

July 2, 2012

Attorney General Luther Strange
501 Washington Avenue
Montgomery, AL 36104

Dear Attorney General Strange:

On June 25, the United States Supreme Court issued its ruling in *Arizona v. United States*, No. 11-182, concerning the constitutionality of Arizona's anti-immigrant law, the inspiration for Alabama's. The Court's decision found that federal law clearly preempted most of Arizona's law and established the federal government's "broad, undoubted power over the subject of immigration and the status of aliens." Slip op. at 2.

On the question of whether federal law preempted Arizona's mandate that law enforcement officers attempt to verify immigration status during stops and detentions upon "reasonable suspicion" that an individual is unlawfully in the United States, the Court made clear that "[d]etaining individuals solely to verify their immigration status would raise constitutional concerns" and that "it would disrupt the federal framework to put state officers in the position of holding aliens in custody for possible unlawful presence without federal direction and supervision." *Id.* at 22. The Court also discussed the constitutional problem that would arise if, "in practice, state officers will be required to delay the release of some detainees [stopped for non-immigration reasons] for no reason other than to verify their immigration status." *Id.* The Court expressly refrained from definitively upholding the law enforcement verification mandate at issue in *Arizona* and instead "counsel[ed] caution in evaluating the" statute's validity. *Id.* at 23. It expressly left open the prospect of "other preemption and constitutional challenges to the law as interpreted and applied after it goes into effect." *Id.* at 24. Sections 12 and 18 of Alabama's anti-immigrant law are analogous to Arizona's verification mandate. It is essential that you, as the chief law enforcement officer of the state, provide guidance so that Alabama's provisions are not enforced in a manner inconsistent with the U.S. Supreme Court opinion.

We call upon you to issue guidance to Alabama's law enforcement agencies regarding the practical applications of Alabama's law enforcement verification mandates, Ala. Code §§ 31-13-12 and 32-6-9. We also call upon you to explain clearly how your office will ensure that law enforcement officers throughout the state will neither engage in racial profiling to enforce these provisions, nor engage in unlawful detention to ascertain individuals' immigration status.

We are aware of numerous examples that demonstrate that Alabama's law is being enforced in ways that violate the Supreme Court's admonitions. We share with you just an illustrative handful of the many stories that have been shared with us since Alabama's anti-immigrant law was passed:

- In October, 2011, an immigrant was stopped outside the courthouse in Calhoun County. He was asked for his immigration papers and was arrested for not having papers. Despite the fact that he was already known to the federal government and had been ordered released pending his upcoming immigration court hearing, he was detained for days.
- In April, 2012, two Alabama state troopers stopped two Latino men in a vehicle in northern Alabama. Neither man had a driver's license, and the state officials proceeded to arrest both men--including the passenger--for driving without a license. The non-driver was arrested and detained for a considerable period on these patently baseless charges solely for the purpose of checking immigration status and funneling the man into the immigration system.
- In February, 2012, two Latino men conversing at a gas station in northeastern Alabama were approached by two local police officers. The officers demanded that the men produce "green cards." When the men could not do so, the officers arrested the men and held them for several days. Neither man was ever charged with a crime.
- In March, 2012, a Guatemalan man was arrested after being awakened by police while sleeping in his parked vehicle. He was asked for papers and was then arrested.
- In October, 2011, an immigrant woman called the police after she was hit by her ex-husband. The police arrived on the scene and arrested the woman, who was unable to show her immigration papers.
- In November, 2011, a family was pulled over by police near Decatur, Alabama. Despite the fact that the father (the vehicle's driver) was a lawful permanent resident and the children were U.S. citizens, the entire family was arrested because the wife/mother was not carrying her immigration documents with her. They were detained for approximately five hours.

We've also received dozens of phone calls from individuals who told us that they had been pulled over as a result of racial profiling; in at least one instance, the individual was informed by police that she was stopped because she was Hispanic. In other instances, callers told us they were given no reason for their stop but were questioned about their immigration status. And there is good reason to believe that a great number of individuals have never reported their experiences of being racially profiled. As courts have recognized, "[t]he reality is that very few innocent victims of racial profiling ever come forward with complaints. Instead, these victims simply retain vivid memories of their police encounter for future reference." *Martinez v. Vill. of Mount Prospect*, 92 F. Supp. 2d 780, 783 (N.D. Ill. 2000).

These detentions clearly contravene the Supreme Court opinion in *Arizona v. United States*. It is

incumbent upon you to ensure that these kinds of illegal stops and detentions end. And the public deserves to know what steps the state will take to assure that these abuses will not continue.

In addition, we urge you to ensure that both the state and localities keep complete data to provide meaningful opportunity for review to guarantee that impermissible prolonged detentions do not continue to occur in this state. Our review of many law enforcement records in Alabama shows them to be woefully lacking in data that would permit appropriate review.

This week's decision repudiated the scope and operation not only of Arizona's law, but those of other states that chose to follow in its footsteps, including Alabama. "State[s] may not pursue policies that undermine federal law." *Arizona*, slip op. at 25. In withholding final judgment on Arizona's law enforcement verification mandate, the Court has given Alabama a chance to show that it understands that proper boundary. We and the public await your response.

Sincerely,

Mary Bauer
Legal Director
Southern Poverty Law Center

Cecillia Wang
Director
ACLU Immigrants' Rights Project

Linton Joaquin
General Counsel
National Immigration Law Center