STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION by TERRY GODDARD ATTORNEY GENERAL March 24, 2010	No. I10-004 (R09-041) Re: Reporting Requirements in A.R.S. §§ 1-501, -502

To: David Raber, Interim Director,
Arizona Department of Administration

Questions Presented[1]

1. To which state employees do the provisions of subsections E in A.R.S. §§ 1-501 and -502 apply?

2. What constitutes a "discovered violation" of federal immigration law pursuant to subsections E in both A.R.S. §§ 1-501 and -502?

3. How are "discovered violations" to be reported and to whom?

[1] You have asked several other questions regarding A.R.S. §§ 1-501 and -502. These issues will be addressed in a separate opinion.

Summary Answers

1. The criminal sanctions for failing to report discovered violations of federal immigration law set forth in A.R.S. §§ 1-501(E) and -502(E) apply to all state and local employees reviewing documentation of benefit applicants and to those employees' supervisors.

2. "Discovered violations" of federal immigration law under subsections E in A.R.S. §§ 1-501 and -502 are violations established by documented verification of a benefit applicant's illegal status or by verbal or written admissions by a benefit applicant of the applicant's illegal status.

3. Discovered violations should be reported to United States Immigration and Customs Enforcement ("ICE").

Background

In 2009, the Arizona Legislature enacted two statutory changes regarding citizenship and immigration status and public benefits. 2009 Ariz. Sess. Laws, 3rd S.S., ch. 7 § 1. The legislation addresses documentation requirements for state and local public benefits, subject to 8 U.S.C. § 1621, and federal public benefits, subject to 8 U.S.C. § 1611.

The federal laws that provide the backdrop for A.R.S. §§ 1-501 and -502 were enacted in 1996, as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA"). Title IV of that federal law focused on restricting access to public benefits based on immigration status.[2] In 8 U.S.C. § 1611, Congress specified that with certain exceptions, "an alien who is not a qualified alien . . . is not eligible for any Federal public benefit." With some exceptions, a "federal public benefit" is:

[2] "Alien" is defined in federal statute as "any person not a citizen or national of the United States." 8 U.S.C. § 1101.3. "Immigrant" is defined in 8 U.S.C. § 1101.15 as "every alien except an alien who is within one of [certain] classes of nonimmigrant aliens."

> (1)(A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and
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> (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by any agency of the United States or by appropriated funds of the United States.

8 U.S.C. § 1611(c). Similarly, a "state or local public benefit" is:

> (1)(A) any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and
>
> (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

8 U.S.C. § 1621(c). Only qualified aliens, nonimmigrants, and aliens paroled into the United States under 8 U.S.C. § 1182(d)(5) for less than one year are eligible for most state or local public benefits. 8 U.S.C. § 1621(a). In both 8 U.S.C. §§ 1611 and 1621, Congress determined that certain public benefits are available without regard to citizenship or immigrant status. *See* 8 U.S.C. §§ 1611(b), 1621(b). These public benefits include emergency medical assistance under Title XIX of the Social Security Act; "short-term, non-cash, in-kind emergency disaster relief;" certain public health assistance "for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases;" and

> [p]rograms, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which (A) deliver in-kind services at the community level, including through public or private nonprofit agencies; (B) do not condition the provision of assistance, the amount of assistance provided,

> or the cost of assistance provided on the individual recipient's income or resources; and (C) are necessary for the protection of life or safety.

8 U.S.C. § 1621(b)(4).[3]

Sections 1-501 and 1-502 parallel the requirements in A.R.S. § 46-140.01(A), which Arizona voters approved in 2004 as part of Proposition 200 ("Prop. 200"). Section 46-140.01 addressed the verification of applicants for "state and local public benefits," but that statute does not define state and local public benefits or prescribe which documents satisfy proof of acceptable immigration status. In Arizona Attorney General Opinion I04-010, this Office advised that A.R.S. § 46.140.01 applied to State and local public benefits subject to restrictions based on immigration status in 8 U.S.C. § 1621 that are within Title 46.[4] Like A.R.S. § 46-140.01, A.R.S. §§ 1-501 and -502 address documentation relating to immigration status, criminal penalties for failing to report discovered violations of immigration law, and standing to bring actions to enforce these statutes' requirements.

