

Testimony of

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Sheriff

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Hearing on

**“Protecting American Citizenship II: Federalism, Sanctuary Cities, and the
Rule of Law”**

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Chairman Schmitt, Ranking Member Welch, and other distinguished members of the Subcommittee on the Constitution, thank you for the opportunity to testify.

My name is Clarence Birkhead, Sheriff of Durham County, North Carolina, and I believe that true public safety is built on a foundation of trust between local law enforcement and the communities they serve.

My career in public service started as a deputy sheriff in rural Randolph County, North Carolina in 1984. In those early days, it became evident that for me to be successful as a law enforcement officer, I needed to secure the trust and support of the community. Often working alone without having backup close by, relationships are what protected me as a young deputy. This focus on community trust has guided me throughout my career, from those beginnings to my time serving as a chief of police at Duke University and later the

Town of Hillsborough, North Carolina, to serving as sheriff of Durham County, North Carolina, a position to which I was elected in 2018. Recognizing the value of community trust and strong relationships, I have never wavered from being public focused and community oriented in policing philosophy. That is one of the reasons I joined the Law Enforcement Immigration Task Force (LEITF), a nationwide group of law enforcement leaders committed to immigration reforms that enhance public safety and community trust.

Today's hearing, entitled "Protecting American Citizenship II: Federalism, Sanctuary Cities, and the Rule of Law," presents a forum for discussing the limited and discretionary role of state and local law enforcement in federal immigration enforcement. In our constitutional system, power is divided between multiple levels of government: federal, state, and local. In my experience as a police chief and sheriff, I have found that leaders at the local level of government know their communities well and are focused on ensuring public safety. In their cities and counties, local law enforcement leaders are solely responsible for prioritizing enforcement against threats to the public in a manner that builds and maintains community trust, even when facing limited resources. Given this, I believe that federalism principles are best upheld when local jurisdictions are not impeded in determining how their limited resources can most effectively protect their residents.

1. Public Safety Depends on Community Trust

Effective policing is impossible without the cooperation of the public. Sir Robert Peel stated in his "Policing Principles," "[t]o recognize always that the power of the police to fulfill their functions and duties is dependent on public approval of their existence, actions and behavior, and on their ability to secure and maintain public respect."

My experience has been that when local law enforcement is perceived as an extension of federal immigration authorities, the trust we all work hard to secure and maintain is eroded. As a result, immigrant communities — both documented and undocumented — are more likely to fear engagement with local law enforcement and retreat into the shadows. When individuals fear engaging with law enforcement could cause their friends, loved ones, or themselves to be in danger of deportation, they are less likely to report

crimes or participate in investigations. Victims of domestic violence hesitate to call 911; witnesses to violent crimes refuse to come forward and cooperate with investigations. Law enforcement's ability to address and solve crimes is severely diminished. This "chilling effect" makes our entire community less safe.

Since being elected to my first term as sheriff, I have advocated maintaining a clear distinction between local police and federal immigration agents, and I have strived to ensure that every resident feels safe engaging with the Durham County Sheriff's Office.

2. The 10th Amendment and Anti-Commandeering

The "Rule of Law" includes adherence to the 10th Amendment. Our nation is facing complex immigration issues that Congress and federal agencies have been trying to solve for decades. Faced with limited or insufficient resources, the federal government wants to mandate state and local law enforcement prioritize and enforce federal civil immigration law violations. Through the use of local taxpayer dollars and personnel, federal agencies would expand their ranks by deputizing local deputies and police officers. However, the Supreme Court has repeatedly held that the federal government cannot "commandeer" state and local officials to carry out federal regulatory programs. As stated by Justice Scalia:

The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. Such commands are fundamentally incompatible with our constitutional system of dual sovereignty. *Printz v. United States* (1997).

Federalism requires "a proper respect for state functions." *Younger v. Harris* (1971). As explained by U.S. Supreme Court Justice Hugo Black, this:

does not mean blind deference to 'States' Rights,' [but it] does represent . . . a system in which there is sensitivity to the legitimate interests of both State and National Governments, and in which the National Government, **anxious though it may be to vindicate**

and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States. *Younger v. Harris* (1971) (emphasis added).

Immigration enforcement has traditionally been a federal responsibility. Shifting some of this federal responsibility to state and local governments seems to be an easy and logical solution to our complex immigration issues. Forcing local officers to take on new immigration-related responsibilities diverts precious, limited local resources away from investigating local violent crimes and detracts from our mission of overall public safety for everyone. It is my position that these federal administrative tasks be left to federal officers. In accordance with the needs of their respective communities, state and local leaders may choose, but are not required, to assist in enforcing federal immigration law.

