

Kris Kobach

From: Russell K. Pearce <rpearce@azleg.gov>
Sent: Monday, February 27, 2006 9:13 AM
To: Kobach, Kris W.
Subject: RE: Any advice, quotes or case law that might help would be great.

Will do. We should pass our trespass bill on the House this week.
Thank you. Did you get all of my updated bills on going after illegal aliens and employers who hire them?

-----Original Message-----

From: Kobach, Kris W. [mailto:KobachK@umkc.edu]
Sent: Sunday, February 26, 2006 10:12 PM
To: Russell K. Pearce
Subject: RE: Any advice, quotes or case law that might help would be great.

Russell,

I see that the AZ Senate passed the trespassing bill. Let me know if you need any help, either in terms of testimony on the house side, or help in court when the open borders crowd challenges this law in court (assuming your Gov. signs it).

Kris

From: Russell K. Pearce [mailto:rpearce@azleg.gov]
Sent: Wed 2/22/2006 5:59 PM
To: Kobach, Kris W.
Cc: Karen Smith
Subject: RE: Any advice, quotes or case law that might help would be great.

Kris thank you. I am going to send you a copy of two of my major bills and see what you think. One is Local Enforcement and the other is Employer Sanctions. I believe I have the support to get them out. Law Enforcement folks love to argue about their lack of authority (I have spent 30 years in the Criminal Justice System, even as the Chief Deputy/Under Sheriff of Maricopa County Sheriff's Office and as Justice of the Peace). I know they have inherent authority and your testimony to the committee can be very helpful. I will let you know when. I have them out of committee's here in the House and will get them passed on the Floor and then to the Senate where I could really use your testimony.

-----Original Message-----

From: Kobach, Kris W. [mailto:KobachK@umkc.edu]
Sent: Tuesday, February 21, 2006 11:14 PM
To: Russell K. Pearce
Subject: RE: Any advice, quotes or case law that might help would be great.

Russell,

Let me know if you need help on any of these bills. I have testified three times in Utah regarding their immigration reform bills in the last 12 months. They aren't quite as energized as Arizona is, but there is a good chance that they may pass at least one good law (repealing instate tuition for illegal aliens) this session.

One cautionary note on HCR 2037--which I think is great... If it looks like it might pass, we should think seriously about amending it to protect it against judicial challenge. Building the wall will pass constitutional muster. But the funding mechanism is likely to be struck down. There are several US Supreme Court precedents that jeopardize a state tax on international wire transfers. It will be characterized as an infringement on Congress's dormant power to regulate international commerce. Much as I love the poetic justice of taxing these remittances to build the wall, I need to caution you that it will be difficult to sustain in court. Are there other funding sources that might be substituted in the bill?

Kris

From: Russell K. Pearce [mailto:rpearce@azleg.gov]
Sent: Wed 2/22/2006 1:05 AM
To: Kobach, Kris W.
Subject: Any advice, quotes or case law that might help would be great.

Kris thank you for the note. I use some of your comments quite often. I so much appreciate your support.

I absolutely agree with you. Several of my bills are listed at the end of this response:

Enough is Enough!!!! Enforce the Law, Secure the Border, Sanction law breaking employers, demand local law enforce the law, stop insane policies that reward or encourage illegal immigration:

This Governor and the Democrat legislators talk tough about the broken borders, but do everything they can to prevent the laws from being enforced. They have fought every single effort to allow local law enforcement to enforce the law, they fought against Prop. 200 to stop welfare and voting fraud, they have thwarted every effort to place the National Guard at the border (now she acts as if she is willing but has refused to put them down there as promised in her State of The State), they want to give illegal aliens driver licenses, they have NOT ONE proposals to enforce the law.

"Local Law Enforcement's has Inherent Authority to Enforce Immigration Law"

"Any decision by law enforcement not to enforce immigration laws is a political decision by politicians and local police chiefs and sheriff's, not a lack of authority."

Congress has firmly established that there is a significant public interest in the effective enforcement of immigration law. Congress could have chosen to limit local enforcement pursuant to its plenary power over immigration, but it has not done so. In the absence of a limitation on local enforcement powers, the states are bound by the Supremacy Clause of the United States Constitution to enforce violations of the federal immigration laws. "The statutory law of the United States is part of the law of each state just as if it were written into state statutory law."

The enforcement role given to local government by the Constitution and the Congress is clear. Unsanctioned entry into the United States is a crime.

State and local law enforcement officials have the general power to investigate and arrest violators of federal immigration statutes without prior INS knowledge or approval, as long as state law does not restrict such general power.

The arrest, detention, or transportation of aliens by local police enforcing criminal provisions of the INA is not a regulatory "determination" of the conditions of alien entrance and residency, but merely enforcement of the previously determined conditions. States can prosecute illegal aliens under state laws without running afoul of the

INA. State and local laws do not attempt to regulate who may come to and stay in the U.S. , and thus do not impinge upon the federal government's exclusive power to regulate immigration, even if they affect immigrants.

In 1999 a decision in the Tenth Circuit Court of Appeals upheld the independent authority of local police departments to enforce federal immigration law, as long as state law prescribing police power of arrest authorized such an arrest. The U.S. Dept. of Justice endorsed this doctrine in April 2002. Under Attorney General Ashcroft, the U.S. Dept. of Justice took the position that state and local police have inherent authority to enforce civil immigration laws.

