

Testimony of

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Statement of Michelle Malkin, Investigative Journalist and Author

Senate Judiciary Subcommittee on Immigration, Border Security, and Citizenship

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Mr. Chairman and members of the subcommittee, thank you for the privilege of testifying before this subcommittee. Senate Bill 1906, the Homeland Security Enhancement Act, closely tracks many of the recommendations I made in my recent book *Invasion* on how to fix systemic failures to detect, detain, and deport immigration violators who undermine our safety and our values.

I approach today's topic from two levels - as an investigative journalist who has reported extensively on the consequences of lax immigration enforcement, and as a second-generation American whose immigrant parents arrived legally in this great country three decades ago. My professional interest has been the exposure of weaknesses, lapses, loopholes, and obstacles in our immigration system that imperil public safety and national security. My personal interest--shared by untold numbers of naturalized Americans and their families--is in seeing these problems remedied effectively so that the American dream remains accessible to those who embrace freedom and respect the rule of law.

The "Other Wall"

There has been much public debate over the past few weeks about the "wall" of separation between the CIA and FBI. This bureaucratic barricade between agencies prevented crucial information-sharing about potential terrorist threats. Three thousand innocent men, women, and children paid for this policy with their lives on September 11, 2001. The USA PATRIOT Act tore down this infamous wall, but there is another dangerous barrier that impedes communications between investigators and undermines our safety and security: the perceived wall between federal immigration authorities and state and local law enforcement officials. Terrorists and criminal aliens alike have benefited directly and indirectly from this barrier.

When September 11 hijackers Hani Hanjour and Khalid Almihdhar needed help getting fraudulent government-issued photo IDs before embarking on their suicide mission, they hopped into a van and headed to the parking lot of a 7-Eleven store in Falls Church, Va. That's where scores of migrant day laborers - often erroneously referred to as "undocumented" -- ply bogus identity papers to other illegal aliens from around the world. During my research, I visited this 7-Eleven. It is a stone's throw from the Pentagon, where Hanjour and Almihdhar deliberately crash-landed American Airlines Flight 77. The parking lot was, as usual, filled with "undocumented" day laborers. Local cops I interviewed suspect that most of these men are here illegally and that they continue to facilitate trade in fake identification documents. But nobody arrests them.

This is an all-too-familiar scene from the border states to the heartland. Public officials talk tough about the need for improved cooperation among local, state and federal authorities to secure the homeland. Yet, several areas of the country serve as safe havens for criminal aliens -- and as magnets for immigration outlaws with even more nefarious aspirations.

The overwhelming majority of illegal aliens, of course, have no connection to terrorism. But they are breaking the law. And one of the key lessons of 9/11 was that our continued high tolerance for massive illegal immigration gives terrorists and criminal aliens deadly cover. Remember: More than half of the 48 Islamic radicals convicted or tied to recent terrorist plots in the United States over the past decade either were themselves illegal aliens or relied on illegals to get fake IDs. Immigration violators participated in the first attack on the World Trade Center, the Los Angeles Millennium bombing plot, and the New York subway bombing conspiracy. Three of the 9/11 hijackers were here illegally; two had previous immigration violations.

Many of these operatives who were here in violation of our immigration laws were not under investigation for terrorism at the time they hatched and carried out their plots. Three 9/11 hijackers - Mohammed Atta, Hani Hanjour, and Ziad Jarrah--came into contact with state and local police before the attacks for speeding. Atta and Hanjour were visa violators. How many lives might have been saved if there had been collaboration between local or state law

enforcement officers and the feds to detain them on immigration charges?

Victims of the Other Wall

The dangerous public-safety impact of the Other Wall reaches beyond terrorism. Illegal aliens, some with long criminal records, were the perpetrators of the savage gang-rape of a Queens mother in Flushing Meadows-Corona Park last December. The NYPD had previously arrested three of the illegal aliens numerous times for such crimes as assault, attempted robbery, criminal trespass, illegal gun possession, and drug offenses. But in keeping with the tradition of the Other Wall, local cops never notified the then-INS. If a local/federal cooperation scheme had been in place, some of the accused might have been turned over to federal immigration authorities for deportation before the rape occurred.

