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Wednesday, April 28, 2010

Debating Arizona [Cesar Conda]

Ramesh, perhaps it is you who have been misled about the new Arizona law. According to some very smart lawyers and [immigration policy](#) experts I've consulted, proponents of the new law are wrong in asserting that "lawful contact" means lawful detention. According to former assistant U.S. attorney Bill Otis: "As Justice White said in concurrence in *Terry v. Ohio*: 'There is nothing in the Constitution which prevents a policeman from addressing questions to anyone on the streets.' What limitations there are come almost exclusively from 'reasonable suspicion.'"

Byron York says, by the way, that "The law clearly says that if someone produces a valid Arizona driver's license, or other state-issued identification, they are presumed to be here legally. There's no reasonable suspicion." Actually, that's not what the law says. It says that an Arizona license creates this presumption, but it definitely does not say that any "other state-issued identification" does so. Other government-issued identifications only have this effect "[i]f the [issuing] entity requires proof of legal presence in the United States before issuance . . ." (Art. 8 11-1051 B. 4).

Many states have no such requirement, and therefore many out-of-state licenses won't work. Moreover, the police officers are going to need a list of all the federal, state, and local identifications that do and don't have such a prerequisite in order to know whether an I.D. creates the presumption. Indulging in the fantasy that officers actually will be provided such lists, that they will be accurate, and that the officers will use them, at a minimum anyone with a license from a state that doesn't require such proof will need to carry something that does prove that he or she is here legally. I'm not even sure what this would be for Americans — a [birth certificate](#), perhaps?

The bottom line is that this new law places enormous discretion in the hands of local police officers, since there are any number of circumstances in which an interaction between a police officer and a private individual is "lawful contact"; indeed, there are very few in which it is anything other than lawful contact, according to Mr. Otis.

This is why conservatives like Jeb Bush, Marco Rubio, Tunku Varadarajan, David Boaz of the Cato Institute, Bob Barr, and others have raised concerns about the Arizona law, and specifically that this "reasonable suspicion" standard could lead police officers to unreasonably single out legal immigrants and American citizens. Some proponents of the new law contend that the only likely context where this law would come into play is a traffic

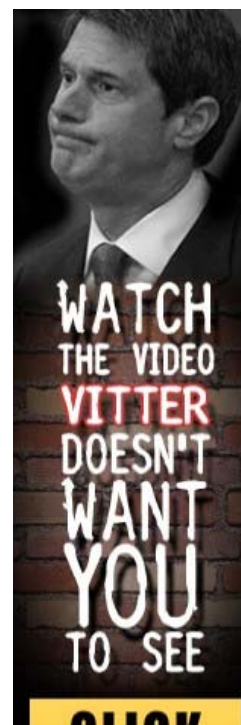


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stop. But what appears to be a speeding van filled with illegal immigrants could also be an American family of ethnic origin driving through Arizona on vacation and going a little over the speed limit.

We all want to stop illegal immigration, but I'm afraid the Arizona law will cause more problems than it solves, and it certainly should not be used as a model for other illegal immigration control legislation.

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