

Virginia follows lead of Arizona immigration law, carefully

Police officers can check immigration status during criminal investigations, Virginia's attorney general says. The Arizona immigration law has encouraged other states to review their measures.



Protesters gather July 29 in Phoenix to rally against Arizona's new immigration law, SB1070. Police officers can check immigration status during criminal investigations, Virginia's Attorney General Ken Cuccinelli says.

(Matt York/AP)

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Atlanta —

Federal Judge Susan Bolton deemed that Arizona's immigration law went too far in requiring police officers to check immigration papers for people they suspected of being in the United States illegally.

But that hasn't stopped states like Virginia from searching for a way for police officers to become de facto immigration agents to stem public discontent over America's illegal-immigration problem.

On Monday, Virginia Attorney General Ken Cuccinelli issued a legal opinion that authorizes Virginia police officers to check the immigration status of anyone stopped by police for any reason. Previously, such rights were only accorded to officers after an arrest.

IN PICTURES: Arizona immigration law protests

Virginia is one of nearly 20 states searching for a way to deal with the perception that the Obama White House, despite spending more than any other administration on the border, is failing to protect Americans from negative impacts of illegal immigration.

But such gambits also threaten to take the country down an uncertain path, where the discretion of local police officers could determine the fate of illegal immigrants and undermine federal authority to allocate limited law-enforcement resources.

"The bigger question posed by Virginia is what role, if any, can or should local law enforcement [take] with regard to immigration enforcement, and that issue is entirely unsettled," says Rick Su, an immigration-law expert at the University at Buffalo Law School in New York.

Mr. Cuccinelli, a Republican who has become a national point man for states questioning federal supremacy on issues like health-care reform, parsed state law at the request of state Delegate Robert Marshall, a Prince William County Republican. Mr. Marshall wanted more clarity on whether state and local police could inquire about someone's legal status during a routine stop or investigation.

"Our opinion basically said that Virginia law enforcement has the authority to make such inquiries so long as they don't extend the duration of a stop by any significant degree," Cuccinelli said at a news conference Monday. "That's consistent with Supreme Court authority."

Cuccinelli added that it's "inadvisable" for local police to address civil issues like visa overstays, saying that it's "decidedly unclear" to what extent police can inquire about legal status when there is a civil offense.

Such careful parsing of relatively untrampled constitutional grounds promises to force what became in Arizona signs of a deepening divide between states and the Obama administration on immigration matters.

The Obama administration, in fighting the Arizona law on the grounds of federal preemption, has in some respects reversed a Department of Justice memorandum issued during the Bush administration that said state law enforcement has "inherent power" to enforce immigration laws. The perception among some Arizona sheriffs is that the Obama administration is siding with civil rights and social-justice groups against state residents who are bearing the brunt of problems stemming from the illegal immigrants being in the country.

"The bigger picture is while what's going on in Arizona is critically important, what comes out of this and happens here will affect our entire nation in terms of our ability to protect our citizenry from a very serious homeland security threat," Sheriff Larry Dever of Cochise County, Ariz., recently told the Cybercast News Service, a division of the conservative Media Research Center.

However, Washington University law professor Stephen Legomsky disagrees that the Obama administration has somehow sided with lawbreakers. Instead, he says, the issue is about the extent to which going after otherwise law-abiding illegals would undermine efforts to apprehend undocumented residents who pose serious criminal or national-security risks.

"What I hear the federal government saying is that we have a law, the 287(g) provision, that allows for [local involvement] in immigration," Mr. Legomsky says. "But ... we can't have 50 states and thousands of local municipalities all deciding what our enforcement priority is going to be."

Meanwhile, parts of the Arizona law untouched by Judge Bolton put more pressure on local law enforcement to uphold federal immigration laws. Bolton left alone a provision in SB 1070 that allows residents to sue municipalities that don't enforce immigration laws to the same extent as, for example, burglary or murder measures.

That provision, Mr. Su says, could impact "sanctuary" policies in cities like Mesa, Ariz., where police chiefs order officers to stand down from asking about immigration status in order to not alienate a sizable portion of the population.

"On one side of this is the message to police officers that, 'If you want to be hard-core, I encourage you to be hard-core,' " Su says. "But cities also don't want police officers to abuse that discretion, which is why cities have been concerned about clearly delineating all of this."

It's also far from clear whether local police departments are even interested in the work. The general trend, says Legomsky, is that elected law officers like sheriffs tend to favor local immigration enforcement while appointed ones, such as most police chiefs, are concerned that such efforts will frighten potential victims and witnesses necessary for police to keep communities safe.

Moreover, Legomsky says, Cuccinelli's four-page opinion, though carefully worded, fails to resolve two central issues facing local law enforcement when dealing with a suspected illegal immigrant. For one, Legomsky says, it's not clear how officers would have reasonable suspicion about whether a person entered the country without inspection (a criminal violation), or about an overstayed a visa (a civil complaint). (About 40 percent of illegals in the US today are visa overstayers.)

In his opinion, Cuccinelli also leaves uncertain what right an officer has to demand to see someone's papers as they "detain and briefly question" a suspect, Legomsky says. "So if a person simply says, 'Yes, I'm here legally, but, no, I don't have my papers with me,' it's not clear whether the attorney general's opinion would then prevent the officer from taking any other steps."

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