Last spring, I reported on the case of David Montiel Cruz a.k.a. Enrique Sosa Alvarez, an illegal alien from Mexico who dragged a 9-year-old girl from her San Jose, Calif., home in broad daylight, and is charged with kidnapping and raping her over three days. Cruz is scheduled to stand trial later this summer. The case stands out as a textbook example of the continued failures of interior immigration enforcement. According to the San Jose Police Department's official policy manual, under section L7911 of the line and operations procedure, officers may not "initiate police action when the primary objective is directed towards discovering the alien status of a person." Translation: San Jose cops are prevented from proactively contacting federal immigration authorities if they suspect violations of immigration law in the course of their duties.

"Our department is very lenient" when it comes to illegal aliens, San Jose Police Department spokeswoman Katherine Unger told me. In fact, San Jose is one of the police departments that refused to cooperate with the Justice Department's effort to interview thousands of illegal aliens from terror-friendly and terror-sponsoring nations in the wake of the Sept. 11 attacks. "We don't do anything on immigration," Unger lamented. "It's not, you know, politically correct. It's frustrating."

It's important to note that the Other Wall is not just a one-way obstruction. In untold instances, cops have risked punishment by their politically correct superiors and reached out to federal immigration authorities--only to be ignored or rebuffed. On Memorial Day weekend 2002, for example, with the nation on high alert, NYPD officers contacted the then-INS and attempted to turn in seven illegal aliens from the Middle East who had been arrested with false IDs in a dilapidated van near a major tunnel. The agency ordered furious cops to release the men who were all admitted illegal aliens. Just this week, four illegal aliens from Mexico suspected of felony crimes walked free in White County, Arkansas, after federal immigration officials explained to local law enforcement officers that they cannot automatically expel the men just because they are illegal. "I had to hand this guy his car keys and allow him to walk out the door," Detective Randy Rudisill said. "He is not even supposed to be in this country, and he admitted he was here illegally, but we can't do a thing about it. Our hands are tied."

Even if every state were to enter into cooperative agreements with the federal government to train the nation's 600,000 state and local law enforcement officers to enforce immigration law, little would change without an effective system of detention and deportation that puts an end to the standard procedure of "catch and release." This policy undermines homeland security and has cost lives:

-- Victor Manuel Batres Martinez a.k.a. Maximiliano Silerio Esparza, an illegal alien from Mexico, was convicted a year ago on charges of brutally raping two nuns who were praying on a walking path in Klamath Falls, Ore. -- and then strangling one of them to death with her own rosary beads. Esparza had been detained twice last year by the U.S. Border Patrol, but was released both times. Martinez/Esparza was let loose under the federal government's cost-saving catch-and-release policy. He previously served time in jail in California, had been arrested later in Portland on drug charges, and had an outstanding warrant for his arrest at the time of the alleged rapes and murder. Federal law mandates that immigration authorities detain criminal aliens with extensive rap sheets such as Martinez/Esparza's until their deportation outside the U.S. But following standard procedure, Esparza was set free in violation of the law.

-- Two years ago next week, Los Angeles sheriff's deputy David March pulled over Armando Garcia for a routine traffic stop in a San Gabriel Valley suburb. Garcia walked toward the officer, pulled out a 9 mm semiautomatic pistol, and fired at close range several times before fleeing. The deputy died of gunshot wounds to the head. Garcia was an illegal alien from Mexico who had been previously deported three times in 1992, 1994 and 2001 and convicted of two felonies while in America. Garcia had an extensive criminal history, from drug dealing and weapons violations to suspected murder. Following "standard procedure," neither the INS nor the U.S. Attorney's Office in Los Angeles took any measures to keep Garcia off the streets and enforce a federal law requiring criminal prosecution for illegal re-entry into the United States. Garcia remains a fugitive.

-- In August 2002, Miguel Angel Heredia Juarez, an illegal alien from Mexico, was convicted for viciously raping and beating a 19-year old North Bend, Wash., woman. Juarez was on probation at the time, after serving time in prison for threatening to kill someone. Juarez had been previously convicted of four other felonies, including theft and assault, since illegally crossing the Mexican border five years ago. Criminal aliens are supposed to be taken

immediately into INS custody after serving their sentences, but as the Justice Department's Inspector General reported, the INS lets tens of thousands of them run loose. In fact, following "standard procedure," federal immigration authorities' failure to track foreign-born inmates led to the release of 35,318 criminal aliens into the general population in 2000 -- roughly one-third of whom went on to commit serious crimes.