The Office of Sheriff pre-dates the founding of our country, in North Carolina it is created by our state constitution and represents the longest-standing elected office in the state. The Sheriff has significant independence in charting policy to ensure public safety and well-being. As an elected office, the Sheriff is responsive to the local residents' opinions on public safety goals and priorities as expressed through votes and community engagement. In recent years, the North Carolina legislature has passed various state laws relating to state participation in immigration enforcement. For example, North Carolina sheriffs are statutorily required to verify the legal status of the people held in our jails. Recent state legislation has created judicial processes for verifying legal status and reviewing ICE detainees. I am concerned that passage of this type of legislation – at both the state and federal levels – is often unnecessary and potentially undermines other needed public safety priorities.

3. Prioritizing local needs, issues, and concerns does not mean a locality is a “sanctuary city.”

Public safety is not "one-size-fits-all." A sheriff in a rural North Carolina or a border town faces different challenges than a police chief in a major metropolitan hub, like Durham. Listening to the concerns and values of our constituents informs resource allocation and

public safety initiatives. These discretionary decisions may not be aligned with federal initiatives or the public safety goals of other communities.

While some critics are quick to label various policies welcoming immigrants or limiting engagement on specific areas of immigration enforcement as “sanctuary” policies, I’d note that the term “sanctuary city,” the subject of this hearing, has not been defined in federal legislation. The absence of clarity over the term’s meaning often obscures more than it illuminates. As a sheriff, I follow the law – local, state and federal.

North Carolina law prohibits “sanctuary” policies, barring cities and counties from adopting “sanctuary” ordinances that restrict or limit cooperation with federal immigration authorities. N.C.G.S. 160A-205.2. Durham County is not a sanctuary county, and the Durham County Sheriff’s Office follows state law. This includes presenting detainees to state judicial officials for review and following any related court orders. If ordered by our magistrates or judges, a person is held for forty-eight hours to allow ICE an opportunity to seize the criminal detainee. As required by state law, we notify ICE when the 48-hour clock starts.

As a law enforcement leader who must answer to the voters, I prioritize local public safety objectives above all else. Consistent with state and federal law, I determine whether or not to participate in the voluntary 287(g) program, or which federal law enforcement task forces Durham County Sheriff’s deputies are assigned to, with the goal being to advance community trust and public safety. This also means that I work to ensure that the Durham County Sheriff’s Office upholds core state and federal constitutional principles, including ensuring individuals’ rights, due process, and civil liberties are respected.

4. Respecting Local Expertise

In law enforcement agencies across the nation – big cities, small towns, rural counties, and urbanized states – collaboration regularly occurs between local and state law enforcement leadership and the federal government. These efforts work best when there are open lines of communication between federal, state, and local authorities, and local input is valued. At the Durham County Sheriff’s Office, I am eager to work with the federal government on efforts to combat public safety threats. I have deputies assigned to various task forces (TFOs) from FBI Safe Streets, U.S. Marshals, HSI, to DEA. These

partnerships have proven successful in combatting drug trafficking and apprehending violent criminal combatants. When we allow local departments to focus on their core mission—protecting life and property—we strengthen the rule of law rather than weakening it.

As it relates to immigration enforcement, I am willing to find ways to work with federal authorities to help us locate and neutralize threats to public safety. This includes focusing enforcement resources on the U.S citizens and immigrants who commit violent crimes. As a member of the Major Counties Sheriffs of America and the National Sheriffs' Association, I recently attended a conference, where I heard directly from “Border Czar” Tom Homan about his immigration enforcement priorities. Homan noted that his focus is on identifying known and violent offenders who are in communities across the United States and removing them. I agree with that approach. However, in North Carolina and beyond, we've increasingly seen people without criminal records who pose no threat to public safety get swept up in federal immigration efforts, to the detriment of community trust. If local law enforcement collaborates with the federal government on immigration issues, we must strike the right balance to target threats to public safety in a way that doesn't undermine trust between immigrant communities and local law enforcement.

Conclusion

Protecting American citizenship and the rule of law does not require us to turn our local police officers or deputy sheriffs into immigration agents. It requires us to respect the expertise and autonomy of sheriffs and chiefs of police in our cities to serve as professionals in the best interest of their locality. We all want to keep our communities safe. We all want to identify and apprehend violent offenders, especially those committing gun violence, regardless of their immigration status. In that spirit of respect, I urge this Subcommittee to support policies that empower local law enforcement to build bridges, not barriers.

Thank you, and I look forward to your questions.