

STATEMENT OF

FLOYD I. CLARKE

MEMBER OF THE BOARD OF MANAGERS

ALLIED SECURITY HOLDINGS

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I. INTRODUCTION

Chairman Andrews, Ranking Member McKeon, and Members of the Subcommittee, thank you for the opportunity to testify today about HR 2703, the Private Security Officers Employment Authorization Act of 2007 and the experience of AlliedBarton Security Services in attempting to use the criminal history database of the Federal Bureau of Investigation (FBI) to help screen applicants for these positions of trust,

I am the Vice President for Corporate Compliance of MacAndrews & Forbes Holdings, Inc. and a Member of the Board of Managers for Allied Security Holdings LLC, the parent company of AlliedBarton Security Services. Previously, I spent 30 years working at the Federal Bureau of Investigation, ending in January 1994 as Acting Director of the Bureau. Thus, I approach this issue with the benefit of the perspective of both the FBI and the private sector.

AlliedBarton Security Services, headquartered in King of Prussia, Pennsylvania, is the largest American-owned security officer services company. Established in 1957, AlliedBarton is a trusted leader with proven expertise in providing highly trained security officers to a number of markets, including manufacturing and industrial, financial institutions, colleges and universities, commercial real estate, government services, healthcare, residential communities, and shopping

malls and other retail facilities. AlliedBarton has more than 52,000 security officers and over 100 offices located across the United States from which we help protect the facilities, employees, and customers of our approximately 3,500 clients.

Mr. Chairman, let me begin by commending you for your commitment to this issue over the years. As Congress recognized in legislation that you were instrumental in helping to pass in 2004, there is a homeland security imperative for having “professional, reliable, and responsible security officers for the protection of people, facilities, and institutions” and ensuring that these private security officers are “thoroughly screened and trained.”¹

In an effort to achieve this objective, as part of the Intelligence Reform and Terrorism Prevention Act of 2004, Congress enacted the Private Security Officer Employment Authorization Act (PSOEAA) to allow Allied-Barton and other private security officer firms to submit requests through the states to screen employees² against the FBI’s criminal history records. Unfortunately, for a variety of reasons, states have generally not exercised this authority and private security officer employers still cannot regularly screen prospective employees against the national database. I want to again commend you, Mr. Chairman, for recognizing the need to strengthen that earlier legislation.

I know from my experience at the FBI how important it is to obtain timely criminal history record checks. In my years with AlliedBarton, I have seen how important it is in the private security officer context as well. My testimony today briefly discusses why this access is so important, how it has worked -- and not worked -- for AlliedBarton over the last two years, and why the changes made by HR 2703 are important for both applicants and employers.

II. Reliable Private Security Officers are Crucial to our Nation’s Security

Private security officers provide a primary line of defense for much of our country, securing countless lives and tens of thousands of important and valuable facilities from coast to

¹ P.L. 108-458, section 6402.

² References to “employees” in this statement should be understood to also include applicants.

coast. The Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. No. 108-458) found that “the threat of additional terrorist attacks requires cooperation between public and private sectors and demands professional, reliable, and responsible security officers for the protection of people, facilities, and institutions.” Noting that the private sector controls 85% of the critical infrastructure in the nation, the 9/11 Commission concluded that, “unless a terrorist’s target is a military or other secure government facility, the ‘first’ first responders will almost certainly be civilians.”³

Those civilians are likely to include private security guards, counted on as the prime protectors of homes (apartment buildings, dormitories, and private communities), offices, financial institutions, factories, public sector facilities, hospitals and other critical elements of the infrastructure of our nation. For the safety of the people at these locations and the facilities involved, the companies employing these private security officers want to do all that we reasonably can to ensure that the officers we hire are trustworthy and not likely to commit violence or, at worst, aid or support terrorists. At a minimum, this requires that our companies have a reliable and timely way of learning about any serious criminal history of our applicants and employees.

Reliable Criminal History Checks Require Access to FBI-Maintained Records

When Congress enacted the PSOEAA, it also directed the Attorney General to examine the issues related to non-law enforcement access to federal criminal history records and report back. The Attorney General’s Report⁴ concluded that a comprehensive and reliable criminal history background check cannot be accomplished without timely access to the records of the Criminal Justice Information Services Division of the Federal Bureau of Investigation. We agree. Let me explain why this is so important.

³ The National Commission on Terrorist Attacks on the United States (“9/11 Commission”), *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks on the United States*, 397-98 (July 2004).

⁴ United States Department of Justice, *The Attorney General’s Report on Criminal History Background Checks* (June 2006).

Without access to federal records, the only records available to an employer are those in the states and their political subdivisions, where the records are typically kept at the courthouse in each county. Since there is no practical way to check all 3,000 clerks of court around the country for every employee, employers usually will request a record check in the counties in which the applicant says they have recently lived or worked. This leaves the employer blind to any criminal history records in states for which the applicant failed to disclose contacts. How can employers rely on a system to weed out untrustworthy or dangerous applicants when that process necessarily depends on the honesty and forthright nature of every applicant?

There are commercial databases that aggregate criminal history information from multiple states but, as the AG Report found, these are not truly national in scope because not all states, courts, or agencies make their records available to such compilers. Moreover, these databases are only updated occasionally and, thus, may lack current data. These commercial databases, therefore, are not adequate substitutes for screening against the FBI-maintained database.

Congress acted in 2004 to provide private security officer employers with access to that federal database. Unfortunately, in doing so, Congress required that the employers always go through the state identification bureaus in order to get that access. In other words, we must submit the employee information to the state bureau, which then decides whether to forward the request to the federal level.

