



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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Attorney General

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-sent by fax-

Dear Friends:

I contact you today to address a recent action of my office regarding the law enforcement community. As you know, law enforcement and the safety of Virginians is one of my top priorities as attorney general.

As you may be aware, on July 30th of this year I issued an opinion regarding police authority to inquire into the immigration status of any person they have stopped or arrested. To many of you, this is not a new subject or was not something that was in question in your departments' policies. A few outside groups are attempting to make this a political issue, rather than allowing law enforcement to properly address the public as a safety matter.

On July 30th an opinion arose from a legislator's formal inquiry to my office. The questions were (1) whether Virginia officers have the legal authority to perform background checks into the legal presence status of persons in vehicles stopped by police (or stopped in similar circumstances as persons being questioned in Arizona under its new immigration law); and (2) if Virginia law enforcement officers do have this authority under current Virginia statutes, would those statutes also apply to zoning officers in counties and cities, as well as state park administrators.

Our response to the inquiry is similar to an existing attorney general's opinion from 2007, and does not change existing law nor create any new law. My opinion issued July 30th concludes the following:

- (a) Police can arrest people for criminal violations of our immigration laws but, because the law is not clear, it is not advisable to arrest for civil infractions.*
- (b) We noted that police can make inquiries as to immigration status when they have reasonable articulable suspicion to believe a crime has been committed; or when probable cause is present, police can inquire about that criminal violation – whether the crime is a violation of immigration laws or some other crime.*

(c) *We said that when police have done a lawful traffic stop, they can ask about immigration status so long as such questioning does not unreasonably prolong the length of the stop. Such authority is based directly on United States Supreme Court precedent.*

(d) *We also noted that when persons are in more prolonged state custody (a traffic stop would not qualify), the Vienna Convention on Consular Relations requires an inquiry into citizenship.*

(e) *Finally, we noted that conservation officers do have the authority to investigate crimes (including – where appropriate – immigration violations), but zoning officers do not.*

The opinion of my office does not usurp federal authority, because Congress created a cooperative federal-state immigration enforcement process. Some aspects of immigration law are reserved to federal authorities, while some are joint federal-state efforts. With respect to crimes, Virginia routinely cooperates with the federal government on matters of immigration enforcement.

It is the goal of my office to give law enforcement the tools they need to be effective. If my office can be of assistance with this or any other matter, please do not hesitate to contact me. I appreciate your dedication and service to keeping Virginia safe, and I look forward to working with you in the future.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli
Attorney General of Virginia