

LEGAL MEMORANDUM

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Deputizing Federal Law Enforcement Personnel Under State Law

Paul J. Larkin, Jr.

Abstract

The use of federal–state task forces offers promise as an alternative to new federal criminal legislation if the federal government is to tackle violent crimes as one of its principal missions. The authority exists for such cooperation, including cross-designation of federal authorities to investigate and prosecute alleged violations of state law (and vice versa). Nonetheless, Congress could eliminate any doubt on that score by expressly empowering federal investigators and prosecutors to be cross-designated as state law enforcement officials. Before reflexively adding to the federal penal code and exacerbating the overfederalization problem, Congress should expressly allow federal authorities to be deputized to act under state law in order to bring offenders to justice in appropriate cases in state courts.

The Legislative Response to Unsettling Crimes

The criminal law has always sought to prevent wrongdoing and redress grievances.¹ Both the federal and state governments have that responsibility, with the states doing the lion’s share of the work.² The reason is that states have a general “police power”—that is, the inherent authority to legislate on any subject to protect the health, safety, and well-being of the public³ unless the Constitution gives a particular subject matter exclusively to the federal government.⁴ This police power enables any state to make it a crime to murder, rape, rob, or swindle anyone within its territory.⁵

The federal government, by contrast, has no general police power.⁶ It can define crimes only in connection with one of the powers given to it by the Constitution.⁷ Certain crimes—such as treason, espionage, the counterfeiting of U.S. currency, or the murder of

KEY POINTS

- States have a general “police power”—the inherent authority to legislate on any subject to protect the health, safety, and well-being of the public unless the Constitution gives a particular subject matter exclusively to the federal government.
- The federal government, by contrast, has no general police power. It can define crimes only in connection with one of the powers given to it by the Constitution.
- In meeting the threat of violent crime, rather than invent some new arcane statute that would remain on the books as a trap for the unwary long after the need for it has passed, Congress could expressly authorize federal law enforcement officers to be deputized under existing state law.
- The appropriate use of cross-designation would enable the federal government to ensure that defendants of particular federal interest get the attention they deserve while also helping states and localities to bring common criminals to book.

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The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

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federal officials—are natural candidates for federal offenses whether or not they are also crimes under state law.⁸ For most of our history, the federal criminal code focused on matters of peculiar interest to the federal government.

But no more. It is not uncommon today to see Congress enact a new federal criminal law in response to a surge of media attention to a problem or a noteworthy event. In 1992, the problem was “carjacking,” and the event was a carjacking in the Washington, D.C., region of a mother’s car with her child still in it. To signal its disapproval, Congress gave us a federal carjacking statute,⁹ even though kidnapping and the interstate transportation of a stolen vehicle were already federal offenses¹⁰ and kidnapping and theft were crimes in all 50 states.¹¹ Ten years later, large-scale corporate fraud prompted Congress to enact the Sarbanes–Oxley Act of 2002,¹² even though there already were dozens of federal fraud statutes on the books¹³ and both fraud or larceny have been crimes in one form or another since the common law.¹⁴

Today, the problem is the rise in assaults against police officers, and the events were the murders of officers in San Antonio, Texas, and Baton Rouge, Louisiana, as well as the ambush murders of several officers in Dallas. Together, those incidents have led some Members of Congress to introduce legislation that would make it a federal crime to kill a state or local police officer if his department receives federal funds,¹⁵ even though every state criminal code already outlaws murder.¹⁶ It would not be unreasonable for anyone to conclude that Congress no longer feels itself bound by the principle that there is a limit as to how far it should extend federal criminal jurisdiction in the service of a healthy system of federalism.

Although the reflexive desire to address the murder of state and local police officers through new federal legislation is misguided, the sentiment behind such legislation can be noble. Police officers are “the foot soldiers of an ordered society,”¹⁷ and there is reason to believe that they have recently been under assault. Preliminary data for 2016 recently published by the Federal Bureau of Investigation (FBI) indicate that 66 police officers were feloniously killed in the line of duty, 17 of them by ambush, for a 61 percent increase over the 41 killed in 2015.¹⁸ Also troubling is the trajectory of those numbers. Over the past decade, the number of officers killed in the line of duty peaked at 72 in 2011 and then declined

to 27 in 2013 before the recent uptick beginning in 2014, which saw an increase to 51.¹⁹ We are not in the same position today that we found ourselves in during the 1960s, when the Black Liberation Army targeted members of the New York City Police Department for assassination,²⁰ but the current trend is one that any responsible party wants to see reversed.

Some commentators have concluded that the rise in murders of police officers is due to the vocal outcries made by leftist groups to defy and confront the police, such as clamors heard after a white police officer shot and killed Michael Brown, a black assailant, in Ferguson, Missouri. The private condemnations of the Ferguson incident began before all of the facts were in and, some could argue, were intended to generate media attention and throw back on their heels any politicians who might otherwise automatically support the police for using force in self-defense or to arrest a suspect.²¹ The constant reiteration of those claims by the media in their 24/7/365 news cycle only aggravated the harm. It is true that the police have abused their authority in some well-publicized cases²² (and others unknown), but the Michael Brown incident was not one of them.²³ Moreover, it is in the nature of things that calls by extremists for the on-sight murder of white police officers²⁴ will have an effect on at least some portion of the target audience.²⁵ When anything can be said—however incendiary, however inciting, however dangerous—there is a real risk that whatever is said will be done. The result is that to some elected officials, the only effective response is new legislation making the strong statement that “This conduct stops *here and now!*”

Yet there is more than one way to address a crime problem. (In fact, the addition of a new provision to the federal criminal code is sometimes the least desirable option.) Congress, like any state or local assembly, can always address a criminal justice problem in several ways. For example, it can increase the number of law enforcement officers (e.g., authorize additional investigators); attract better-quality personnel by increasing the salaries of current investigators (e.g., create a new GS scale level); recruit experts to perform closely allied tasks (e.g., hire forensics or computer personnel); reassign investigators from one agency to another (e.g., shift the Bureau of Alcohol, Tobacco, Firearms, and Explosives from the Treasury Department to the Justice Department); and upgrade the physical assets that

investigating officers need to enhance their efficiency (e.g., purchase upgraded patrol car computers or smart phones).²⁶ Or, alternatively, Congress could leave to the Attorney General the responsibility for designing a solution.

