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TESTIMONY OF WELDON L. KENNEDY
Vice Chairman, Guardsmark, LLC

before the

HEALTH, EMPLOYMENT, LABOR AND PENSIONS SUBCOMMITTEE
OF THE HOUSE COMMITTEE ON EDUCATION & LABOR

February 26, 2008

Hearing on *"H.R. 2703, Private Security Officer Employment Authorization Act of 2007*

Chairman Andrews, Ranking Member Kline, and Members of the Subcommittee, thank you for this invitation to present the views of Guardsmark LLC on the H.R. 2703, the Private Security Officer Employment Authorization Act of 2007. My name is Weldon Kennedy, Vice Chairman of Guardsmark LLC, and a former Deputy Director of the FBI. My experience gives me a unique perspective on the issues being considered today, and I trust the subcommittee will find it helpful.

Guardsmark LLC provides security services to companies in the manufacturing, financial, health care, transportation, petrochemical, automotive, information technology, government services, public utility and many other industries. Guardsmark's services include: uniformed security officers, private investigation, pre-employment screening, executive protection, and business continuity planning and preparedness. Guardsmark, which is headquartered in New York, New York, provides services in over 400 cities throughout the United States, Puerto Rico, Canada and the United Kingdom. Guardsmark, which is a privately owned U.S. company, is one of the largest security companies in the world. Guardsmark is committed to providing unmatched security services to its clients.

For over 25 years, Guardsmark has led the fight to raise professional standards in the security services industry. Guardsmark's historic efforts in this regard were instrumental in obtaining passage of the *Private Security Officer Employment Authorization Act of 2004,* Section 6402 of Public Law 108-458 (the "PSOEAA"). The PSOEAA was the result of bipartisan cooperation to enhance security services in the wake of 9/11. The PSOEAA received unanimous passage by the U.S. Senate, after having first been unanimously approved by the Senate Judiciary Committee, 19-0.

We greatly appreciate the subcommittee's interest in the topic of improving the process by which private security officers are employed and private security company may have access to criminal history record information (CHRI). Improved company access to this information will promote national security and homeland security, and we genuinely thank you, Mr. Chairman, for your desire to assist on these critical issues.

I am here today to offer constructive criticism of H.R. 2703. I would like to emphasize first that we share a common objective – improving qualified employer access to CHRI. There is no debate that the current regime is not functioning as intended, notwithstanding enactment of the "PSOEAA". The concerns I address today apply not to the objective of H.R. 2703, but rather to the manner by which its objective is pursued. Unfortunately, H.R. 2703 contains significant problems. Far from *curing* problems with the PSOEAA, its enactment would simply *create* greater confusion, uncertainty and difficulty for private security companies.

Principal Concerns

Based upon my prior experience as Deputy Director of the F.B.I., I believe that the provisions of H.R. 2703 are certain to raise concerns on the part of the U.S. Department of Justice, which makes enactment of the bill unlikely. During my service as Deputy Director of the F.B.I., I had direct authority over the administration of the F.B.I's criminal justice information system. While this is an excellent repository and retrieval system, it is not designed to be the primary screening mechanism for all criminal history background checks in the United States. CJIS works with the respective states to effectuate their own efforts in enhanced criminal history retrieval and reporting. For the Department of Justice to undertake the new and expanded type of responsibility as contemplated by H.R. 2703 would be beyond its mission and intrude on an area of traditional state regulation. Imposing such an expanded responsibility upon DOJ would likely be received with resistance.

Guardsmark is also concerned that H.R. 2703 would "federalize" a system that is currently centered at the State level – with minimal federal participation. The private security industry is regulated at the State level in 40 states. Indeed, the regulation of almost all professions is a traditional state – not federal – function. Our industry has a minimal interaction with the federal CJIS database, which the PSOEAA sought to enhance through greater reliance on the federal CHRI database when employment candidates have resided in more than one state. Critically, the PSOEAA avoided displacing the state-level regulatory function. H.R. 2703, however, would reverse this situation by placing a federal restriction on employment of private security officers, and by interposing the U.S. Justice Department directly into the hiring process. Guardsmark believes that, no matter how well intended this approach, the result will be confusion at the state level, and a degradation of the review that state regulators currently provide to new private security officers. The end result could be a reduction in the overall quality of new private security officers, which is in no one's interest. Again, we know such a result is not intentional, but we feel compelled to point it out in order to avoid it.

Additional Concerns:

Among the additional specific objections that Guardsmark has to H.R. 2703 are the following:

1. The bill creates a new federal prohibition on the employment of a private security officer until all criminal background check results are received, even if the company has

solid evidence that a particular candidate is fully qualified based on its comprehensive pre-employment screening, such as that currently performed by Guardsmark. This new opportunity for delay in hiring even qualified candidates would diminish, rather than enhance, the security services that are being demanded by U.S. companies.

2. The bill makes it unlawful to employ someone as a security officer who does not meet the bill's standards, which are poorly defined and may conflict with state laws. Many states have more stringent standards than those set forth in the bill. Due to the bill's ambiguous language, it is unclear whether it would federally pre-empt tougher state standards.

3. A federal entity (whether the United States Attorney General, or an entity created or designated by the Attorney General) is interposed to administer standards in what has historically been a state-regulated industry. This is certain to meet strong objections in Congress on both constitutional (10th Amendment) grounds and under the doctrine of federalism. The purpose of the PSOEAA was to expedite obtaining federal criminal history background information. Trying to establish a federal security services "czar" is both unnecessary and unlikely to succeed.

4. The bill mandates a three-day response time, thereby encouraging (if not forcing) states to "opt out" under the PSOEAA. Imposing an unrealistically short deadline for processing criminal background information requests provides states with an incentive to "opt out" under the PSOEAA rather than cooperating with private security companies. This bill therefore could unintentionally impede, rather than facilitate, obtaining the federal criminal history records.

5. The bill expands the list of disqualifying offenses, together with a "catch all" category, making the employment screening process far more complex and cumbersome. It also requires employers to compare and reconcile the proposed federal standards with possibly conflicting state standards. This is a recipe for confusion – and ultimately lower compliance.

6. By expanding the list of offenses and prohibiting employment until the background has been completed, the bill invites opposition on civil rights, civil liberties, privacy and employment-related grounds from a variety of groups representing these interests. Up until this point, the PSOEAA and its sponsors have worked hard to avoid this controversy. Exposing the private-security CHRI regime to this criticism could be damaging to overall support for the current process, which itself would be harmful to homeland security.

For these reasons, I believe that the deficiencies of H.R. 2703 are significant enough to justify withholding further action on this legislation. There are alternative methods to legislative remedies that we are pursuing, and I would be happy to discuss these cooperative administrative efforts with the Committee during the question and answer period.

Again, we appreciate this committee's interest, and we appreciate the opportunity to testify.