluctance is fear of deportation and some is cultural distrust of authorities.

9. I have already sent a cover letter, dated September 14, 2006 and an eleven-page discussion of this problem. I have included a new copy of the letter and the discussion with the answer sheet.

Michael K. Lands
District Attorney
Gaston County

State of North Carolina
General Court of Justice
Twenty-seven A Prosecutorial District
GASTONIA, N.C. 28052

MICHAEL K. LANDS
DISTRICT ATTORNEY

September 14, 2006

Chairman Mark Souder
Government Reform Subcommittee on
Criminal Justice and Drug Policy
B377 Rayburn House Office Building
Washington, D.C. 20515

Re: Update of Testimony before the Subcommittee
in Gastonia, N.C., August 25, 2006

Dear Chairman Souder:

I am writing to provide information you and Representative Myrick asked for during my testimony in Gastonia on August 25, 2006. During my testimony, you asked about and suggested that more state prosecutions for false identifications were needed. I answered, in part, that such prosecutions were difficult because Federal employees did not have to honor State subpoenas to come to court to testify in State prosecutions. I made mention of a case where my office had difficultly getting a witness from the Social Security Administration to honor a State subpoena and came to Court to testify about a Social Security number account. Both you and Representative Myrick indicated you wanted more information about the case and the problem. Please find enclosed with this letter a memorandum from William Stevenson, Assistant District Attorney, about the problem, the cases involved, and solutions. I hope this refreshes your memory and provides the information you requested.

Mr. Stevenson suggested that I stress that Case III on Page 4 of the memorandum could be of particular interest to the Subcommittee. There a naturalized citizen, who obtained her citizenship legally, is the victim of a crime by an illegal alien immigrant.

but when I sent a subpoena to get the SSA office manager, Deborah Dedmond to testify, I received a letter that cited Touhy and 20 C.F.R. 403.100 to the extent that "SSA employees are generally precluded from testifying in a lawsuit" and outlined what I had to do get them to testify, which included giving thirty (30) days notice before the testimony (see attachment "A"). Of course, the trial was set to begin in 14 days at that point. In addition, I was informed that since the SSA did not initiate or conduct this investigation, the regulations mentioned above applied. **Worse, I was told that there are only two SSA fraud investigators in the State of North Carolina,** and that is why they weren't interested in the case.

After much haggling with the SSA Office of General Law in Baltimore, Maryland, and the Atlanta-based Area Office of SSA, the SSA agreed to allow Ms. Dedmond to testify, but did not make the authorization until the day before the trial began. Even so, Ms. Dedmond's testimony was limited to SSA procedure (which was useful testimony) but not to any activity concerning the SSA account in question (which was frustrating). Thankfully, her testimony helped to secure a conviction.

Case II- State v. Ricardo Tobon 04 CRS 9319
Offense- Felony Identity Theft
Date of Offense: 12-5-2003
Investigating Agency: Gaston County Police Department

This is a case where the defendant, Ricardo Tobon, by all accounts, not a citizen of the United States, nor a legal immigrant, went to the North Carolina Division of Motor Vehicles (N.C.D.M.V.) and attempted to get a North Carolina Drivers license by giving a fraudulent Social Security Number. The SSA, as they are limited by the Privacy Act and federal regulations, could only say that the number that the defendant used was "not verified" (see attachment "B") and would not say to whom the number belonged. The State needed this testimony because it would have given the jury a victim to sympathize with and also helped establish criminal intent. The N.C.D.M.V. has been informed that SSA does not investigate these types of cases, owing to lack of resources, so it fell upon the Gaston County Police Department to investigate and bring charges. Once again, the SSA was contacted before trial to have an employee come testify, but this time, they did not approve the request in time, so the State was forced to take a plea to a lesser offense.

Case III – State v. Ivonne Molina 05CRS51004, etc.
Offense: Felony Identity Theft
Date of Offense: 10-1-2003; 6-19-2004, etc.
Investigating Agency: McAdenville City Police

If there ever was a case that demonstrates the injustice that illegal immigrants do legally naturalized citizens this is it. Defendant Ivonna Molina, an illegal immigrant, somehow (we suspect from a fraudulent identification broker) got the social security number of Maria Trinidad Hernandez, a Charlotte, North

Carolina resident, who was born a Mexican citizen and became a naturalized American citizen by going through all the proper channels.

The defendant used the victim's name and social security number to obtain employment at Pharr Yarns, one of the local textile mills in McAdenville, and at a Wix plant in Gastonia, racking up all sorts of unpaid taxes (the defendant apparently set wage withholding at the maximum number of exemptions) which were then taxed to the victim. After receiving tax notices from the Internal Revenue Service (IRS) that not only included unpaid taxes from the two employers mentioned, the victim has been also saddled with about eight other instances of back taxes owed from work to employers in places as far away as Ohio. The IRS told the victim that they believed that she, the victim, was still working in McAdenville, North Carolina for Pharr Yarns and not paying any withholdings. The victim reported this to the McAdenville City Police, who after intervention by our office, enlisted support of an Immigration and Customs Enforcement Agent, who found the defendant, Ivonne Molina, in fact working at Pharr Yarns under the name of Maria Hernandez (see attachment "C" which is Ms. Molina's fake name badge and identifications recovered from the plant).

