Vanderbilt Journal of Transnational Law

Volume 21
Issue 4 *Issue 4 - 1988*

Article 7

1988

Case Digest

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CASE DIGEST

This CASE DIGEST provides brief analyses of cases that represent current aspects of transnational law. The Digest includes cases that establish legal principles and cases that apply established legal principles to new factual situations. The cases are grouped in topical categories and references are given for further research.

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I. IMMIGRATION

MATERIALITY STANDARD FOR CONCEALMENT OR MISREPRESENTATION UNDER IMMIGRATION AND NATIONALITY ACT § 1451(a) IS SUFFICIENT TO INFLUENCE AN IMMIGRATION AND NATURALIZATION SERVICE DECISION; THE TEST OF GOOD MORAL CHARACTER UNDER § 1101(f)(6) DOES NOT REQUIRE A FINDING OF MATERIALITY FOR ANY FALSE TESTIMONY—*Kungys v. United States*, 108 S. Ct. 1537 (1988)

The United States sought to denaturalize a naturalized citizen accused of Nazi attrocities in Lithuania in 1941. The Government alleged that the defendant had misrepresented the date and place of his birth, his wartime occupation, and his wartime residence during his 1954 naturalization proceedings and that knowledge of these facts would have changed the outcome of the proceedings. To change the individual's citizenship status after the close of the Immigration and Naturalization Service (INS) proceedings, the United States must prove the following: (1) the misrepresentation or concealment of some fact; 2) the misrepresentation or concealment must have been willful; 3) the fact must have been material; and 4) citizenship was gained as a result of the misrepresentation or concealment. The pertinent sections of the Immigration and Nationality Act are the concealment and misrepresentation clause of § 1451(a) and the false testimony clause of § 1101(f)(6). The United States Court of Appeals for the Third Circuit held for the United States with respect to

§ 1451(a). The court applied the standard developed in *Chaunt v. United States*, 364 U.S. 350 (1960), which provided that the state must prove by "clear, unequivocal, and convincing" evidence that the additional facts, if known, would have warranted a denial of citizenship or would have triggered an investigation that would have led to the disclosure of facts warranting a denial of citizenship. The Third Circuit further held that false testimony provided during a naturalization proceeding is deemed to be material under § 1101(f)(6), which requires a finding of lack of moral character for such testimony. The United States Supreme Court *held: Reversed,* the applicable standard is whether the misrepresentation or concealment had a natural tendency to influence the INS's decision that the applicant was qualified, provided that evidence of such misrepresentation or concealment was clear, unequivocal, and convincing.

In a plurality opinion, the Supreme Court held that the relevancy of the information must be determined by the result that would have ensued from official knowledge of the misrepresented fact itself, not from the actions resulting from official knowledge of any inconsistency in facts. The Court also rejected the need for a finding of materiality with respect to § 1101(f)(6), holding that false testimony, whether material or not, is sufficient to constitute a lack of good moral character warranting denial of citizenship. The Court remanded the case to the court of appeals for a determination of the effect of the defendant's misrepresentation under § 1451(a) and for a determination of whether that misrepresentation constituted "false testimony" under § 1101(f)(6). *Significance*—The plurality's reformulation of the meaning and application of the materiality clause establishes a clear standard for application to future cases: If the concealed or misrepresented facts, standing alone and without additional investigation, would have warranted a denial of citizenship, then the denaturalization is proper.

THE BROAD SUBPOENA POWER OF THE IMMIGRATION AND NATURALIZATION SERVICE DOES NOT AUTHORIZE ISSUANCE OF A BLANKET JOHN DOE SUBPOENA TO GATHER INFORMATION REGARDING UNIDENTIFIED ALIENS—*Peters v. United States*, 853 F.2d 692 (9th Cir. 1988).

Under an Immigration and Naturalization Service (INS) program designed to prevent undocumented aliens from receiving subsidized housing, the INS sought to review the files of a federally subsidized labor camp to determine which residents were illegal aliens. The camp manager refused the request. The INS then served her with a third-party subpoena ordering her to testify in connection with an INS criminal in-

vestigation into the unknown individuals residing at the camp. The INS issued the subpoena pursuant to 8 U.S.C. § 1225(a), which provides that a subpoena may issue if it "concerns any matter which is material and relevant" to the enforcement of the Immigration and Nationality Act. The INS argued that this broad statutory language authorized the INS to issue subpoenas similar to the power of the Internal Revenue Service (IRS) to issue John Doe summonses under 26 U.S.C. § 7609(f). The district court found that unlike 26 U.S.C. § 7609(f), § 1225(a) imposes no special procedural safeguards for John Doe subpoenas. Prior to issuance, however, the INS had demonstrated a reasonable belief that the camp residents were in violation of the law. Based on these findings, the court enforced the subpoena. The Court of Appeals for the Ninth Circuit *held: Reversed*, the INS does not have the authority under § 1225(a) to issue a blanket John Doe subpoena when the targets of the investigation are unknown.