Analysis

I. The Criminal Sanctions Set Forth in A.R.S. § 1-501(E) and A.R.S. § 1-502(E) Apply to Employees Reviewing Documentation of Beneficiaries of Public Benefits and to the Employees' Supervisors.

You have sought clarification regarding which employees are subject to the provisions of subsections E in A.R.S. §§ 1-501 and 1-502. Subsection E in A.R.S. § 1-501 and the analogous provision in A.R.S. § 1-502 provide as follows:

> Failure to report discovered violations of federal immigration law by an employee of an agency of this state or a political subdivision of this state that administers any [state and local public benefit or federal public benefit] is a class 2 misdemeanor. If that employee's supervisor knew of

[3] Congress specifically permitted states to provide state or local public benefits to aliens not lawfully present but "only through enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility." 8 U.S.C. § 1621(d). Arizona has not enacted any such law.

[4] For more information regarding State and local public benefits under 8 U.S.C. § 1621, see Arizona Attorney General Opinion I05-010.

> the failure to report and failed to direct the employee to make the report, the supervisor is guilty of a class 2 misdemeanor.[5]

If the language of a statute is plain and unambiguous, courts will interpret the language as written, without resorting to other methods of statutory interpretation. *Mid Kansas Fed. Savings & Loan Ass'n v. Dynamic Dev. Corp.*, 167 Ariz. 122, 128, 804 P.2d 1310, 1316 (1991). If the statutory language is ambiguous, however, courts will determine its meaning by considering the statutory context, the subject matter, historical background, its effects and consequences, and spirit and purpose. *Bentley v. Building Our Future*, 217 Ariz. 265, 270, ¶ 13, 172 P.3d 860, 865 (App. 2007).

As a threshold matter, the placement of the phrase "by an employee of an agency of this state" creates some ambiguity regarding the conduct that is subject to these statutes. The statutes could be read to impose a duty to report "discovered violations of federal immigration law by an employee of this state that administers" state and local or federal public benefits. But the second sentence of this section and the statutory context as a whole clarifies that the statutes establish criminal sanctions only if certain state or local employees fail to report violations of immigration law that they have discovered.

Because the statute addresses the verification process concerning eligibility for state and local and federal public benefits, the criminal penalties for failing to report logically apply to those employees reviewing the documentation described in these statutes and to their supervisors. The statute could be read to apply to all state employees that may have some knowledge of a possible violation of federal immigration law. But, if the Legislature had intended that the provision apply to every state employee, there would have been no need to

[5] This provision is almost identical to A.R.S. § 46-140.01(B) which provides that "[f]ailure to report discovered violations of federal immigration law by an employee is a class 2 misdemeanor. If that employee's supervisor knew of the failure to report and failed to direct the employee to make the report, the supervisor is guilty of a class 2 misdemeanor."

specify that an employee's supervisor is guilty of the same misdemeanor for knowingly failing to report the discovered violation, since that supervisor would already be included as an employee with knowledge of a discovered violation of federal immigration law. Therefore, the criminal sanctions set forth in these subsections apply to employees who review documentation of the beneficiaries of public benefits and to those employees' direct supervisors who know of a failure to report and do not direct the employees to report. Of course, other state employees who become aware of a violation of federal immigration law may voluntarily report such a violation, and state agencies may not limit or restrict reporting by any employee who chooses to make such a report. *See* 8 U.S.C.A. §§ 1373, 1644.

II. "Discovered Violations" Are Violations Established by Documented Verification of an Applicant's Illegal Status or by an Admission by an Applicant of the Applicant's Illegal Status.

You have asked what constitutes a "discovered violation" of federal immigration law under A.R.S. §§ 1-501 and -502. These statutes do not define this term, but based on federal statutory provisions and on case law from other jurisdictions interpreting similar reporting statutes, "discovered violations" include those violations established through documented verification by a federal agency or by verbal or written admissions of illegal status by a benefit-seeking applicant.