In this case, that last course may be the optimal one. The Attorney General can arrange with state and local governments for the latter to cross-designate federal investigators as state investigators and federal prosecutors as state prosecutors, thereby enlarging the pool of personnel handling violent crimes. Cross-designation would enable the Justice Department to investigate and to prosecute violent crimes in state court, including assaults on police officers, using existing state laws in the applicable jurisdiction.²⁷

The Ubiquity of Law Enforcement Task Forces

Federal law enforcement agencies commonly use task forces to bring together different investigative agencies with concurrent jurisdiction over certain offenses or subjects for the purpose of investigating a common problem. For example, the FBI, Drug Enforcement Administration (DEA), and Immigration and Customs Enforcement (ICE) may become partners on a drug task force to conduct a particular investigation or series of investigations. To ensure that the agencies cooperate effectively, they often enter into a formal memorandum of understanding (MOU), which is an agreement among different law enforcement agencies spelling out how they will work cooperatively. MOUs often resolve a number of issues, such as which agency has primary investigatory jurisdiction; which agency is in charge of operations, seizures, evidence collection, and storage of forfeited items; what notice should be given to other federal, state, and local agencies; how to coordinate; and how interagency disputes will be resolved. For example, in 1990, the Secretary of the Treasury, Attorney General, and Postmaster General entered into an MOU regarding money-laundering statutes to “reduce the possibility of duplicative investigations, minimize the potential for dangerous situations which might arise from uncoordinated multi-bureau efforts, and to enhance the potential for successful prosecution in cases presented to the various United States Attorneys.”²⁸ Similarly, in 1984, the Department of Justice entered into an MOU with the Department of Defense to establish policy

with “regard to the investigation and prosecution of criminal matters over which the two Departments have jurisdiction.”²⁹

Federal and State Collaboration via Task Forces

The federal government often partners with state and local law enforcement agencies to address a common problem. For example:

Organized Crime Drug Enforcement Task Forces. A well-known example of strong cooperation among federal, state, and local law enforcement officers can be seen in the Organized Crime Drug Enforcement Task Forces Program (OCDETF). These task forces were formed in recognition that no single government agency is “in a position to disrupt and dismantle sophisticated drug and money laundering organizations alone.”³⁰ The program is a coordinated effort between several federal agencies and state and local law enforcement authorities to combat organized drug trafficking.³¹ It allows government agencies to share information, coordinate resources, and work side-by-side to further each organization’s shared law enforcement goal.

The National Infrastructure Protection Plan. The National Infrastructure Protection Plan (NIPP) is an example of a collaborative effort between federal and state officials.³² Under the NIPP, the Department of Homeland Security (DHS) formulated a “largely voluntary” plan for securing the nation’s critical infrastructure and key resources by coordinating with other federal agencies and state governments.³³ The NIPP identifies the roles and responsibilities of the federal, state, and local governments in order to coordinate federal and state resources and share information. It encourages states to facilitate “the exchange of security information, including threat assessments and other analyses, attack indications and warnings, and advisories, within and across jurisdictions and sectors therein.”³⁴

FBI Violent Gang Task Forces. The FBI created the Safe Streets Violent Crime initiative in January 1992 to bring federal, state, and local law enforcement agencies to bear on “violent gangs, crime of violence, and the apprehension of violent fugitives.”³⁵ This initiative ensures that law enforcement officials at all levels of government collaborate in an effort to eliminate violent, gang-related crime in their communities. The task forces are organized by state; for example, Arizona has the Phoenix

Violent Gang Task Force and the Northern Arizona Violent Gang Task Force. This initiative focuses on prosecuting racketeering, drug conspiracy, and firearms violations, specifically.³⁶ According to FBI testimony, the initiative benefits local law enforcement because it eliminates unnecessary spending and overlap between the federal and state levels. In addition, non-federal law enforcement agencies receive federal support that might not otherwise be readily available.³⁷

Disaster Fraud Task Force. The Disaster Fraud Task Force (DFTF) was created on September 8, 2008, to combat various instances of fraud in relation to Hurricane Katrina and other natural disasters,³⁸ such as the submission of benefit claims on behalf of people who did not exist.³⁹ In 2006, the Government Accountability Office “estimated that perhaps as much as 21 percent of the \$6.3 billion given directly to victims might have been improperly distributed.”⁴⁰ By working together with local law enforcement, as well as the Federal Trade Commission and the Securities and Exchange Commission (among others), the DFTF is able to combat a wide array of thefts and frauds from both Katrina and subsequent natural disasters.⁴¹

Fusion Centers. By integrating intelligence and evidence from across government agencies, federal law enforcement can share important counterterrorism and threat information with state and local officials. That is why fusion centers were established pursuant to the Intelligence Reform and Terrorism Prevention Act of 2004,⁴² which required the President to facilitate the exchange of information regarding terrorism and homeland security by linking together information and people in the federal, state, local, and tribal communities, along with the private sector.⁴³ As of 2006, fusion centers were operating in 37 states.⁴⁴ Those centers have provided the resources and assistance to local officials that have allowed them to apprehend terrorist suspects.⁴⁵

Intellectual Property Task Force. Law enforcement agencies at the federal, state, and international levels have joined forces via the Intellectual Property Task Force. Intellectual property crimes have been on the rise due to increasing globalization and international trade, among other factors.⁴⁶ In 2010, the Intellectual Property Task Force played a part in the arrest of multiple storeowners and subsequent seizure of almost \$100 million in counterfeit merchandise in San Francisco, California.⁴⁷

National Explosives Task Force. The Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) heads this federal task force, which is designed to use a “whole of Government”⁴⁸ approach to combat criminal and terrorist attacks using explosives. Like many other task forces, its goal is to fight dangerous threats against our nation while efficiently consolidating the personnel and assets of different government agencies. For example, as the Government Accountability Office has reported, the BATFE and FBI divisions of the National Explosives Task Force are located in the same headquarters to reduce jurisdictional confusion.⁴⁹ Other evidence of the high level of collaboration between BATFE and FBI officials can be seen in the consolidation of explosives training, databases, and laboratories.⁵⁰

ICE: Customs Cross-Designation. The office of Homeland Security Investigations (HSI) under ICE is authorized to “cross-designate other federal, state and local law enforcement officers to investigate and enforce customs laws.”⁵¹ Those cross-designated officers⁵² can conduct customs searches, serve customs-related arrest warrants, and carry firearms, just as a standard ICE officer can.⁵³ Overall, this means that HSI has a much greater reach than it would at just the federal level, and more officers can be utilized in positions where they are needed that would normally be outside their jurisdiction.

