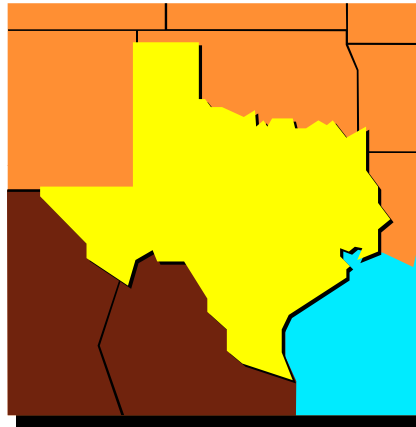


Foreign Nationals & Immigration Issues



16th Annual Municipal Prosecutors Conference

Austin, Texas
July 1, 2009

BOJORQUEZ
LAW FIRM, PLLC

Kudos & Thanks

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

A Look Ahead

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



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



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.
- Any thoughts?



ICE, ICE Baby!

born Robert Van Winkle
aka, Vanilla Ice, Ryan Turner
October 31, 1967
Dallas, Texas



ICE: A *chilly* acronym?



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

Seized Counterfeit Documents



Texas Cities



Sanctuary Cities?

Withdrawn (?) 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).

O' Farmers Branch...

“Litigation is an expensive proposition....”

--ACLU of Texas

April 13, 2009

Farmers Branch spent **\$2 million** on own attorneys

Settlement: **\$250k** to Apartment Operators + **\$220k** to Advocacy Groups

Legal Defense Fund:

The City is accepting financial donations to defray legal costs associated immigration initiatives.

City of Farmers Branch

P.O. Box 819010

Farmers Branch, Texas 75381



Harris County

- D.A.'s proposal to bar illegal immigrants from receiving plea bargains
- Defendants in the country illegally would be ineligible for probation or deferred adjudication

Houston Chronicle
April 1, 2009

Pennsylvania

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

- 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):

- 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 seeking business license to work in city must sign affidavit, *prepared by the city attorney*, affirming do not knowingly 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) :

- 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/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.

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

Legislative Update

Texas H.B. 266 :

- by Leo Berman (R-Tyler)
- Regulating verification of employment status of immigrants
- Providing harsher civil & criminal penalties
- Amends Gov't, Education, Labor, Penal, & Criminal Pro Codes
- 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 that in Arizona case: *Chicanos Por La Causa v. Napolitano*.
- Referred to: House Admin, Higher Ed, then State Affairs (*died in cmte*)



Legislative Update

Texas H.B. 255 :

- by Leo Berman
- Prohibits admission by public institutions of higher education applicants who are not lawfully authorized to be in the country
- Bill died in Committee



Recent A.G. Opinions

GA-0695

- If legislation providing for revocation of business license of employers of undocumented aliens closely tracks the Legal Arizona Workers Act (*Chicanos Por La Causa, Inc. v. Napolitano*), and 5th Cir adopts reasoning of 9th Cir. would likely be upheld.

Another A.G. Op.

GA-0696

- In a criminal proceeding foreign-language interpreters are required to interpret for a witness or the person charged but not for the district attorney (article 38.30).

More A.G. Ops.

Opinion No. GA-0699

- Texas Legislature has authority to deter local governments from adopting policies that hinder enforcement of federal immigration laws.

Legislative Update

H.B. 362 (Motor Voter)

“Rather than everyone here having to learn Chinese — I understand it’s a rather difficult language — do you think that it would behoove you and your citizens to adopt a name that we could deal with more readily here?” Rep. Betty Brown said.



- Houston Chronicle

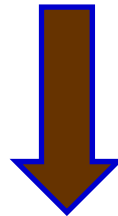
Betty Brown Name Generator

by: Representative Trey Martinez Fischer



<http://rumandmonkey.com/widgets/toys/namegen/12054/>

Alan Bojorquez



Billy-Ray "Golden Corral" Brown

for Copy of Presentation

TexasMunicipalLawyers.com

The logo for Bojorquez Law Firm, PLLC. It features a dark brown horizontal bar at the top with a small 'TM' trademark symbol on the right. Below the bar, the word 'BOJORQUEZ' is written in a large, blue, serif font. Underneath that, 'LAW FIRM, PLLC' is written in a smaller, blue, serif font. A thin dark brown horizontal line is positioned below the text.
BOJORQUEZ
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