

August 3, 2010

Governor Robert McDonnell
Office of the Governor
P.O. Box 1475
Richmond, VA 23218

Dear Governor McDonnell:

I write to ask that you immediately reject the request by Del. Robert G. Marshall of Prince William County to authorize law enforcement agents to “conduct investigations into the immigration status of persons...stopped or arrested by law enforcement.” As the recent decision in *United States v. Arizona* makes clear, such an action would violate federal law. My office will challenge in court any effort by you, the State Legislature, or any law enforcement agency in the State to promulgate or engage in such a policy and seek damages for those subjected to such an investigation.

I have no doubt but that you would acknowledge the string of Supreme Court decisions holding that the power to regulate immigration is exclusively a federal power. Though the federal government can authorize state and local governments to take on certain limited tasks with respect to the enforcement of civil immigration law, e.g. pursuant to Sec. 287(g), no such authorization from the federal government is being sought here. Without such authorization, such investigations would be unlawful under federal law.

Just last week in the well-publicized case of *United States v. Arizona*, the court held that the section of S.B. 1070 mandating inquiries into status of those stopped, detained, or arrested, if otherwise practical, was federally preempted and thus unconstitutional. Specifically, the court held that such a policy would place an undue burden on lawfully-present aliens “because their liberty will be restricted while their status is checked.” Order, p. 16. The court reasoned

Finding a state law related to alien registration to be preempted, the Supreme Court in *Hines* observed that Congress “manifested a purpose to [regulate immigration] in such a way as to protect the personal liberties of law-abiding aliens through one uniform national . . . system[] and to leave them free from the possibility of inquisitorial practices and police surveillance.”

Order, p. 15. The court concluded that such inquiries contravened Congress' purposes and were thus unlawful. For the same reason, Del. Marshall's requested directive would also violate federal law.

Similarly, for the reasons you noted in your opinion as Attorney General on this issue, State and local police lack authority under Virginia law to enforce federal civil immigration law. Your opinion stated that under Va. Code Ann. § 15.2-1704(A), "local law-enforcement officers are vested with the power to prevent and detect crime, apprehend criminals, safeguard life and property, preserve peace, and enforce 'state and local laws, regulations and ordinances.'" Your opinion then concluded that "[i]n limiting the authority of local law-enforcement officers to the enforcement of state and local laws, regulations, and ordinances, § 15.2-1704(A) ostensibly prohibits such officers from enforcing federal laws and regulations." (p.6) (emphasis added)

Finally, allowing the police to ask questions about a matter they have no jurisdiction serves no purpose apart from targeting those who appear to be immigrants. It would undoubtedly result in massive racial profiling.

I thank you for your attention to this matter and look forward to your prompt reply.

Sincerely,



Cesar A. Perales
President and General Counsel
LatinoJustice PRLDEF

Cc: Eric Holder, Attorney General of the United States