Various states have also created their own task forces. For example:

California: Proactive Methamphetamine Laboratory Investigative Task Force. This task force operates on the state level but works with the U.S. Department of Justice and the Bureau of Narcotics Enforcement of the California Department of Justice. The Orange County Proactive Methamphetamine Laboratory Investigative Task Force was established in 1998 to “provide support and enhance the existing efforts of the BNE Clandestine Laboratory Program, with the interdiction and eradication of the small to medium size ‘stove top’ methamphetamine labs.”⁵⁴

Pennsylvania: Crimes Against Children Task Force. Created on September 23, 1999, this task force was designed to bring together not only the federal, state, and local governments, but also medical experts, hospitals, and victims’ services groups in order to further the fight against the sexual exploitation of underage victims.⁵⁵ There are similar task forces at the state and federal levels addressing the

same type of crime. As one example, the Alabama and Georgia Internet Crimes Against Children Task Force, a component of the much broader Internet Crimes Against Children Task Force,⁵⁶ arrested 29 suspects on the charge of possession and distribution of child pornography.⁵⁷

Virginia: Northern Virginia Regional Gang Task Force. Created to address the growing threat of gangs in Northern Virginia, this task force is a collaboration of federal, state, and local officials that aims to educate on, prevent, and infiltrate gangs in the area.⁵⁸ This task force is unique in that its jurisdiction does not extend across state lines and it assists local police departments only when needed.⁵⁹ A multijurisdictional task force is important where culprits can easily move across state lines.⁶⁰

The Benefits of Deputizing Federal Investigators and Prosecutors as State Investigators and Prosecutors

There will be occasions when the federal government will want to be involved in the investigation or prosecution of what is, at bottom, an ordinary “street crime.” For example, a suspected terrorist might commit an attempt under state law in a field where there is no federal law making an attempt a crime. While that offense would be only a state crime, the federal government would have a strong interest in bringing a terrorist to justice—if for no reason other than to demonstrate to other would-be terrorists that it will pursue and prosecute them for their crimes, whatever they are, wherever they may be—or in assisting a locale, such as Chicago, that is swamped with violent crime. Rather than invent some new arcane statute justified by a tenuous theory of federal jurisdiction—a statute that would remain on the books as a trap for the unwary long after the need for it has passed—Congress could expressly authorize federal law enforcement officers to be deputized under existing state law. Through appropriate use of cross-designation, the federal government could ensure that defendants of particular federal interest get the attention they deserve while also helping states and localities to bring common criminals to book.

The Attorney General, the nation’s senior federal law enforcement officer,⁶¹ has the authority under Title 28 of the U.S. Code to manage the conduct of all federal investigations and litigation.⁶² The Intergovernmental Personnel Act⁶³ empowers the Attorney

General to assign federal personnel to states or localities “for work that [he or she determines] would be of mutual concern to [both parties].”⁶⁴ If so, the Attorney General should be free to enter into an MOU with a senior state official—perhaps the governor or the state attorney general—granting federal investigators and prosecutors the same authority enjoyed by their state counterparts. Where federal and state law enforcement personnel are working on a case or problem of interest to both, cross-designation would be a sensible decision.⁶⁵ Federal law expressly allows the Attorney General to appoint state or local prosecutors as Special Assistant U.S. Attorneys (SAUSAs), and those SAUSAs may prosecute cases in federal court.⁶⁶ The proposal outlined in this paper is to regularize the same process, just in reverse.

One benefit of a cross-designation program is that it would enhance the federal government’s ability to address violent crime while avoiding the statutory and constitutional shortcomings that can keep it from addressing that problem under existing federal law. Those statutes often do not empower the Justice Department to prosecute someone for what would normally be seen as a state law crime,⁶⁷ in part because Congress lacks the Article I authority to make such conduct a federal offense.⁶⁸ In some circumstances, Congress can condition the disbursement of federal funds on a state’s willingness to adopt a new state law, even a new criminal law.⁶⁹ That proposition, however, cannot be stretched indefinitely. Using the receipt of federal funds simpliciter as a basis for extending the reach of the federal criminal code might be an unconstitutional exercise of federal power. It certainly is an unwise one. It would enable Congress, for example, to make it a crime to murder anyone who is a recipient of any federal payments (or credits) through federal programs such as Social Security, Medicare, Medicaid, Pell Educational Grants, or scores of other similar undertakings. The effect would be to empower Congress to make any conduct a crime despite the limitations expressed by the explicit and particularized grants of power in Article I, Section 8 of the Constitution.

The Role for Congress

Is there a role for Congress? Yes, but adding to the federal criminal code is not it. Instead, Congress should expressly authorize the Attorney General to pursue agreements with state authorities in

which federal law enforcement officials are designated with state law enforcement authority. The states have the power to respond to ordinary “street” crimes. Neither the Constitution nor any federal law expressly prohibits states from sharing their authority with federal agents and Justice Department lawyers. Nonetheless, federal legislation would be valuable. It would powerfully signal congressional and executive approval of deputization as a valuable law enforcement option and would eliminate any claim that a particular federal law enforcement officer violated federal law in making an arrest, executing a search, or questioning a suspect for a purely state law crime.

The Constitution. Not surprisingly, while the Constitution does not expressly authorize federal officials to act under state law, it also does not prohibit them from doing so. The Constitution left that issue up to the new national government and the states. Only one provision in the Constitution—the Article I Incompatibility Clause—advertises to the possibility that a federal official could hold another position simultaneously, and it does not speak to the issue here. The clause provides specifically that:

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his continuation in Office.⁷⁰

The text of the Incompatibility Clause is no bar to the deputization option recommended in this paper. It addresses only interfederal office-holding, not the scenario discussed here, which would involve federal-state power sharing. The clause denies Senators and Representatives the ability to hold any office created “under the Authority of the United States” while they are serving in Congress and imposes a corresponding restraint on members of the executive branch also simultaneously serving in Congress.⁷¹ There is no parallel bar on holding a position in the federal and state governments at the same time.

Allowing a federal official to possess state-delegated authority also does not run afoul of the purposes of the Incompatibility Clause. The Framers

intended for the clause to achieve two goals. On the one hand, by denying members of the Senate and House of Representatives any opportunity to serve simultaneously in a position in the Articles II and III branches, it prevents the President from buying votes in Congress by offering members attractive positions and a double salary elsewhere in government. On the other hand, by keeping officials in the executive and judicial departments from serving as Senators or Representatives, it keeps the President and federal bench from infiltrating Congress with their cronies. Neither purpose is offended by allowing officers in Article I, II, or III to serve at the same time in a position in state government.

