

ACLU of Virginia

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[Police Chief]
[Address]

Re: Attorney General's Opinion on Law Enforcement Investigations into

without making an inquiry into the nationality of the person who is in custody.” That may be the case, but it is irrelevant. An officer can easily inquire into the *nationality* of a detainee (i.e., what country he is a citizen of) without questioning his *immigration* status (what kind of visa he has, whether he has a green card, etc.).

The Attorney General also does not address – or even acknowledge – the fact that the United States District Court in Arizona recently enjoined the portion of the Arizona’s law that requires officers to inquire about immigration status when they have reasonable suspicion that a lawfully detained person might have an unlawful status. The concerns raised by the court in that case – *United States v. Brewer*, No. CV 10-1413-PHX-SRB (D. Ariz. July 28, 2010) – apply equally here. As the court noted, “[c]ertain categories of [lawfully present] people . . . will not have readily available documentation of their authorization to remain in the United States, thus potentially subjecting them to arrest or detention, in addition to the burden of ‘the possibility of inquisitorial practices and police surveillance.’” Such burdens on lawful residents may undermine “the important federal responsibility to maintain international relationships, for the protection of American citizens abroad as well as to ensure uniform national foreign policy,” in violation of the Constitution’s Supremacy Clause.

Additionally, the Attorney General’s opinion provides no guidelines as to when questions about immigration status is justified. Because most police officers have not been trained to enforce immigration law, allowing them to question individuals about immigration status is an invitation for racial profiling and potential Equal Protection violations. It will also have an adverse effect on public safety as immigrants will be less likely to feel safe cooperating with law enforcement in reporting and responding to questions about crimes.

The Attorney General relies on the Supreme Court case *Muehler v. Mena*, 544 U.S. 93 (2005) for the proposition that “so long as the questioning does not prolong a lawful detention, police may ask questions about immigration status.” But that case only holds that such questioning is not a Fourth Amendment violation. It did not address the Supremacy Clause and Equal Protection problems inherent in such inquiries.

For these reasons, law enforcement agencies should not accept the Attorney General’s invitation to investigate immigration status.

Thank you for your attention to this matter. Should you have any questions, or wish to discuss this matter further, please do not hesitate to call me at (804) 644-8080.

Sincerely,

Rebecca K. Glenberg
Legal Director