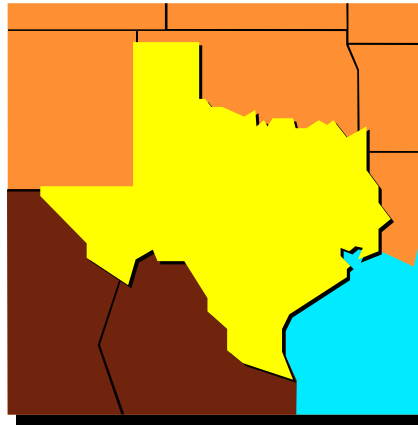
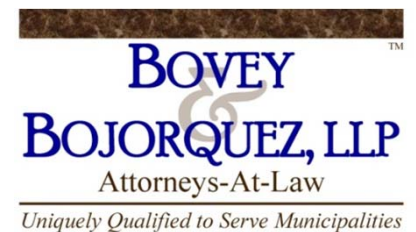


Foreign Nationals & Immigration Issues



16th Annual Municipal Prosecutors Conference

Addison, Texas
March 5, 2009



A Look Ahead

1. Vienna Convention
2. ICE Holds
3. Illegal Status (*Entry v. Presence*)
4. Texas Cities
5. Other States
6. Legislative Update



Vienna Convention ('67)

- Foreign national must be offered opportunity to have consulate notified that criminal action pending (*notice & consultation*)
- If Mandatory Country:
 - Notify consulate &
 - Notify detainee of right to confer with consulate
- If Permissive Country:
 - Notify detainee of right to confer with consulate, ***or***
 - Get written acknowledgement & waiver from detainee

Vienna Convention (*cont.*)

Admission of Evidence:

- CCP Art. 38.23: No evidence obtained in violation of laws of Texas or U.S. shall be admitted, and jury shall be instructed.
- Exception for officer acting in good faith reliance on a warrant issued on probable cause.
- U.S. courts unwilling to find that violation of Vienna leads to inadmissibility of evidence.

Rulings on Vienna

- *Mexico (Avena et al.) v. U.S.*
 - U.S. has obligation under Vienna Convention
- *Medellin v. Texas*
 - Avena judgment creates obligation on U.S., but is not necessarily binding on domestic law
- *Sanchez-Llamas v. Oregon*
 - Will not exclude evidence

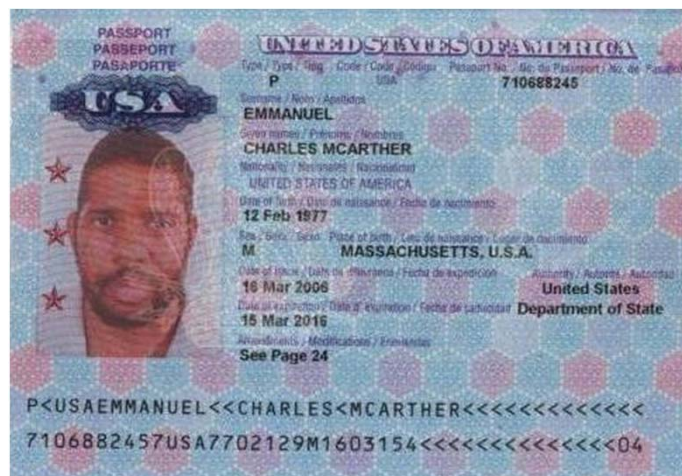
Another Ruling on Vienna

Sierra v. State, 218 S.W.3d 85 Tex. Crim. App. (2007):

- Court held alleged violation of Vienna Convention did **NOT** require suppression of defendant's confession under the exclusionary rule

Magistrate Duties under Vienna

- Obligation to provide Vienna Convention notifications to foreign nationals.
- Should determine if detainee is foreign national.
- Document findings for the record.



Good Resource

oag.state.tx.us/criminal/consular.shtml

Do the Right Thing

Sandra Babcock, Law Professor / Defense Atty:

- Vienna Convention protects Americans abroad
- Noncompliance could affect safety of U.S. foreign exchange students, armed services personnel, and tourists.

ICE?

- Ryan Turner is obsessed with it.
- Got any ideas?
- Reference to Ryan's prior career as a rap star?