Ethical problems could arise if, for example, a federal agent or prosecutor were subject to a conflict of interest or if inconsistent demands pulled him in two different directions. For instance, a state, county, or city might try to force a federal agent to assist in the investigation of so many open state cases that the agent could not properly perform his responsibilities as a federal law enforcement officer.⁷² Or the federal government might want to use a particular offender as an informant on the street rather than see him wind up in prison for a state offense.

Those problems, however, are practical ones, not constitutional ones. The Constitution does not establish a code of ethics for federal officials. That is a task for Congress or the heads of the various federal agencies. The Incompatibility Clause is the only provision in the Constitution that is analogous to a canon of ethics, and it is concerned not with morality but with power—in particular, the risk of compromising Congress’s ability to operate independently of the President. The cross-designation of law enforcement officers proposed in this paper does not remotely resemble the problem that the Incompatibility Clause avoids.

The Federal Code. There are two relevant issues. One involves the substantive authority of federal agents to enforce state law. The Justice Department, through its Office of Legal Counsel, has concluded that federal agents lack inherent state law enforcement power; they must receive that authority from another source.⁷³ The second issue concerns the proper use of federal funds. Federal agency expenditures must be expressly authorized by, or at least fully consistent with, an appropriations bill passed by Congress.⁷⁴ As the Justice Department has explained: “If the agency believes

that [an] expenditure bears a logical relationship to the objectives of the general appropriation, and will make a direct contribution to the agency's mission, the appropriation may be used."⁷⁵ Otherwise, any enforcement of state laws must bear a clear and logical relationship to the agency's purpose, which in almost all instances is to enforce federal law, not state law.

Those conclusions are sensible ones. Congress is limited to the authority granted by the Constitution, and federal law enforcement officers—e.g., federal agents and Justice Department lawyers—are limited to the authority that Congress assigns them.⁷⁶ The Constitution does not grant Congress the power to create state law, so federal law enforcement officers cannot claim to possess an inherent federal right to exercise state law enforcement authority. For example, because Congress cannot make simple common-law crimes—such as murder, rape, robbery, and burglary—federal offenses (unless the victims are federal officials or the crime occurs on federal property),⁷⁷ it cannot authorize federal agents to investigate such violations of state law.

In a few instances, Congress has authorized the Attorney General to provide federal law enforcement assistance to states or localities. The Emergency Law Enforcement Assistance Act authorizes the Attorney General to use federal law enforcement personnel during a state or local "law enforcement emergency."⁷⁸ The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988⁷⁹ would empower the President to use federal law enforcement officers to help a state protect the public during a disaster or emergency.⁸⁰ The Protection of Children from Sexual Predators Act of 1998⁸¹ authorizes the Attorney General and FBI director, upon request by a senior state or local law enforcement officer, to assist in the investigation of "serial killings."⁸²

Those, however, are baby steps. Congress took a giant step toward granting federal agents plenary authority to act under state law in the Anti-Drug Abuse Act of 1988.⁸³ The act added a new Section 564 to Title 28, which provides that U.S. Marshals and Deputy U.S. Marshals may exercise "the same powers which a sheriff of the State may exercise in executing" state law when a marshal or deputy is engaged "in executing the laws of the United States."⁸⁴ That provision does not completely turn federal agents into police officers—a federal agent must be in the process of executing federal law to be

deemed a state sheriff—but it does signal that Congress does not object to that proposition in appropriate circumstances.

It could be said that by tasking federal law enforcement officers with the responsibility to assist states and localities, Congress has impliedly granted federal officers whatever authority is necessary to assist in the enforcement of state law, including the power to make arrests or execute search warrants. In *Maul v. United States*,⁸⁵ Justices Louis Brandeis and Oliver Wendell Holmes agreed that certain law enforcement powers, including the authority to arrest someone for a crime, "inhere" in that office itself and should be assumed to exist unless there is a statutory provision to the contrary.⁸⁶ The argument would be that Congress, the President, and the Attorney General know how and when federal law enforcement officers could be useful and would not involve them in a law enforcement setting if they lacked the express or implied authority to carry out the mission for which they are suited.

But that is merely an argument; it is not a statute. New legislation expressly approving this practice would settle the issue without the need to await the outcome of what could be years of litigation. It would empower the Attorney General from the day it is signed into law to enter into deputization or cross-designation agreements with state officials. Those agreements would eliminate any doubt about whether federal law enforcement officers can make an arrest or execute a search warrant solely for a state law crime. And that would go a long way toward assuaging any concern that reliance on federal agents would create problems when it comes to the prosecution of a case and toward eliminating any claim that those agents were engaged in an unauthorized use of federal funds.

Practical Implementation of This Proposal

It may be necessary for the Attorney General to enter into an agreement with a senior state official, whether the governor, the attorney general, or the chief of the state police. Municipalities are merely corporations created by the state, and officers within municipal police departments may not possess statewide law enforcement authority.

One option would be to use the model created by the Anti-Drug Abuse Act of 1988, but with a slight twist. To eliminate all uncertainty, legislation could

vest U.S. officials with the power to receive from a state the same authority possessed by a sheriff, state police officer, or state prosecutor in any state willing to deputize federal officials. At common law, the sheriff, then known as the shire reeve, was the king's agent, responsible for handling "all the king's business" and maintaining "the king's peace."⁸⁷ Different states may assign their sheriffs different law enforcement authority, but a number of them grant their sheriffs and deputies law enforcement authority throughout the state. The alternative of making federal officials state police officers or prosecutors should eliminate any doubt on this score. In sum, an agreement for identified federal agents to receive the same delegated statewide authority would eliminate any question about their authorization.

Conclusion

The use of federal-state task forces is a widespread practice in contemporary law enforcement and offers promise as an alternative to the passage of new federal criminal legislation if the federal government is to tackle violent crimes as one of its principal missions. The authority for such cooperation, including cross-designation of federal authorities to investigate and prosecute alleged violations of state law (and vice versa), exists. Nonetheless, Congress could eliminate any doubt on that score by expressly authorizing federal investigators and prosecutors to be cross-designated as state law enforcement officials.

