



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 7, 2003

The Honorable Edward M. Kennedy
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Senator Kennedy:

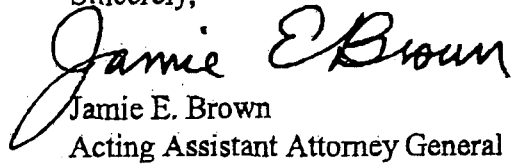
This responds to your letter, dated October 28, 2002, which requested information about a recent opinion by the Department's Office of Legal Counsel (OLC) regarding the authority of state and local police officers to enforce Federal immigration laws. I apologize for the delay in responding to your letter.

The OLC opinion you referenced has not been published and remains an internal advice document within the Department. I can advise you, however, of its conclusion that states possess inherent authority to arrest individuals whose names have been entered into the FBI's National Crime Information Center (NCIC) database because they have both (1) violated civil provisions of the Federal immigration laws that render them deportable and (2) been determined by Federal authorities to pose special risks, either because they present national security concerns or because they are absconders who have not complied with a final order of removal or deportation. Thus, when state and local law enforcement officers encounter an alien who poses special risks and has been listed in the NCIC database for violating the Immigration and Nationality Act, they may arrest that individual and transfer him to the custody of the Bureau of Immigration and Customs Enforcement in the new Department of Homeland Security, which has assumed the detention and investigative functions formerly performed by the Immigration and Naturalization Service at the Department of Justice. However, the transfer of the immigration enforcement function from the Department of Justice to the Department of Homeland Security does not affect OLC's view.

This narrow, limited mission that we are asking state and local police to undertake is completely voluntary. No state or local law enforcement agency need participate if it does not wish to do so or if its state laws preclude such actions. In keeping with our mission to enforce civil rights laws, the Department will seek to ensure that the civil rights of aliens are respected by all law enforcement officers. Where appropriate, willful violators of the law will be prosecuted.

I hope that this information is helpful and that you will contact me if you would like additional assistance regarding this or any other matter. We have sent an identical response to Senator Feingold, who joined in your letter to us.

Sincerely,

A handwritten signature in black ink that reads "Jamie E. Brown". The signature is written in a cursive style with a large, looping initial "J".

Jamie E. Brown
Acting Assistant Attorney General