We work closely with state regulators of private security officers and, for the most part, they fully and competently fulfill their state role. However, the states with which we work have not prioritized the next step of seeking an FBI records check, despite the 2004 statute permitting them to do so. In addition, several states have no background check process at all. Thus, without another way to access the FBI-maintained database, AlliedBarton and other security officer employers have no way to verify applicants' backgrounds in these states.

It is equally important that record checks be completed in a timely manner. Significant delays in getting responses to criminal history record requests are unfair to employers and

applicants, and present potential security risks. Hiring needs are typically time-sensitive, which means either passing over the applicant because the records are not in, or, where permitted, placing a private security officer applicant “on the job” pending the results of a state background check—leaving potentially unreliable and dangerous persons as the protectors of loved ones and valuable sites for weeks.

The Attorney General’s Report found that the processing time for states, from the date of the fingerprint capture to the date of submission to the FBI ranged up to 42 days.⁵ This is consistent with AlliedBarton’s experience over the last 2 years under the current statute.

III. RECOMMENDATIONS: PROTECTING OUR NATION

To address these problems, the AG’s Report recommends that private sector employers be able to screen job applicants against the FBI’s criminal history records, with the states serving as employers’ primary access point for criminal background checks only if they can meet standards set by the Attorney General. The Report recommends, “In order to participate, states must meet standards specified by the Attorney General, within parameters set by statute, for the scope of access and the methods and time frames for providing access and responses for these checks.”⁶ Specifically, the Attorney General concluded, “A participating state or the FBI should be required to respond to an enrolled employer, entity, or consumer reporting agency within three business days of the submission of the fingerprints.”⁷

Importantly, this means that an employer in a state that cannot, or chooses not to, provide timely background check results that incorporate both state and FBI data should be able to make requests to the FBI, either directly or through an entity designated by the Attorney General, for criminal history records. The Attorney General’s Report stated it this way: “Access to FBI-maintained criminal history records should be available to employers when states do not opt to participate, either because they lack the authority, the resources, or infrastructure (such as system

⁵ *Id.* at 22.

⁶ *Id.* at 87.

⁷ *Id.* at 94.

capacity) to process such checks, or because the access they can offer is limited in scope or does not meet the national standards set for this system.”⁸

Based on our experience, we strongly support this recommendation and applaud the Chairman for incorporating it in HR 2703. Ensuring timely and accurate record checks is in the best interest of both employers and employees.

The best way to ensure accuracy is to combine federal and state records, which the proposed legislation authorizes. There are sound reasons for employers seeking comprehensive criminal histories to also check state repositories. The Attorney General’s Report noted that the “rationale for requiring the submission of fingerprints through a state record repository is based on the fact that the FBI-maintained records are not as complete as the records maintained at the state level.”⁹ The FBI’s records also have more limited information regarding disposition of arrests, with only 50 percent of its arrest records containing final dispositions, compared to the states that range from 70 to 80 percent.¹⁰ HR 2703 provides a process for ensuring that screening is not based on incomplete records by requiring that when records are incomplete, the government shall provide notice of any state(s) in which such records may be completed or verified.

Thus, even if employers are permitted to submit requests without first going through the state, they will use the federal response as an indicator of which states contain records regarding the employee, and then they will check the records in those states. This process, however, will avoid the delays involved in having to go through the states just to get the FBI response.

Mr. Chairman, I understand there may be concerns that this legislation by-passes the states. As I read it, however, it clearly requires employers to go through the states in every instance where the states are willing and able to respond. The only instance in which employers can make a request other than through the state is where the state has chosen not to establish a

⁸ Id at 88.

⁹ Id at 27.

¹⁰ Id.

mechanism for getting prompt federal records checks accomplished. AlliedBarton fully supports efforts to get more states to adopt such mechanisms. However, that will take time; time during which we will continue to have a dangerous gap in screening. HR 2703 does not preclude continuing efforts to work with the states and ensures that, as those states come into compliance with AG standards, employers will be required to go through them for the record checks.

Guaranteeing Employee Protections

AlliedBarton's experience indicates that the protections afforded to employees that Congress wisely included in the Private Security Officer Employment Authorization Act have worked well to protect important privacy rights, ensure the fairness of the process, and support essential policies to promote appropriate re-entry of ex-offenders. These protections are consistent with the recommendations in the Attorney General's Report and include:

- Written, informed consent of the employee
- The opportunity for the employee to review the information received
- Specific qualifying crimes, where states do not have their own standards
- Criminal penalties for misuse of the criminal history information

In addition, Allied supports the additional safeguards in HR 2703 to protect applicant rights and improve accuracy of NCIC records. HR 2703 adds a new section requiring the Attorney General to ensure that there is a process whereby an employee subject to a request for a National Crime Information Center criminal history records check will have the opportunity to provide to the head of the National Crime Information Center of the Federal Bureau of Investigation information concerning the accuracy or completeness of such results.

The bill also imposes strict record management requirements to protect confidentiality. Under these amendments, employers would be required ensure that the results of the records search are maintained confidentially and are not misused or disseminated to any person not

involved in the employment decision. It also requires that the results of the search request are destroyed with one year unless a claim is pending.

Moreover, HR 2703 limits reporting to convictions only. It deletes the current language in the PSOEEA that allows employers to consider arrests for which there has been no resolution for 365 days. In addition, this version provides greater specificity in offenses, ensuring their direct relevance to the position of private security officer, replacing current broad language that includes any “offense involving dishonesty or a false statement.”

IV. Conclusion

In conclusion, I want to thank you again for the opportunity to testify today in support of HR 2703. It provides essential improvements to the PSOEEA and I’m confident that these improvements in the screening of private security officers – specifically by insuring employers’ timely access to FBI criminal records while preserving employee rights –will make our nation safer.