Federal legislation encouraging deputization would materially assist federal, state, and local law enforcement efforts both by putting the weight of congressional approval behind the practice and by resolving certain questions that would arise when federal agents pursue someone who has violated only state law. An act of Congress would eliminate any risk that authorization could be challenged in a criminal prosecution or that a federal official could be said to have spent federal funds for an unauthorized purpose. Before reflexively adding to the federal penal code and exacerbating the existing overfederalization problem, Congress should expressly allow federal authorities to be deputized to act under state law in order to bring offenders to justice in appropriate cases in state courts.

—*Paul J. Larkin, Jr.*, is Senior Legal Research Fellow in the Edwin Meese III Center for Legal and Judicial Studies, of the Institute for Constitutional Government, at The Heritage Foundation. *Claudia Rychlik*, a 2017 Summer Intern for the Meese Center, provided invaluable research assistance.

Endnotes

1. See, e.g., Paul J. Larkin, Jr., *The Lost Due Process Doctrines*, 66 CATHOLIC U. L. REV. 293, 328–30 (2016) (so describing the origin of the English common law of crimes).
2. See JOHN F. PFAFF, LOCKED IN: THE TRUE CAUSES OF MASS INCARCERATION AND HOW TO ACHIEVE REAL REFORM 33 (2017) (noting that approximately 87 percent of all American prisoners are confined in state facilities).
3. See U.S. CONST. amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”); *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905) (noting that each state possesses “the police power—a power which the State did not surrender when becoming a member of the Union under the Constitution,” which includes “such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety”).
4. See, e.g., U.S. CONST. art. I, § 9, cls. 5 (prohibiting the states from imposing a tax or duty on exported goods) & 6 (same, from granting a preference to particular ports).
5. See WAYNE R. LAFAVE, CRIMINAL LAW § 4.4, at 223–24 (5th ed. 2010); Paul J. Larkin, Jr., *The Dynamic Incorporation of Foreign Law and the Constitutional Regulation of Federal Lawmaking*, 38 HARV. J.L. & PUB. POL’Y 337, 342 & n.19 (2015) (discussing the territorial basis for criminal jurisdiction).
6. See, e.g., *Bond v. United States*, 134 S. Ct. 2077, 2086 (2014) (“In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder. The States have broad authority to enact legislation for the public good—what we have often called a police power.... The Federal Government, by contrast, has no such authority and can exercise only the powers granted to it, including the power to make all Laws which shall be necessary and proper for carrying into Execution the enumerated powers.... For nearly two centuries it has been clear that, lacking a police power, Congress cannot punish felonies generally.... A criminal act committed wholly within a State cannot be made an offence against the United States, unless it have some relation to the execution of a power of Congress, or to some matter within the jurisdiction of the United States.”) (citations and internal punctuation omitted).
7. See, e.g., U.S. CONST. art. I, § 8, cls. 1–17 (identifying the powers of Congress); *id.* § 8, cl. 18 (“The Congress shall have Power...To make all Laws which shall be necessary and proper for carrying into Execution the foregoing powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department of Officer thereof.”); *Morrison v. United States*, 529 U.S. 598, 607 (2000) (holding unconstitutional, as beyond Congress’s Commerce Clause power, a statute making rape a federal offense); *United States v. Lopez*, 514 U.S. 549, 552, 566 (1995) (same, a federal statute making it a crime to possess a firearm in the vicinity of a school).
8. See, e.g., 18 U.S.C. § 472 (2012) (issuing counterfeit U.S. currency); *id.* § 794 (supplying defense information to the advantage of a foreign nation); *id.* § 1114 (murdering a federal official); *id.* § 2381 (treason).
9. See the Anti-Car Theft Act of 1992, Pub. L. No. 102–519, title I, subtitle A, § 101(a), 106 Stat. 3384 (1992) (codified as amended at 18 U.S.C. § 2119 (2006)).
10. See 18 U.S.C. § 1201 (2012) (kidnapping); *id.* § 2312 (interstate transportation of a stolen motor vehicle).
11. See WAYNE R. LAFAVE, *supra* note 5, § 18.1, at 933–47, § 19.1–19.8, at 966–1030.
12. Pub. L. No. 107–204, 116 Stat. 745 (2002).
13. See, e.g., 18 U.S.C. § 1341 (2012) (mail fraud); *id.* § 1343 (wire fraud); STUART P. GREEN, LYING, CHEATING, AND STEALING: A MORAL THEORY OF WHITE-COLLAR CRIME 152 & n.23 (2006); Ellen S. Podgor, *Criminal Fraud*, 48 Am. U. L. Rev. 729, 730–31, 740 (1999).
14. See, e.g., LAFAVE, *supra* note 5, §§ 19.1–19.5, at 966–95, § 19.7, at 1006–24.
15. See the Back the Blue Act of 2017, S. 1134, 115th Cong. (2017).
16. See LAFAVE, *supra* note 5, §§ 14.1–14.7, at 764–816 (murder).
17. *Roberts v. Louisiana*, 431 U.S. 633, 642 (1977) (Rehnquist, J., dissenting).
18. See FBI NAT’L PRESS OFFICE, FBI RELEASES 2016 PRELIMINARY STATISTICS FOR LAW ENFORCEMENT OFFICERS KILLED IN THE LINE OF DUTY (May 15, 2017), <https://www.fbi.gov/news/pressrel/press-releases/fbi-releases-2016-preliminary-statistics-for-law-enforcement-officers-killed-in-the-line-of-duty>; Christopher Ingraham, *Ambush Killings of Police Officers Has Hit a 10-Year High*, WASH. POST, Nov. 21, 2016, https://www.washingtonpost.com/news/wonk/wp/2016/11/21/ambush-killings-of-police-officers-has-hit-a-10-year-high/?utm_term=.5f3fafc6d9e8; Christopher Ingraham, *Fatal Shootings of Police Officers Are up More Than 50 Percent from Last Year*, WASH. POST, Nov. 2, 2016, https://www.washingtonpost.com/news/wonk/wp/2016/11/02/fatal-shootings-of-police-officers-are-up-more-than-50-percent-from-last-year/?tid=a_inl&utm_term=.e243c2376866 (hereafter Ingraham, *Fatal Shootings*). For the statistics for 2002–2015, see FBI, UNIFORM CRIME REPORTS, ABOUT LAW ENFORCEMENT OFFICERS KILLED AND ASSAULTED, 2015 (Oct. 2016), <https://ucr.fbi.gov/leoka/2015> (hereafter LEOKA).
19. *Id.*, Tbl. 23, https://ucr.fbi.gov/leoka/2015/tables/table_23_leos_fk_circumstance_at_scene_of_incident_2006-2015.xls.
20. See ROBERT DALEY, TARGET BLUE: AN INSIDER’S VIEW OF THE NYPD (1974).
21. See, e.g., HEATHER MACDONALD, THE WAR ON COPS: HOW THE NEW ATTACK ON LAW AND ORDER MAKES EVERYONE LESS SAFE (2016) (hereafter MACDONALD, WAR ON COPS); Sheriff David Clarke, *This Is a War, and Black Lives Matter Is the Enemy*, THE HILL, July 18, 2016, <http://thehill.com/blogs/pundits-blog/civil-rights/sheriff-david%20clarke-black-lives-matter-baton-rouge-civil-war>; see also, e.g., HEATHER MAC DONALD, ARE COPS RACIST? (2010).

