

Testimony for Hearing of the
House Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement
on
H.R. 3808, the “Scott Gardner Act”
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by

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Mr. Chairman, Ranking Member Lofgren, I thank you for allowing me to testify today. This hearing is about a serious problem, but it's not the one the Chairman or my colleagues on this panel described, and the bill in question won't address it. Rather, what the bill would do is create additional problems for our country and for state and local law enforcement.

I'll start by laying out the problem: According to the National Highway Traffic Safety Administration, one-third of traffic fatalities result from people driving under the influence, approximately 11,000 people in 2009.¹ That is far too high and we need to address it. Fortunately, we know how. The number one answer, according to the Bush Administration, is "Sustained high-visibility enforcement".² State and local police need more resources to put cops on the beat and prosecute offenders. This is the problem we saw in Mr. Gardner's and Mr. McCann's cases, where problems with information sharing between police departments left officers and the bond court unaware of their past records. If you want to stop more people from dying at the hands of drunk drivers, you should join me in supporting the \$5 billion investment in state and local public safety personnel contained in the President's American Jobs Act.

What you shouldn't do is adopt H.R. 3808.

This bill won't stop drunk driving. It could actually make the problem worse by forcing state and local police to spend their time and money on immigration duties for which they haven't been trained and that aren't their job. That means less time patrolling for drunk drivers and going after criminals. But drunk driving isn't within the Subcommittee's jurisdiction, Immigration is, so let's talk about that.

¹ Department of Transportation, "Fatality Analysis Reporting System, General Estimates System, 2009 Data Summary", page 12. (<http://www-nrd.nhtsa.dot.gov/Pubs/811401.pdf>)

² National Highway Traffic Safety Administration, "The Nation's Top Strategies to Stop Impaired Driving", Summary. (<http://www.nhtsa.gov/people/injury/alcohol/StrategiesStopID/pages/Summary.html>)

This bill, like the border fence, won't stop undocumented immigration, though it could discourage people from coming to the country legally, both tourists and immigrants. Because it should be noted that the bill goes even further than SB 1070, the flawed and unconstitutional law passed in Arizona in 2010.

That bill limited the demand, "Show me your papers!" to those for whom "reasonable suspicion exists that the person is an alien who is unlawfully present in the United States."³ Now, I would like to know how anyone could have reasonable suspicion of such a fact short of seeing the person cross the border. I was born in San Antonio, like my father before me, but I don't see anything that says, "lawfully present in the United States" when I look in the mirror. Chairman Gallegly, with all due respect, I don't see that in your face either. But H.R. 3808 doesn't even make that distinction. It requires the officer to suspect anyone if "the officer has reasonable ground to believe that the individual is an alien".⁴ Does that mean that we now suspect everyone who wasn't born in this country is a criminal?

Alabama arrested and jailed an executive from Mercedes-Benz last year. They nabbed a Honda executive a few weeks later. Do we expect these companies to invest in the United States when we treat their workers this way? Do we expect them to visit on vacation? One study said SB 1070 cost Arizona's economy \$140 million and the state \$30 million.⁵ That's \$30 million less for the police officers who can actually stop drunk driving. H.R. 3808 would bring the same economic and jobs losses to the rest of the country. I suppose that's one way of creating equality.

³ State of Arizona, Forty-ninth Legislature, Second Regular Session, Senate Bill 1070, p. 1 (http://azgovernor.gov/dms/upload/SB_1070_Signed.pdf)

⁴ United States House of Representatives, 112th Congress, Second Session, H.R. 3808, line 25 of Page 2 through line 2 of Page 3. (<http://www.gpo.gov/fdsys/pkg/BILLS-112hr3808ih/pdf/BILLS-112hr3808ih.pdf>)

⁵ Ginger Rough, "The issue: SB 1070's effect on tourism revenue", *The Arizona Republic*, August 10, 2011 (<http://www.azcentral.com/news/election/azelections/azfactcheck/fact-story.php?id=289>)

Here's a worse problem. Incarcerating people costs money. In California, a night in county jail costs the county about \$150.⁶ State and local governments already use government programs to shift the costs of incarcerating people from their budgets to the Department of Homeland Security. Local authorities have told me that they often lessen criminal charges to get them off of their roll and sent to DHS. The federal government itself has problems affording to reimburse them. This bill will just exacerbate this problem by giving state and local officers the unchecked authority to give up responsibility for people they've picked up for committing crimes.

H.R. 3808 is also probably unconstitutional, as I see nothing in the Constitution granting Congress the power to command state and local officers to check the immigration status of people they stop. I trust that the Congressional Tenth Amendment Caucus will publically announce its opposition to the bill shortly.

Mr. Chairman, when I served as a judge, I dealt with cases of drunk driving. It's a horrible crime, and I expect people who commit it to be exposed to the full force of the law. I don't want someone to get a free pass on drunk driving just because he didn't get his passport stamped when he entered this country. But this bill would encourage state and local authorities to drop the drunk driving charge so they can get the federal government to pay for the incarceration. That's just not right.

But will it stop immigration, the Subcommittee's jurisdiction? The answer, again, is No.

First of all, someone who entered the country illegally won't be listed in any federal database unless they have already been processed by law enforcement. There will be no criminal

⁶ Jennifer Medina, "In California, a Plan to Charge Inmates for Their Stay", The New York Times, December 11, 2011 (<http://www.nytimes.com/2011/12/12/us/in-riverside-california-a-plan-to-charge-inmates.html>)

record for the police to find. I can also say with complete confidence that no one has ever, in contemplating entering the United States illegally, considered what might happen if he should be arrested for driving under the influence.

But let me tell you something else: If an undocumented immigrant gets booked for DUI in San Antonio today, or in any of the 1,700 jurisdictions in the Secure Communities program – up from 140 in 2008⁷ – they’ll run his name past the FBI and ICE. “If these checks reveal that an individual is unlawfully present in the United States or otherwise removable due to a criminal conviction, ICE takes enforcement action”.⁷ If he’s got a DUI, that’s one of ICE’s priorities and they have been very effective, with deportations in 2011 30% above the number in 2007.⁸

H.R. 3808 can’t help with deportations for drunk driving because ICE already considers DUI a high priority offense. This bill would only burden local law enforcement officers with additional responsibilities they are neither trained nor equipped to handle. There are concerns about the Secure Communities program, but its record of prosecuting and deporting drunk drivers isn’t one of them. The Obama Administration is rapidly implementing the program. The last counties in North Carolina were added a year ago⁹ and the Department of Homeland Security expect to have the entire country, including Cook County, active in the Secure Communities program by the end of 2013. Let’s empower ICE and our state and local officers to work on combating the scourge of drunk driving and not get distracted by this well-intentioned but misguided legislation.

⁷ United States Department of Homeland Security, Immigration and Customs Enforcement, “Secure Communities” (http://www.ice.gov/secure_communities/)

⁸ United States Department of Homeland Security, Immigration and Customs Enforcement, “Removal Statistics” (<http://www.ice.gov/removal-statistics/>)

⁹ United States Department of Homeland Security, Immigration and Customs Enforcement, “Secure Communities Activated Jurisdictions” p. 16 (<http://www.ice.gov/doclib/secure-communities/pdf/sc-activated.pdf>)