Improvidently, the magistrate handling the case did not set a high bond on the defendant and she has subsequently failed to appear in court- an order for her arrest is pending along with many unserved warrants for her arrest for new charges. Here, the difficulty that Touhy, the Privacy Act, and even the IRS regulations pose is that it is going to be nigh impossible to get the necessary federal agents into state court to effectively prosecute the case, even though much of our evidence has been generated by the I.R.S. and the SSA. Given that we have observed firsthand how illegal immigrants appear to change their "soiled" identities as frequently as one would change dirty clothing, we may never see Ms. Molina again, if that is her true name.

3. Suggestions for Modifying Federal Law that Would Empower and Enable State Prosecutors to Call Necessary Federal Witnesses in the Above-Mentioned and Similar Cases.

A. Amend the Social Security and Other Federal Regulations and Allow Local Prosecutors Access to Federal Employees for Testimony

First and foremost, the Congress should amend 20 C.F.R. 403.115(b) to include state initiated prosecutions for identity theft, Social Security Fraud and illegal activities that involve the use of a Social Security account number arising from purely state conducted investigations. There already is an exception for "a criminal proceeding in which the United States is a party;" in 20 C.F.R. 403.115(b)(4) and "In a legal proceeding initiated by state or local authorities arising from an investigation or audit initiated by, or conducted in cooperation with, SSA's Office of the Inspector General" 20 C.F.R. 403.115(b)(5); therefore, it appears logical to empower local prosecutors with the same abilities as the federal government in this area, given that the United States Attorney's office has been thus so far unwilling to prosecute all matters involving the misuse of Social

Security account numbers and fraud, understandably citing their limited resources and court time.

To make such an amendment also would appear to be within the spirit of the code which repeatedly makes reference to "SSA's policy of impartiality among private litigants", (20 C.F.R. 403.130(b)) demonstrating that the intent of the code's framers was to keep private attorneys from bogging down the S.S.A. with frivolous subpoenas. On the contrary, to empower local prosecutors to enlist S.S.A. assistance in prosecuting cases actually will free up federal prosecutors to apply themselves to more serious matters and act as a "force multiplier" in combating identity theft and illegal immigration, given that Social Security numbers are central to an illegal immigrant's ability to obtain employment. The same can be said of Internal Revenue Service employees as that information is of equal value in prosecuting illegal immigrants such as those in the Molina case above.

B. Amend the Federal Privacy Act and Related Federal Regulations to Allow State Prosecutors to Identify and Contact Victims of Identity Theft and for Federal Employees to Testify to Matters Covered by the Privacy Act in Identity Theft Prosecutions

As outlined in the story of State v. Carr and State v. Toban, above, the Federal Privacy Act of 1974, 5 U.S.C. 552(a), prohibits the federal government from divulging the name of a Social Security Account holder based on a state prosecutor's request to identify to whom a number belongs. Neither can federal employees discuss S.S.A. account information nor other records. Because of these laws, local law enforcement authorities cannot contact the victim who has had his or her Social Security account number illegally used (as in the Toban case, above). This inability actually fosters their victimization- the poor souls don't even know that their number is being used illegally, so they cannot take to steps to insure that they are protected from further violations. Also, it makes the crime appear "victimless" to a jury who cannot put a name or face to the person whose number has been hijacked.

Please recognize also that because of the Privacy Act and related regulations the I.R.S. is also unwilling to testify to matters that are relevant and important in the prosecution of illegal immigrants such as Ivonne Molina.

C. Establish an Ombudsman or Liaison between the U.S. Department of Justice and Local Prosecutors in Every U.S. Attorney's Office

At present, whatever information flows between state and local prosecutors and the federal government is piecemeal, done by contacts established by personal relationships between state and federal agents. This has led to a haphazard and ineffective mechanism for the prosecution of fake

identifications and cases like the ones highlighted above which are reliant on federal evidence. Presently, the state prosecutor has to navigate through the myriad of federal bureaucracies and hope he or she winds up calling the correct person in the correct manner to obtain vital information or contacts.

What there needs to be is an ombudsman or liaison, between local prosecutors and United States Attorney's office or the U.S. Department of Justice, to facilitate the flow of critical federal information and the provision of witnesses to state prosecutors whom are dealing with cases, such as illegal immigrants and identity theft, which rely heavily on federal evidence.
This ombudsman or liaison ideally would be able to direct the state prosecutor to the proper federal agency and contacts within that agency, which could provide information, evidence and witnesses essential for prosecution.

In sum, if the status quo is maintained, it will continue to foster the employment of illegal immigrants, the victimization of innocent and unknowing victims, and the slap-shod prosecution of defendants who are actually being protected, sadly by the very system that is supposed to protect the public from their criminal activity.