22. See, e.g., Sewell Chan, *The Abner Louima Case, 10 Years Later*, N.Y. TIMES, Aug. 9, 2007, <https://cityroom.blogs.nytimes.com/2007/08/09/the-abner-louima-case-10-years-later/comment-page-1/>; John Marzulli, *The Abner Louima Case: 10 Years Later*, DAILY NEWS, Aug. 10, 2007, <http://www.nydailynews.com/news/crime/abner-louima-case-10-years-article-1.237985>; Editorial, *An End to the Louima Case*, N.Y. TIMES, Sept. 24, 2002, http://www.nytimes.com/2002/09/24/opinion/an-end-to-the-louima-case.html?rref=collection%2Ftimestopic%2FLouima%2C%20Abner&action=click&contentCollection=timestopics®ion=stream&module=stream_unit&version=latest&contentPlacement=14&pgtype=collection.
23. See, e.g., DEP'T OF JUSTICE REPORT REGARDING THE CRIMINAL INVESTIGATION INTO THE SHOOTING DEATH OF MICHAEL BROWN BY FERGUSON, MISSOURI, POLICE OFFICER DARREN WILSON (Mar. 4, 2015), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/doj_report_on_shooting_of_michael_brown_1.pdf; Jack Healy et al., *Ferguson Report Puts "Hands Up" to Reality Test*, N.Y. TIMES, Mar. 5, 2015, https://www.nytimes.com/2015/03/06/us/in-ferguson-both-sides-see-vindication-in-justice-department-reports.html?_r=0; Sari Horwitz, *Justice Department Clears Ferguson Police Officer in Civil Rights Probe*, WASH. POST, Mar. 4, 2015, https://www.washingtonpost.com/world/national-security/justice-dept-review-finds-pattern-of-racial-bias-among-ferguson-police/2015/03/03/27535390-c1c7-11e4-9271-610273846239_story.html?tid=a_inl&utm_term=.d48facbf699a.
24. See John G. Malcolm, Book Review of MACDONALD, *WAR ON COPS*, 17 FED'T SOC. REV. ISSUE 3, 68, 68-69 (2016) ("The public should be, but too often is not, horrified by spectacles such as Black Lives Matter (BLM) activists in St. Paul, Minnesota marching in the streets yelling, 'Pigs in a blanket, fry 'em like bacon'; or BLM protestors in New York City chanting, 'What do we want? Dead Cops! When do we want it? Now!'; or a message posted by the African American Defense League urging its followers to 'hold a barbeque' and 'sprinkle Pigs Blood!'; or the Facebook posting by a man in Detroit following the slaying of five Dallas police officers which read, 'All lives can't matter until black lives matter. Kill all white cops.' One would think that, in any civilized society, such sentiments would be universally condemned as barbaric. Instead, such deplorable rhetoric is met with sympathy and tolerance by some on the Left. One can acknowledge, as former Speaker of the House Newt Gingrich did recently, that '[i]f you are a normal white American, the truth is you don't understand being black in America and you instinctively underestimate the level of discrimination and the level of additional risk.' But one should also acknowledge, as Gingrich did, that, from the perspective of the police, '[e]very time you walk up to a car you could be killed. Every time you go into a building where there's a robbery you can be killed.' The hateful rhetoric quoted above only serves to incite violence, and, to put it mildly, generates more heat than light.") (footnotes omitted).
25. See Ingraham, *Fatal Shootings*, *supra* note 18 ("There have been two high-profile instances this year in which multiple police officers were targeted and killed by black male suspects with a history of antipathy toward law enforcement. In Dallas in July, Micah Johnson shot and killed five police officers and wounded nine others, telling authorities he 'wanted to kill white people, especially white officers.' [¶] Later that month in Baton Rouge, Gavin Long killed three police officers and wounded three others after leaving behind a long trail on social media arguing that violence was the solution to the oppression of black Americans.").
26. See Paul J. Larkin, Jr., *Public Choice Theory and Overcriminalization*, 36 HARV. J.L. & PUB. POL'Y 715, 735-37 (2013).
27. The Heritage Foundation has previously urged the federal government to pursue such undertakings. See Paul J. Larkin, Jr. & Daniel J. Dew, *Making Crime Fighting a Team Effort: Cross-Designating Federal Law Enforcement Officers as State Officers*, HERITAGE FOUND. LEGAL MEMORANDUM No. 100 (Aug. 14, 2013), http://thf_media.s3.amazonaws.com/2013/pdf/lm100.pdf.
28. See OFFICE OF THE UNITED STATES ATTORNEYS, U.S. ATTORNEYS MANUAL, 9-2186, <https://www.justice.gov/usam/criminal-resource-manual-2186-memorandum-understanding-investigatory-authority-and-procedures> (last visited June 26, 2017).
29. See OFFICE OF THE UNITED STATES ATTORNEYS, U.S. ATTORNEYS MANUAL, 9-669, <https://www.justice.gov/usam/criminal-resource-manual-669-prosecution-military-personnel> (last visited June 26, 2017).
30. U.S. DEPARTMENT OF JUSTICE, *PRIVACY IMPACT ASSESSMENT FOR THE ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCE FUSION CENTER AND INTERNATIONAL ORGANIZED CRIME INTELLIGENCE AND OPERATIONS CENTER SYSTEM 2* (June 1, 2009), available at <http://www.justice.gov/opcl/crime-taskforce.pdf> (last visited Mar. 25, 2013).
31. See U.S. Department of Justice, *Organized Crime Drug Enforcement Task Forces*, available at <http://www.justice.gov/criminal/taskforces/ocdetf.html> (last visited Mar. 25, 2013).
32. See U.S. DEPARTMENT OF HOMELAND SECURITY, *NATIONAL INFRASTRUCTURE PROTECTION PLAN: PARTNERING TO ENHANCE PROTECTION AND RESILIENCY* (2009), available at http://www.dhs.gov/xlibrary/assets/NIPP_Plan.pdf (last visited Mar. 22, 2013).
33. *Id.* at iii. DHS has the responsibility to support "the formation and development of regional partnerships, including promoting new partnerships," and to enable "information sharing." *Id.* at 17.
34. *Id.* at 22.
35. See Federal Bureau of Investigation, *Violent Gang Task Forces*, <https://www.fbi.gov/investigate/violent-crime/gangs/violent-gang-task-forces> (last visited May 24, 2017).
36. *Id.*
37. Grant D. Ashley, Ass't Director, Criminal Investigative Division, FBI, *Testimony Before the Senate Judiciary Committee*, Federal Bureau of Investigation (Sept. 17, 2003), <https://archives.fbi.gov/archives/news/testimony/the-safe-streets-violent-crimes-initiative>.
38. See U.S. Dep't of Justice, *Disaster Fraud Task Force*, <https://www.justice.gov/criminal-disasters> (last visited May 24, 2017).
39. Eric Lipton, *"Breathtaking" Waste and Fraud in Hurricane Aid*, N.Y. TIMES, June 27, 2006, <http://www.nytimes.com/2006/06/27/washington/27katrina.html>.

