

Testimony of

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## THE HOMELAND SECURITY ENHANCEMENT ACT: THE WRONG WAY TO PUBLIC SAFETY

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Senator Chambliss, Ranking Member Senator Kennedy, and Member of the Subcommittee, I am grateful for the chance to present to you my views on the Homeland Security Enhancement Act of 2003.

Immigration enforcement is a matter of great concern to all Americans, and to every level of government in our nation. It implicates national security, our economy, and our law enforcement priorities. The federal government has always had the role of enforcing immigration law. This is, frankly, as it should be; the policing of the national borders should be a national matter. And in our system of government, that means the federal government. Anything else poses a grave threat not just to our national security, but to the right to be safe from violent crime - the right of every person walking the streets of every city and town in our nation.

The Homeland Security Enhancement Act of 2003, well intentioned though it may be, puts all of this in jeopardy. Police officers and administrators, those first responders who have served the public for generations in the fight to make our neighborhoods safer, know this better than anyone. That is why so many of them have spoken out against having their departments enforce immigration law.

In my comments today, I will briefly describe the basic problems with the Homeland Security Enhancement Act.

The Homeland Security Enhancement Act of 2003 aims to force local law enforcement to take actions that will destroy the all-important relationships of trust that police have painstakingly built with immigrant communities. In big cities, small towns, and suburban and rural areas all over America, our population has become increasingly diverse over the last two decades. The fastest-growing Hispanic populations, for example, are found not in the California, American Southwest or Florida, but in places like Arkansas, North Carolina, and Georgia. Police in these towns and cities know this; they see it up close every single day on every beat they walk or drive. They know that their jurisdictions are much different than they were even a few short years ago.

This increasing diversity of people, and the backgrounds, experiences, languages, and cultures that they bring with them to our country, have tremendously important implications for community policing. Over the last twenty years, community policing has become the mantra for successful police departments all over the United States. It brings the police together with the communities that they serve, in order to undertake together the task of building safe, secure neighborhoods. The experiences of police departments in the era before community policing, as well as extensive criminological research, taught police that they could not make the streets safe alone; to make genuine progress, they would have to work together with the public, sharing information, responsibility, and decision making. Police adopted community policing not because they found it a convenient set of tasks or a catchy slogan, but because it worked. It helped cut crime in cities across the country, as it simultaneously strengthened the crucial relationships between police and those they served. It is no accident that community policing is the one policing strategy that can be found in more American towns and cities than any other.

Community policing presents a particularly daunting task vis a vis immigrant communities, because it forces police

officers to confront languages, cultures, and history that is often different from their own. Indeed, police know that in immigrant communities, people often come from societies in which the police were untrustworthy and violent. Nevertheless, police have always known that they could do no less to connect with residents in immigrant neighborhoods than they did in others. Police departments therefore applied themselves to the task of building relationships of trust with special vigor in immigrant communities. All of community policing depends on building partnerships with the community. And partnerships require that partners trust each other. Without that trust, there would be no sense of shared ownership of problems and solutions, and community policing would wither and eventually die.

The biggest problem with the Homeland Security Enhancement Act is that in any community with a significant number of immigrants, the Act will destroy this foundation of trust upon which not just community policing, but all of local law enforcement, is predicated. Police depend on people for information, for cooperation, and for help. If local police are forced to become de facto immigration agents, people in their neighborhoods will simply stop talking to them. They will fear officers and hide from them, instead of communicating with them about the problems, the issues, and the wrongdoers in their neighborhoods. Even worse, when they are victims of crimes, they will fear reporting these offenses. This can lead only to increased fear and less safe streets, as predators exploit this fear and repeatedly prey on not only immigrants, but anyone in these neighborhoods.

This is why local police have almost uniformly opposed any involvement on their part in immigration enforcement. It can do little but drive a wedge between them and their communities - to the great detriment of the victims of robbery, sexual assault, and domestic violence, for example, who will fear the police too much to come forward. In this sense, the Homeland Security Enhancement Act represents a huge step backwards for law enforcement and public safety.