Finally, for aliens actually ordered deported in Immigration Court, who were not granted relief from removal, and who exhausted all of their lengthy appeals, the Justice Department's inspector general found that:

? 97 percent of all asylum-seekers from ANY country who were released from immigration custody were never apprehended again by the federal government, and were never deported;

? 94 percent of aliens from terrorist-supporting countries who were released from immigration detention were never found again, and were never deported;

? and 87 percent of all aliens released from immigration custody were never caught again, and were never deported. Even when deportation absconders are tracked down, for example, they are often let go because there's nowhere to put them. One official of a bonding company said the feds were freeing 50 percent of the aliens he had been ordered to track down and turn in since September 11.

Arresting and detaining illegal aliens and criminal alien residents is long overdue. But as long as catch-and-release is the order of the day, all the help in the world from local and state officers won't help federal immigration authorities control the problem. The bottom line is that increased enforcement and collaboration cannot succeed without greatly expanding the federal government's current 20,000-bed detention capacity.

Breaching the Other Wall: The Malvo Case

What happens when the wall between federal immigration authorities and local law enforcement officers is surmounted? In at least one case, the decision likely saved untold lives. A year and a half ago, I reported on the extraordinary circumstances surrounding convicted D.C.-area snipers Lee Malvo and John Mohammed.

On Dec. 19, 2001, Bellingham, Wash., police detective Al Jensen called the Border Patrol for assistance during a domestic dispute involving Malvo, his mother, and Mohammed. The detective suspected that Malvo and his mother were illegal aliens; Olson and Ruiz confirmed their unlawful status and processed them as deportable aliens. Malvo and his mother were fingerprinted and photographed (and later released pending deportation proceedings against the recommendation of the Border Patrol).

As we all know now, Malvo and Mohammed went on to carry out a bloody rampage that terrorized the greater Washington, D.C. area and took the lives of ten innocent people. The toll probably would have been higher if not for police detective Jensen's decision to call the Border Patrol and have Malvo processed as an illegal alien. Malvo's prints, taken by the Border Patrol and filed in the former INS/now-BICE database called IDENT, were found at an Alabama liquor store crime scene. The prints were critical in unraveling the sniper case.

Neither Det. Jensen nor the Border Patrol agents could have foreseen the havoc Malvo helped create. But in the course of doing their jobs together, one local cop and two federal immigration officers may have averted an even greater public-safety disaster by just doing their jobs. This kind of unimpeded collaboration is especially necessary in a post-September 11 era when the Department of Homeland Security's interior enforcement forces remain woefully understaffed and rampant illegal immigration remains unchecked. According to the former INS' statistical yearbook, the federal government sent home 184,775 illegal aliens and criminal alien residents in the year 2000. But over 800,000 illegal aliens were entering the country illegally every year during the late 1990s. BICE's 2,000 interior enforcement agents are no match for this onslaught.

The Malvo case underscores the importance of basic, routine cooperation between local and state police and federal immigration authorities. Police officers are sworn to uphold the law and to enforce it when they have reason to believe that the law is being broken. Local police do not sit back and watch bank robbers escape because they lack jurisdiction over a federal crime. A state trooper wouldn't look the other way if he spotted someone breaking into a US Postal Service mailbox or committing arson in a national forest. Just because immigration law enforcement is not a local cop's primary responsibility does not mean that he must or should ignore indications that these federal laws are being broken.

Senate Bill 1906, the Homeland Security Enhancement Act, would help break down the "Other Wall" by affirming the inherent authority of states and their political subdivisions to apprehend, arrest, detain or transfer illegal aliens to federal custody. It would increase criminal penalties for illegal entry into the US; improve information-sharing among local, state, and federal law enforcement officials on immigration violators; and it would address the federal detention space crunch. These steps all reflect a fundamental principle that must be adopted to make homeland security meaningful--namely, that immigration law-breaking must carry real consequences in a post-September 11 world.