40. *Id.*
41. See U.S. Dep't of Justice, Disaster Fraud Task Force, <https://www.justice.gov/criminal-disasters> (last visited May 24, 2017).
42. 108 Pub. L. No. 458, 118 Stat. 3868 (2004).
43. Michael C. Mines, Deputy Ass't Director, Directorate of Intelligence, Federal Bureau of Investigation, *Statement Before the House Committee on Homeland Security, Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment*, Federal Bureau of Investigation (Sept. 27, 2007), <https://archives.fbi.gov/archives/news/testimony/the-fbi-and-fusion-centers> (last visited June 5, 2017).
44. Mary Beth Sheridan and Spencer S. Hsu, *Localities Operate Intelligence Centers to Pool Terror Data*, WASH. POST, Dec. 31, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/12/30/AR2006123000238.html> (last visited June 5, 2017).
45. *Id.*
46. Jerry Markon, *11 in San Francisco Charged with Trafficking in Knockoffs Worth Millions*, WASH. POST, Aug. 3, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/03/AR2010080304739.html> (last visited June 5, 2017).
47. *Id.*
48. See U.S. Dep't of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, National Explosives Task Force, <https://www.atf.gov/explosives/national-explosives-task-force> (last visited June 5, 2017).
49. See U.S. GOV'T ACCOUNTABILITY OFFICE, HOMELAND SECURITY/LAW ENFORCEMENT: EXPLOSIVES INVESTIGATIONS (Mar. 6, 2013), http://www.gao.gov/duplication/action_tracker/Explosives_Investigations/action1 (last visited June 5, 2017).
50. *Id.*
51. See Dep't of Homeland Security, Customs Cross-Designation, <http://www.ice.gov/customs-cross-designation> (last visited June 5, 2017).
52. See 19 U.S.C. § 1401(i) (2012).
53. Customs Cross-Designation, *supra* note 51.
54. See Specialized Task Forces, Orange County Sheriff's Department, <http://www.ocsd.org/gov/sheriff/divisions/fieldops/investigations/sib/stf/default.asp> (last visited May 24, 2017).
55. See U.S. Dep't of Justice, U.S. Attorney's Office, Western District of Pennsylvania Task Forces, <https://www.justice.gov/usao-wdpa/task-forces#child> (last visited May 25, 2017).
56. See Internet Crimes Against Children Task Force, <https://www.icactaskforce.org/> (last visited June 5, 2017).
57. *Alabama, Georgia Task Forces Honored for Child Porn Investigation*, GADSDEN TIMES, May 24, 2017, <http://www.gadsdentimes.com/news/20170524/alabama-georgia-task-forces-honored-for-child-porn-investigation> (last visited June 5, 2017).
58. See Northern Virginia Regional Gang Task Force Resource Website, <http://www.preventgangsnova.org/index.html> (last visited June 5, 2017).
59. Jerry Markon, *Va. Task Force, Agencies Unite to Take on Gangs*, WASH. POST, June 6, 2004, <http://www.washingtonpost.com/wp-dyn/articles/A8540-2004Jun2.html> (last visited June 5, 2017).
60. *Id.*
61. The President appoints the Attorney General, U.S. Attorneys, the Director of the FBI, and other senior federal law enforcement officials. Those officials, in turn, appoint subordinate federal officers. See, e.g., 28 U.S.C. §§ 503, 532-533, 541-542 (2006).
62. See 28 U.S.C. §§ 503, 506, 509-519 (2006).
63. 5 U.S.C. §§ 3372-73 (2012).
64. *Id.* § 3372(a)(1) (2006); see also *id.* § 3373.
65. The Attorney General has assigned Justice Department lawyers to act as local prosecutors. See PETER F. NERONHA, UNITED STATES ATTORNEY, U.S. DEP'T OF JUSTICE, *State, Federal Prosecutors Cross-Designated to Prosecute Drugs, Firearms and Neighborhood Crimes*, NEWS RELEASE (Mar. 9, 2010) ("U.S. Attorney Peter F. Neronha and R.I. Attorney General Patrick C. Lynch today jointly announced the cross-designation of several senior prosecutors to bolster the prosecution of neighborhood crimes, particularly crimes involving drugs and firearms. * * * Cross-designation permits prosecutors to cross-over and prosecute cases in either a state or federal court. Targeted cases are jointly reviewed to determine appropriate charges, appropriate jurisdiction and in which court appropriate penalties are likely to be realized. Senior prosecutors experienced in firearms, drugs, organized crime and neighborhood prosecution have been cross-designated.").
66. See 28 U.S.C. § 543 (2012); Victoria L. Killion, Comment, *No Points for the Assist: A Closer Look at the Role of Special Assistant United States Attorneys in the Cooperative Model of Federal Prosecutions*, 82 TEMP. L. REV. 789 (2009).
67. See, e.g., *Jones v. United States*, 529 U.S. 848 (2000) (the arson of an owner-occupied dwelling not used for commercial purposes does not involve property used in interstate commerce or in an activity affecting interstate commerce and therefore cannot be prosecuted under 18 U.S.C. § 844(i) (2006)).
68. See, e.g., *Morrison v. United States*, 529 U.S. 598 (2000) (holding unconstitutional, as beyond Congress's Commerce Clause power, a statute making rape a federal offense); *United States v. Lopez*, 514 U.S. 549 (1995) (same, a federal statute making it a crime to possess a firearm in the vicinity of a school).