The Homeland Security Enhancement Act requires no training for local police who will enforce immigration law. Immigration law is one of the most complicated areas of American law. Governed by a complex set of statutes and hundreds of court decisions that interpret them, immigration law represents a specialty every bit as insular and difficult to master as the law governing mergers and acquisitions or the death penalty.

The Homeland Security Enhancement Act recognizes this, mandating preparation of a training manual pocket guide, and discussing how training could be provided. But, incredibly, the Act goes on explicitly to make training in immigration law an option and not a requirement. According to Section 108 (d) of the Act, "Nothing in this Act...shall be construed as making any immigration-related training a requirement for or prerequisite to any State or local law enforcement officer to enforce Federal immigration laws in the normal course of carrying out their law enforcement duties." In other words, the federal government is saying to local law enforcement, "Here is a very complex, powerful new tool, and we insist you use it. But there's no need for you to actually know anything about how to use it before you start using it." The absurdity of this is plain on its face. The shortsightedness it shows will doom local police agencies to suffer adverse consequences for years to come.

The Homeland Security Enhancement Act makes asset forfeiture a part of immigration enforcement. Over the past fifteen to twenty years, laws have made asset forfeiture a part of the war on drugs and crime. It is only in the last few years that we have recognized the great damage this has done; forfeiture has rightly been recognized as one of the worst abuses of the drug war. Just a few years ago, some of this damage was corrected by reforms sponsored by Representative Henry Hyde, then the Republican chairman of the House Judiciary Committee. While many, including Representative Hyde, did not feel that the bill that eventually emerged from the legislative process went far enough, it at least pointed the law in the right direction and corrected some of the worst abuses.

The Homeland Security Enhancement Act takes us down this same failed path, threatening to reprise the worst abuses of the last twenty years. Before we go that direction, we ought to remember where it leads: to unchecked government power over private property, to strong financial incentives to abuse the law, and to questions about the enforcement objectives and legitimacy of the government's effort.

The Homeland Security Enhancement Act penalizes police departments that disagree with the policy it expresses with loss of funds at time when first responder agencies are desperately short of cash. We have all heard the many reports concerning the great strains now on state and local budgets. Deficits exist everywhere, and total in the billions of dollars. The situation is so bad that even agencies that perform the bread and butter of public safety functions, such as police departments, face large budgetary cutbacks. A threat to withhold federal funds these departments now get for an explicitly federal function - incarcerating prisoners awaiting deportation - would be a particularly cruel blow at this moment. Given the dire economic situation in which police departments find themselves, this threat amounts to nothing less than a federal knife at local agency's throats if they refuse to see the "wisdom" of the federal approach.

The Homeland Security Enhancement Act writes into law a secret, unreleased policy of the U.S. Department of Justice. In 2002, the Department of Justice first put forth a policy that states had "the inherent authority" to enforce all immigration laws. To those familiar with the intersection of immigration law and local law enforcement, this came as something of a shock. The new policy represented the reversal of longstanding policy of the Department: local law enforcement agencies, it had said, could only enforce the most serious violations of immigration law - those that were criminal in nature. The vast majority of immigration offenses were not criminal, but civil. These civil offenses were the place that most frequently caused people to become deportable - common offenses such as overstaying a visa. Absent special arrangements with the federal government that included explicit, written permission and extensive training for local police, local law enforcement was to leave immigration matters to the federal government. This position had been reaffirmed as recently as 1996. Thus the change brought about by the Department of Justice's new policy was, indeed, dramatic.

Nevertheless, the Department has refused, to this day, to make the policy public. The Attorney General and his spokesmen have restated the conclusion of the policy, time after time, but have refused to reveal any of the reasoning behind it. This leaves the public and the Congress in the uncomfortable position of being unable to assess the correctness or the wisdom of the change.

The Homeland Security Enhancement Act compounds this problem. The Act's first section would affirm the Department of Justice's new policy and write it into law - regardless of the fact that the government has pulled a veil of secrecy over this 180-degree turn in the law. At the very least, the Congress should not consider any such change unless and until the Department of Justice explains its reasoning and makes a convincing case for the change.

Thank you for the opportunity to offer my views on the Homeland Security Enhancement Act of 2003. I am available to answer your questions, and would be glad to answer any future questions via the contact information on the first page.