District Office
215 W Third Ave
Gastonia, NC 28052
(704) 854-3972
(704) 735-0816

January 20, 2005

Mr. William L. Stevenson, ADA
2nd Floor Courthouse
325 North Marietta Street
Gastonia NC 28052

RE: Subpoena (File # 03 CRS 61078)

Dear Mr. Stevenson:

I am writing about the above-reference subpoena in which you request an employee of the Social Security Administration (SSA) to testify. SSA employees generally are precluded from providing testimony in a lawsuit to which the Commissioner is not a party. The regulation found at 20 C.F.R. 403.100 (2001), specifically provides:

An SSA employee can testify concerning any function of SSA or any information or record created or acquired by SSA as a result of the discharge of its official duties in any legal proceeding covered by this part **only with the prior authorization of the Commissioner.**

The United States Supreme Court has upheld the validity of such regulations in United States ex rel. Touhy V Ragen, 340 U.S. 462 (1951). Thus, without the approval of the Commissioner of Social Security with respect to the above-referenced subpoena, no SSA employee may testify.

If you wish to have an SSA employee testify, you must submit a written application that complies with the requirements set forth in 20 C.F.R. 403.120 (a). Please submit the application at least thirty days in advance of the date that you need the testimony. See 20 C.F.R. 403.120(b). You should send your application for testimony to the following address:

Social Security Administration

Office of the General Counsel

Office of General Law

P O Box 17779

Baltimore, MD 21235-7779

A Attachment
"A"

September 10, 1994

Attn: Touhy Officer

See 20 C.F.R. 403.120© as amended at 66 Fed. Reg. 14,315-16 (March 12, 2001). In determining whether SSA will grant your application for testimony, the Commissioner or his designee will consider numerous factors, including the burden on SSA and the interests served by allowing the testimony. See 20 C.F.R. 403.130.

Based upon the above information, I assume you will not attempt to enforce the subpoena but rather will submit a formal application for testimony as you deem appropriate. Please contact me at (704) 867-0204 if you plan to pursue any other course of action or if I can offer any further assistance.

Sincerely yours,

Deborah S. Dedmon

Deborah S. Dedmon
Assistant District Manager

Sincerely,

Roger Eargle
District Manager

NOTICE TO THIRD PARTY OF SOCIAL SECURITY NUMBER ASSIGNMENTS

PART A

IMPORTANT: THIS INFORMATION IS FOR YOUR USE IN PREPARING WAGE OR TAX REPORTS OR FOR COMPLETION OF YOUR RECORDS

FROM: Social Security Admin.

FAX: 704-810-9223

TO: NC Dept of Motor Vehicles

FAX: 704-863-5359

ATTN: [illegible]

SSN:

VERIFIED ___

NOT VERIFIED X

SSA REPRESENTATIVE	TITLE	DATE
KH	FDA	12/5/03

PART B

Applicant Name: Lizardo Tobon Galeano Date of Birth

Applicant Social Security Number: 245 76 4569 10-11-1957

I authorize the Social Security Administration to release information about me to the NC DMV for the purposes of obtaining a drivers license or identification. The information to be released will include name and Social Security number. This consent is in effect for the current and following month, or until such time as I withdraw my authorization.

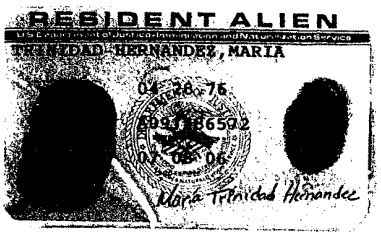
[illegible] I am the individual to whom the information/record applies or that person's parent (if a minor) or legal guardian. I know that if I make any representation which I know is false to obtain information from Social Security records, I could be punished by a fine or imprisonment or both.

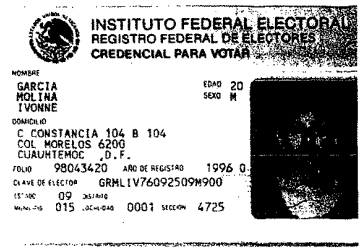
Signature: [illegible]

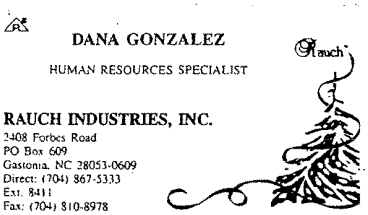
Date: _____ Relationship: _____

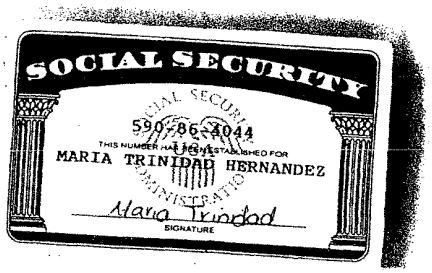
Attachment "B"

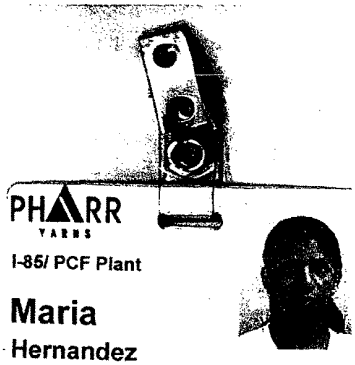
Form SSA-7028 (2-1993) EF (7-2000)











Attachment
"C"