The Ninth Circuit held that § 1225(a) does not contain specific language authorizing the issuance of John Doe subpoenas. The court found that the IRS authority to issue a John Doe summons is reflected in the language of the tax laws; § 1225(a), however, does not contain the same procedural safeguards or policy basis to warrant granting such a broad power. Although the INS had presented evidence of reasonable suspicion in the instant case, the court indicated that this power might be subject to abuse by INS investigators. The broad investigatory power of administrative agencies, recognized in *United States v. Morton Salt Co.*, 338 U.S. 632 (1950), does not alleviate the fact that the authority of an administrative agency to issue subpoenas for investigatory purposes is created solely by statute. Because the court decided that the statute did not authorize the issuance of a John Doe subpoena, the court never reached the question of whether such a subpoena is consistent with the fourth amendment. *Significance*—John Doe subpoenas issued by administrative agencies are invalid without statutory authority derived from specific language. The authorization, safeguards, and policy underpinnings of such subpoenas must indicate a Congressional intent that this power is necessary to effectuate enforcement of the laws governing the agency.

II. Fourth Amendment

Routine Strip Searches of Detained Juvenile Aliens Violate Juveniles' Fourth Amendment Rights—*Flores v. Meese*, 681 F. Supp. 665 (C.D. Cal. 1988).

A class comprised of all past and future detainees of the Immigration and Naturalization Service (INS) under the age of eighteen held within

the INS's Western reserve challenged an INS policy subjecting them to a strip or body cavity searches (1) after meeting with persons other than their attorneys, or (2) at any other time without demonstrable cause. The United States District Court for the Central District of California granted plaintiffs' motion for summary judgment and determined that such routine strip searches violated the fourth amendment's prohibition against unreasonable searches and seizures. The court stated that the severely intrusive nature of a strip search, compounded when its subjects are children and not charged with a criminal offense, outweighed the Government's interest in maintaining security at detention facilities. This governmental security interest was limited because strip searches only resulted in minimal recovery of weapons or contraband. The court held that a strip search must be based on the objective reasonable suspicion standard despite the large number of detained aliens. The lack of constitutional protections in the aliens' home countries does not limit their fourth amendment rights. *Significance*—This is the first decision by a federal district court extending fourth amendment guarantees to prevent routine strip searches of juvenile aliens.

III. ACT OF STATE DOCTRINE

THE ACT OF STATE DOCTRINE DOES NOT BAR A COMPETITOR'S ANTITRUST AND RACKETEERING ACTIONS AGAINST A COMPANY THAT ALLEGEDLY SECURED A FOREIGN MILITARY PROCUREMENT CONTRACT BY BRIBING FOREIGN OFFICIALS—*Environmental Tectonics v. W.S. Kirkpatrick, Inc.*, 847 F.2d 1052 (3d Cir. 1988).

Environmental Tectonics Corporation (ETC) filed suit against W.S. Kirkpatrick, Inc. and others (collectively "Kirkpatrick") for violations of Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1962-68, the Robinson-Patman Act, 15 U.S.C. § 13(c), and the New Jersey Anti-Racketeering Act, 2C N.J.C.S. § 41-1 et seq. The complaint alleged that Kirkpatrick influenced the award of a Nigerian defense contract through bribery of Nigerian Government officials. The district court refused to examine the motivation of the foreign government because it would either result in embarrassment to that government or interfere with United States foreign policy. Citing the act of state doctrine, the court dismissed ETC's action. The United States Court of Appeals for the Third Circuit *held: Reversed*, Although ETC's suit would prompt inquiry into the motivations of a foreign sovereign's acts, the suit does not require a judgment on the validity or legality of the acts of that sovereign. Thus, the suit was not precluded by the act of state doctrine as defined in *Mannington Mills v. Congoleum Corp.*, 595 F.2d 1287 (3d

Cir. 1979) and *Williams v. Curtis-Wright*, 694 F.2d 300 (3d Cir. 1982). Rejecting the broad application of the act of state doctrine under *Clayco Petroleum v. Occidental Petroleum*, 712 F.2d 404 (9th Cir. 1983), the court held that the "traditional justification for involving the doctrine [is to avoid] a judicial determination of the legal validity of a state's act within its own borders." *Environmental Tectonics*, 847 F.2d at 1061. ETC's suit, however, focused on Kirkpatrick's alleged violations of United States domestic law and sought damages from Kirkpatrick, not the Nigerian Government. The court determined that invoking the act of state doctrine could not be justified absent demonstrable proof by Kirkpatrick that the decision posed a threat to United States foreign relations. *Significance*—This case further illustrates the disagreement among the circuits regarding the application of the act of state doctrine. The decision also requires the defendant to present concrete proof of adverse effects on United States foreign policy in order to utilize the act of state doctrine in domestic lawsuits.