The power to regulate immigration is "unquestionably exclusively a federal power." *De Canas v. Bica*, 424 U.S. 351, 354 (1976). Courts have distinguished between state agents making independent determinations of immigration status and state agents merely verifying immigration status. *See League of United Latin American Citizens v. Wilson*, 908 F. Supp. 755, 770 (C.D. Cal. 1995) (upholding a California provision requiring state agents to verify immigration status of benefit applicants, while rejecting a provision requiring state agents to independently determine immigration status of arrestees or state-created categories of

immigration status); *Fonseca v. Fong*, 167 Cal. App. 4th 922 (2008) (upholding a statute requiring state and local law enforcement agencies to notify an appropriate federal agency when the law enforcement agency has reason to believe that a person arrested for a specified drug offense is not a citizen of the United States). In *Fonseca*, the California court found that, unlike previously enacted provisions requiring a state or local law enforcement agency to independently determine whether an arrestee is lawfully present in the United States, the statute at issue required only that state agents "verify" immigration status. *Fonseca*, 167 Cal. App. 4th at 936. Accordingly, the court upheld the reporting statute and rejected claims that it impermissibly interfered with the federal government's power to regulate immigration. *Id.* at 939.

Federal regulations also include reporting requirements. For example, 7 C.F.R. § 273.4(b)(1) requires state agencies to inform ICE when "any member is ineligible to receive food stamps because the member is present in the U.S. in violation of [federal law]." A State may satisfy this reporting requirement by conforming with Interagency Notice 65 FR 58301, which advises that a state entity will "know" that an alien is not lawfully present in the United States "only when the unlawful presence is a finding of fact or conclusion of law that is made by the entity as part of a formal determination that is subject to administrative review on an alien's claim for any of [several statutorily specified programs]." In addition, a Systematic Alien Verification for Entitlements (SAVE) response showing no record individual or a status that renders the person ineligible for a benefit "is not a finding of fact or conclusion of law that the individual is not lawfully present." 65 FR 58303. Thus, state agents do not independently determine immigration status and instead only to verify such status as determined by federal authorities.

Consistent with these principles, A.R.S. §§ 1-501 and -502 do not require Arizona state employees to independently investigate immigration status. However, state employees who learn of a violation of federal immigration law when verifying the immigration status of a beneficiary of public benefits must report the "discovered violation." This reporting obligation extends to a benefit applicant's admission of illegal status. Accordingly, state employees administering benefits subject to A.R.S. §§ 1-501 and 1-502 should report verified violations of federal immigration law and verbal or written admissions of illegal status.

Finally, A.R.S. §§ 1-501 and 1-502 do not change the requirements regarding whose immigration status is relevant to the eligibility determination. If, for example, state or federal benefits are available to a child legally present in the United States regardless of the child's parents' immigration status, state employees are not required to verify the immigration status of a parent seeking benefits to which the child is entitled. Furthermore, although state employees may voluntarily report suspected violations of federal immigration law at any time, state employees should not base such reports solely on factors that do not determine immigration status. For example, a state employee should never submit a report because the person's primary language is a language other than English, or if the person was not born in the United States, does not have a Social Security Number, has a "foreign sounding" name, or has been denied eligibility because of a lack of proof of citizenship. These factors do not provide a basis for concluding that the person is violating any immigration laws.

III. Discovered Violations Should Be Reported to United States Immigration and Customs Enforcement ("ICE").

Sections 1-501 and -502 do not change current procedures for reporting violations of federal immigration law. Accordingly, state employees should follow the procedures in place for reporting violations of federal law under A.R.S. § 46-140.01(A)(4) or as otherwise specified in

federal authorities. Pursuant to directives from the United States Department of Homeland Security, immigration violations are reported to United States Immigration and Customs (ICE). State and local employees should follow the guidance ICE provides regarding the reporting procedures. Currently, reports may be provided by e-mail to azicereport@dhs.gov.

Conclusion

The criminal sanctions in subsections E of A.R.S. §§ 1-501 and -502 apply to state employees reviewing documentation of beneficiaries and to those employees' supervisors. The term "discovered violations" of federal immigration law contained in subsections E of A.R.S. §§ 1-501 and -502 includes violations established by documented verification of a benefit applicant's illegal status or by verbal or written admissions by a benefit applicant of the applicant's illegal status. Discovered violations should be reported to United States Immigration and Customs Enforcement ("ICE").

Terry Goddard
Attorney General