



Congressman Pedro R. Pierluisi
Statement and Questions as Prepared For Delivery
House Committee on the Judiciary
Subcommittee on Immigration Policy and Enforcement
Hearing on H.R. 3808, the Scott Gardner Act
March 7, 2012

I want to begin by addressing Mr. McCann directly. Mr. McCann, I thank you for your testimony today. I am profoundly sorry for your loss. I lost my own brother in a terrible crime. That pain never goes away and I respect and admire you for your efforts to honor your brother's legacy and to ensure that other families do not suffer what you and your family have no doubt endured. I must tell you that I do have serious constitutional and public policy concerns about the bill we are discussing today. But I do not want you to think for a single moment that my opposition is any sense an effort on my part to diminish what you have gone through.

What happened to your brother and what happened to Scott Gardner were profound tragedies—and more than that, they were crimes. But just as there is an old saying among judges that “hard cases make bad law,” it is also sometimes the case that terrible events lead to legislative overreach. These tragedies lead to bills that go too far and that are too broad. They lead to bills that, in a well-meaning effort to address a particular injustice, give rise to a different set of injustices. I think that is clearly the case we have here.

So let me pose a few questions.

Question 1:

Under this bill, when a state or local law enforcement officer “apprehends” an individual for a DWI, if that officer has “reasonable ground to believe that individual is an alien,” then that officer would be required to run an immigration check to determine if that individual is unlawfully present in the United States.

There are so many legal and policy problems here: among them, the ambiguous and potentially broad definition of “apprehend”; the highly subjective “reasonable ground” standard; and the categorical nature of the mandate that local officials are required to obey, regardless of the circumstances.

Sheriff Jenkins: if this bill becomes law, and you are training your officers in Frederick County to implement it, what specific factors would you advise them to consider when making the determination as to whether there is a reasonable ground to believe that an individual who has been pulled over for a possible DWI is an alien? Their accent? Their clothing? Their skin color? If they have a foreign-sounding name? If they work in a particular job? Their behavior? I think it is a colossal understatement to say this bill would invite racial profiling on the part of local law enforcement. I think it *guarantees* racial profiling and makes a mockery of the constitutional principle of “equal protection under the law.” Sheriff Jenkins: tell me why I am wrong.

Question 2:

Chief Burbank: I want to talk about the intelligent use of limited law enforcement resources, which you spoke about in your testimony. Under this bill, if an officer apprehends an individual for suspected drunk driving and has reasonable grounds to believe he or she is an alien, the

officer is required to run an immigration check on that individual. As a practical matter, tell me what that check entails and how much time it could potentially take. Then tell me about the possible opportunity cost of that check. In other words, for every minute you spend checking an individual's immigration status against the federal database, isn't that time you are *not* spending back in your patrol car dealing with other serious issues? Tell me why that is a problem.