ICE, ICE Baby!

born Robert Van Winkle
October 31, 1967
Dallas, Texas



ICE

Immigration & Customs Enforcement

- Part of Homeland Security
- Includes former Immigration & Naturalization Services (INS) & Customs departments
- Office of Detention & Removal Operations (DRO)



ICE Hold

- Request from ICE to local jurisdictions to detain a foreign national
- ICE detainer alerts
- Request notice, and changes in status
- ICE hold requests the court notify ICE:
(1) when prisoner released & (2) disposition



Illegal Status

- What's *illegal* about being “*illegal*”?
- Improper Entry:
 - Time or Place
 - Eludes Examination or Inspection
 - False or Misleading Representation
 - Concealment of Material Fact

8 USC Sect. 1325.

- Civil Matter leading to Deportation
- Turns on Eye Witness Testimony

Texas Cities



Sanctuary Cities

Self-Declaration that illegal immigrants will be safe from local harassment:

- Houston
- Austin
- Detroit
- San Francisco



Irving

- '07
- Referred illegal immigrants (including **Class C** Misdemeanors) to ICE for detention & deportation.
- Mexican Consulate issued travel warning advising Mexican citizens to avoid Irving
- Eventually, ICE declined to place holds on several suspected illegal immigrants
- ICE directing locals to only refer suspects of **Class B** or higher.
- ICE felt Irving PD abusing CAP (Criminal Alien Program)
 - a partnership program ICE created to work with local law enforcement to help identify criminal unauthorized immigrants.
- Section 287(g) Program: ICE trains cops to work with Euless ICE office to determine nationality prior to detainee going before magistrate??

Farmers Branch

- *Villas at Parkside Partners v. City of Farmers Branch*, 577 F.Supp.2d 858 (N.D. Tex. 2008):
- May '08
- Struck down ordinance designed to block *apartment rentals* to illegal immigrants.
- Judge held ordinance was *preempted* by federal immigration law based on the supremacy clause of the U.S. Constitution.
- Ordinance was unconstitutional based on Due Process Clause of 14th Amendment because was *void for vagueness*
(Ordinance did not sufficiently define offense that would subject a landlord to criminal penalties).

Farmers Branch

Legal Defense Fund:

The City of Farmers Branch has established a special revenue fund in order to allow the City to accept financial donations that are sent to the City to help defray legal costs associated with litigation regarding immigration related City initiatives.

The City's mailing address is:

City of Farmers Branch
P.O. Box 819010
Farmers Branch, Texas 75381

Pennsylvania

Lozanov. City of Hazleton, 496 F.Supp.2d 477 (M.D. Pa., 2007):

- July '07
- Struck down a local ordinance that punished *landlords* who rented to illegal immigrants & businesses that hired them.
- Judge held ordinance unconstitutional because regulation of employment of undocumented workers was preempted by federal law.
- Punishing landlords violated due process rights of tenants/landlords.

Missouri

Gray v. City of Valley Park, No. 07-0088, 2008 WL 294294 (E.D. Mo., 2008):

- January '08
- Upheld right of local governments to enforce laws against illegal immigration by *denying business licenses* to employers who hire illegal aliens.
- Ordinances required employers use federal *E-Verify* program to determine eligibility of potential employees.
- Every business applying for business license to work in the city must sign an affidavit, *prepared by the city attorney*, affirming that they do not knowingly utilize or hire undocumented workers.
- Judge rejected preemption, due process & equal protection challenges.

Arizona

Chicanos Por La Causa, Inc. v. Napolitano, 544 F.3d 976 (9th Cir. 2008) :

- September '08
- Legal Arizona Worker's Act
- Ninth Circuit held Arizona law **not preempted** & does not violate the due process, or commerce clause
- Authorizes state court to suspend or revoke the *business licenses* of employers who knowingly hire “unauthorized aliens,”
- Mandates employers utilize an Internet-based system (*E-Verify*), established by the U.S.-DOJ to confirm new employee's eligibility for employment.

Legislative Update

Texas H.B. 255 :

- by Leo Berman (R-Tyler)
- Regulating verification of employment status of immigrants
- Providing harsher civil & criminal penalties
- Amends the Government Code, Education Code, Labor Code, Penal Code, and Code of Criminal Procedure
- Requires *verification* of legal immigration status before state confers any benefit upon the person or employing entity.
- Requires all contractors & subs that contract with state to participate in status verification system to verify work eligibility status of all new employees. (*E-Verify*)
- Bill similar one at issue in Arizona case of *Chicanos Por La Causa, Inc. v. Napolitano*.

Connecticut

In New Haven:

The city is issuing “*Locally Legal Cards*” to illegal immigrants, which will allow access to city services such as libraries and a chance to open bank accounts.

reuters.com/article/topNews/idUSN2227446920070722?feedType=RSS&sp=true

Seized Counterfeit Documents



Kudos & Thanks

- **Ross Fischer**, City Attorney, Seguin
- **Dana Jacobson**, Municipal Judge, Fair Oaks Ranch
- **Damien Shores**, Law Clerk

For Copy of Presentation

TexasMunicipalLawyers.com

Publications

