

Statement for the Record

US Representative Sue Myrick (NC-09)

Legislative Hearing on HR 3808 – The Scott Gardner Act

Committee on the Judiciary  
Subcommittee on Immigration Policy and Enforcement

March 7, 2012

Chairman Gallegly, Ranking Member Lofgren, and Members of the Subcommittee, thank you for inviting me and my colleague Representative Mike McIntyre here today. And thank you for holding a hearing on what we feel is a vital piece of legislation – the Scott Gardner Act.

On July 16, 2005, Scott Gardner, his wife Tina, and their two children were on their way to Sunset Beach. Scott was a high school Social Studies teacher from Gaston County, and as is customary during the summer break from school, many Carolinians make a trip to the coast.

However, while the Gardner Family was in Brunswick County, their car was struck by Ramiro Gallegos, an illegal immigrant who was driving drunk. Scott Gardner was killed. Seven years later, Tina Gardner remains in a vegetative state.

After the accident, it was discovered that Gallegos had been previously arrested five times – FIVE TIMES – for drunk driving. The accident on July 16<sup>th</sup>, 2005, was not his first alcohol-related accident. In 2002, he was involved in a head-on collision. Two of the previous arrests were outside the state of North Carolina.

Once, he was deported back to Mexico. However, six months later, he was back in the United States with a Michigan driver's license. After his other arrests, he was either released on probation, or served minimal time in jail – up to thirty days – before being released and asked to show up in court. He never did.

Sadly, this is not an isolated incident. In August 2010, Carlos Martinelly-Montano, an illegal immigrant with several prior DWI charges, struck and killed a nun in Virginia while driving under the influence. North Carolina resident Leanna Newman and her unborn child were killed in a wreck caused by an illegal immigrant who admitted to drinking before getting behind the wheel. In California, Sara Cole was paralyzed when she was hit by an illegal immigrant who was driving drunk and had previous convictions for DWI.

In June 2011, Denny McCann was hit and killed by Saul Chavez, an illegal immigrant who was first arrested for DWI in 2008. He was allowed to remain in the United States. In August 2011, Matthew J. Denice died after being hit by Nicolas Guaman, an illegal immigrant with several prior arrests.

After Scott's death, I first introduced the Scott Gardner Act in Congress. In December 2005, it was added as an amendment to the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005. The bill originally stated that an illegal immigrant was eligible to be deported after three DWI arrests. My amendment made DWI a deportable offense after ONE arrest.

In addition to working on the Scott Gardner Act, I became involved in helping officers enforce immigration laws within their communities – at a local level. I was one of the first advocates of the successful 287(g) program, whereby local officers have authority to gain information about a detainee's immigration status and are trained to process and detain individuals who are in the country illegally.

I advocated for better communication between local jurisdictions and the federal government when it came to driving records and immigration status. Ramiro Gallegos was allowed to drink and drive because one jurisdiction didn't know what the other one did.

Since 2005, I have reintroduced the Scott Gardner Act every Congress.

Very simply, HR 3808 does three things:

First, it amends the Immigration and Nationality Act to allow local or state law enforcement officers to issue a federal detainer for any individual who is in the country illegally and has been arrested for driving while intoxicated. Officers would be allowed to confirm immigration status via national databases if reasonable evidence exists that the arrested individual is in the country illegally.

Second, the bill requires that The Department of Homeland Security reimburse local law enforcement for the cost of transferring any such individual(s) into federal custody.

Lastly, the bill requires that DHS prioritize the deportation of any illegal immigrant arrested for DWI.

Since 2006, 11,494 illegal immigrants have been arrested in Mecklenburg County, NC, which is in my district and the county that I call home. 2,789 of these arrests have been for DWI. That's 24 percent. It's a problem, and it's only getting bigger.

I've had local law enforcement officers sit in my office – the same ones that have sat before this Committee – and talk of their frustrations. Because DWI isn't considered to be a serious enough crime to warrant deportation, many of those illegal immigrants arrested are released, jailed for a short period of time, or released and told to show up at court.

This often does not happen, leaving the illegal immigrant in the community and able to again drive drunk. In many cases, these illegal immigrants end up back in jail, perpetuating the enforcement method of 'catch and release'. It's ineffective. In cases of DWI, it's dangerous and wrong.

As with all law enforcement agencies, resources are limited. The State Criminal Alien Assistance Program (SCAAP) already reimburses state and local jurisdictions for costs incurred for incarcerating criminal aliens with one felony charge or two or more misdemeanor charges, AND who are incarcerated for at least four consecutive days.

However, we should not simply reimburse local law enforcement when alleged crimes are deemed severe enough. When local and state officers help enforce immigration laws in the place of federal officers, we should absolutely reimburse them for the associated costs. That's what the Scott Gardner Act would allow – state and local jurisdictions would be reimbursed for the cost of transporting illegal immigrants into the hands of federal officials for deportation proceedings.

According to The Century Council, one-third of all DWI arrests are repeat offenders. The Scott Gardner Act allows some of these would-be repeat offenders to be taken off of the streets.

Immigration reform is a divisive and highly controversial topic. However, The Scott Gardner Act is not a controversial piece of legislation.

Let's be clear: Being in the United States illegally is a deportable offense, and the Administration – through its newly instated policy of “prosecutorial discretion” is saying that enforcement of our immigration laws is no longer a priority. Because DWI is not a felony crime, it's not serious enough to deem that someone – who is here illegally – should be deported.

In conjunction with programs like 287(g) and Secure Communities, The Scott Gardner Act gives law enforcement officers at the local and state level the resources and ability to protect their citizens. It's their job, just as it's the primary job of the federal government to ensure the safety and security of our country.