69. See, e.g., *South Dakota v. Dole*, 483 U.S. 203 (1987) (ruling that under its Article I Spending Clause power, Congress can condition the receipt of a portion of federal highway funds on the adoption of a speed limit identified by federal law).
70. U.S. CONST. art. I, § 6, cl. 2.
71. Of course, a person could resign from Congress or the Executive branch to accept or stand for election to a position in the other branch, as members of both parties have done.
72. In the 19th century, the Supreme Court noted that problem in the context of the opposite problem—namely, the federal government’s attempt to impose a burden on state officers. See *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 674–78 (1978) (discussing 19th century cases). The problem is the same here, just in the opposite direction.
73. See U.S. DEP’T OF JUSTICE, OFFICE OF LEGAL COUNSEL, *State and Local Deputation of Federal Law Enforcement Officers During Stafford Act Deployments* 4–5 (Mar. 5, 2012) (concluding that federal law enforcement officers have only the arrest power granted them by federal law; also citing earlier OLC opinions to that effect) (hereafter OLC STAFFORD ACT MEMO).
74. See U.S. CONST. Art. I, § 9, cl. 7 (“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”); 31 U.S.C. § 1301(a) (2012) (“Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.”).
75. OLC STAFFORD ACT MEMO 8 (internal quotations omitted).
76. See, e.g., *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (“It is axiomatic that an administrative agency’s power to promulgate regulations is limited to the authority delegated by Congress.”); *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986) (“an agency literally has no power to act...unless and until Congress confers power upon it”).
77. See *supra* notes 6–7.
78. 42 U.S.C. § 10501 (2012) provides as follows: “(a) State as applicant ¶ In the event that a law enforcement emergency exists throughout a State or a part of a State, a State (on behalf of itself or another appropriate unit of government) may submit an application under this section for Federal law enforcement assistance. ¶ (b) Execution of application; period for action of Attorney General on application ¶ An application for assistance under this section shall be submitted in writing by the chief executive officer of a State to the Attorney General, in a form prescribed by rules issued by the Attorney General. The Attorney General shall, after consultation with the Assistant Attorney General for the Office of Justice Programs and appropriate members of the Federal law enforcement community, approve or disapprove such application not later than 10 days after receiving such application. ¶ (c) Criteria ¶ Federal law enforcement assistance may be provided if such assistance is necessary to provide an adequate response to a law enforcement emergency. In determining whether to approve or disapprove an application for assistance under this section, the Attorney General shall consider—(1) the nature and extent of such emergency throughout a State or in any part of a State, (2) the situation or extraordinary circumstances which produced such emergency, (3) the availability of State and local criminal justice resources to resolve the problem, (4) the cost associated with the increased Federal presence, (5) the need to avoid unnecessary Federal involvement and intervention in matters primarily of State and local concern, and (6) any assistance which the State or other appropriate unit of government has received, or could receive, under any provision of title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. § 3701 et seq.].
79. Pub. L. No. 100-707, 102 Stat. 4689 (1988).
80. See 42 U.S.C. § 5192(a) (2012) (“In any emergency, the President may—(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe, including precautionary evacuations[.]”); *id.* § 5201 (“The President may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this chapter, and he may exercise any power or authority conferred on him by any section of this chapter either directly or through such Federal agency or agencies as he may designate.”); *id.* at § 5195 (“The purpose of this subchapter is to provide a system of emergency preparedness for the protection of life and property in the United States from hazards and to vest responsibility for emergency preparedness jointly in the Federal Government and the States and their political subdivisions. The Congress recognizes that the organizational structure established jointly by the Federal Government and the States and their political subdivisions for emergency preparedness purposes can be effectively utilized to provide relief and assistance to people in areas of the United States struck by a hazard. The Federal Government shall provide necessary direction, coordination, and guidance, and shall provide necessary assistance, as authorized in this subchapter so that a comprehensive emergency preparedness system exists for all hazards.”).
81. Pub. L. No. 105-314, 111 Stat. 1294 (1998) (codified at 28 U.S.C. § 540B (2012)).
82. See 28 U.S.C. 540B (2012) (“(a) In general.—The Attorney General and the Director of the Federal Bureau of Investigation may investigate serial killings in violation of the laws of a State or political subdivision, if such investigation is requested by the head of a law enforcement agency with investigative or prosecutorial jurisdiction over the offense. ¶ (b) Definitions.—In this section: ¶ (1) Killing.—The term ‘killing’ means conduct that would constitute an offense under section 1111 of Title 18, if Federal jurisdiction existed. ¶ (2) Serial killings.—The term ‘serial killings’ means a series of three or more killings, not less than one of which was committed within the United States, having common characteristics such as to suggest the reasonable possibility that the crimes were committed by the same actor or actors. ¶ (3) State.—The term ‘State’ means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.”).
83. Pub. L. No. 100-690, 102 Stat. 4181 (1988) (codified at various sections of 42 U.S.C. (2012)).

84. See 28 U.S.C. § 564 (2012) (“United States marshals, deputy marshals and such other officials of the Service as may be designated by the Director, in executing the laws of the United States within a State, may exercise the same powers which a sheriff of the State may exercise in executing the laws thereof.”).
85. 274 U.S. 501 (1927).
86. *Id.* at 744 n.32 (“The power of the ordinary peace officers to arrest and to seize does not seem to have been conferred originally by statute. As to the sheriff, statutes dealt with the method of appointment, tenure of office, and qualifications, but not with the extent of his powers... Similarly as to constables and watchmen.... These powers, including of course the power to arrest, are in this country thought to inhere in these offices, except in so far as they may be limited by statute.”) (Brandeis & Holmes, JJ., concurring) (citations omitted).
87. 1 WILLIAM BLACKSTONE, COMMENTARIES *328, 332; *McMillian v. Monroe County*, 520 U.S. 781, 793 (1997).