

United States Senate

April 29, 2010

The Honorable Eric H. Holder
Attorney General
U.S. Department of Justice
Washington, D.C. 20530

Dear Attorney General Holder:

It is my understanding that the U.S. Department of Justice (DOJ) is currently reviewing the legality of Arizona's recently enacted law concerning immigration enforcement by state authorities. While a variety of issues have been raised regarding the constitutionality of this new law, I would like to bring one particular issue to your attention that could have a significant impact on the people of New Mexico. Since it appears that New Mexico-issued identification documents may not be sufficient to prove legal status under the law, I am concerned that residents of my state may be detained unnecessarily when traveling in Arizona.

As you know, S.B. 1070, requires an Arizona law enforcement officer to verify the immigration status of individuals who come in contact with the police if the officer has "reasonable suspicion" that the person is unlawfully present in the United States. The statute provides that a person can demonstrate lawful status by providing: (1) an Arizona issued license; (2) a tribal identification card; or (3) a federal, state, or local government identification card if the entity requires *proof of legal presence* when the identification is issued. *See* A.R.S. § 11-1051(B)(4) (effective 90 days after the end of the legislative session).

New Mexico is one of several states that do not currently require proof of legal status when issuing licenses. In issuing identification documents, pursuant to state law, New Mexico permits foreign nationals to prove their identity by producing a tax identification number along with a Matricula Consular card or a valid passport. *See* Section 66-5-9 NMSA 1978; 18.19.5.12 NMAC (revised 7/31/09). All foreign national applications undergo an in-depth analysis and document verification process by the motor vehicle division's investigative office before being approved.

While the Arizona law allows state-issued identification documents to be presented as evidence that a person is lawfully present in the United States, residents of states that do not require individuals to demonstrate legal status, such as New Mexico, could be detained by police while their citizenship or immigration status is verified. For New Mexicans, and the residents of

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similarly situated states, the detention and investigation required to check a person's status would likely be much more than a brief check of a driver's license during a traffic stop. This could result in the detention of U.S. citizens based on a suspicion standard which has been interpreted as articulable facts that amount to little more than a hunch. *See Ornelas V. United States*, 517 U.S. 690, 695 (1996); *Illinois v. Gates*, 462 U.S. 213, 235 (1983). It would be troubling if New Mexicans and the residents of other similarly situated states would need to carry U.S. passports or other proof of citizenship when traveling through or visiting Arizona.

Thank you for your attention to this matter. Please feel free to contact me or my Counsel, Sunalei Stewart, if you have any questions regarding this issue.

Sincerely,



Jeff Bingaman
United States Senator