Assistant Attorney General Kobach explained that the inherent arrest authority of states arises from their pre-constitutional status as sovereign entities. The powers retained by the states at the time of ratification proceeded "not from the people of the United States, but from the people of the several states," and remain unchanged, except as they have been "abridged" by the Constitution. The authority of a state to arrest for violations of federal law is thus not delegated; but "inheres in the ability of one sovereign to accommodate the interests of another sovereign." This federalism-based analysis has a strong judicial pedigree.

The courts also ruled (*Miller v. U.S.*, 357 U.S. 301, 305(1958)) that a warrant less arrest "of an arrest for violation of federal law by state peace officers, ...the lawfulness of the arrest without warrant is to be determined by reference to state law."

Sanctuary policies are illegal. Local, state, or federal government agencies that sanction or retaliate against employees or officials who report immigration law violations to ICE or the Border Patrol can be sued by the whistleblower under 8 U.S.C. 1373 or 8 U.S.C. 1644 for damages and costs.

Citizens have a constitutional right to expect the protection of federal laws which prohibit unauthorized activities by non-citizens are denied equal protection when a police department or magistrate acts in a manner that encourages or assists persons selected on the basis of nationality or alienage to engage in such unlawful activities.

"Harboring" includes any conduct that tends to substantially help an alien to remain in the United States unlawfully. Criminal liability for harboring or sheltering could arise from acceptance of a Mexican matricula consular - which, presented without proper immigration documents, is prima facie evidence of illegal alien status - by a local government agency that , for example, provide housing or utility assistance, made referrals to a public or private job assistance program or detained matricula presenters for violation of city ordinances and release them without verifying their immigration status with the U.S. Immigration and Customs Enforcement.

No policy or humanitarian argument has been identified by the courts that would negate the criminal mens rea of reckless disregard for the fact that aliens are present in the United States in violation of law.

Illegal aliens are not a suspect class entitled to Fourteenth Amendment based strict scrutiny of any discriminatory classification based on that status, nor are they defined by an immutable characteristic, since their status is the product of conscious unlawful action.

A law enforcement officer has probable cause to detain an individual who admits he or she is an alien (legal or illegal) but is not in possession of registration documents. This is a crime that a warrant less arrest can be made in most jurisdictions.

Immigration document fraud is a felony enforceable by local police officers under 18 U.S.C. 1028. Criminalizes eight types of knowing conduct that relate to false identification documents.

The Bail Reform Act of 1984 created a powerful detention provision that authorizes a state of local police officer to arrest any alien other than a legal permanent resident for a federal "offense," and to request a local magistrate to temporarily detain the alien for up to ten days without bail while awaiting transfer into federal custody, so long as the alien is found to be a "flight risk" or danger to any other person or the community."

The authority to make arrest for federal offenses under 18 U.S.C. 3041 extends to state and local law enforcement officers. (U.S. v Bowdach, 561 F.2d 1160, 1168 (5th Cir. 1977))

Supreme Court Ruling Razes Artificial Fire Wall Between Local Law Enforcement and Immigration Enforcement (Muehler v. Mena) 9-0 Landmark Decision:

(Washington D.C.-April 1, 2005) In its March 22 ruling in the case of Muehler v. Mena, the Supreme Court removed barriers that prevent local law enforcement officers from questioning the immigration status of individuals they suspect to be in the United States illegally. In this groundbreaking decision, the high Court rejected the claim of Ira Mena, a permanent resident of the U.S., that police had violated the Fourth Amendment while conducting a lawful search of her home.

"Whatever legal fig leaf many police departments have been using to justify policies of non-cooperation with federal immigration authorities, has been stripped away by this landmark Supreme Court decision," stated Dan Stein, president of FAIR. "If local police are barred from cooperating with federal authorities in the enforcement of U.S. immigration laws it is purely a political decision on the part of local politicians and police chiefs. There is no legal barrier to local police inquiring about a person's immigration status and then acting upon the information they gather."

Congress expressly intended for local law enforcement to act in cases in which officers have reason to believe that an individual is in the country illegally, even though immigration law enforcement is not their primary responsibility. In 1996, Congress passed and President Clinton signed legislation that protects individual officers who act to enforce federal immigration laws, even if their departments have non-cooperation policies.

The Democrat legislators, the Governor and the AG want to do something?

Don't you get tired of double talk? If they really cared they would do something about it. Do you believe these folks who have fought us on every turn all of a sudden want to do something about illegal immigration? It is very frustrating when these same folks admit we have a problem, then proceed to stop any effort to enforce the law of fix the problem. It should alarming to every citizen, yet the main stream media continues to give credit for bold talk knowing it is political posturing. How embarrassing. Some of us have battled with friends in our own party, we have fought friends in the business community and have taken NO prisoners on this issue and have put the security of our nation, our neighborhoods and the Rule of Law above all else.

I believe the Governor, the Attorney General and Sen. Bill Brotherton (and the Democrat legislators) are very disingenuous and remind me of The Three Amigos, they have dressed up, talk tough, parade around, shoot their guns in the air, put on a great show for the village, but have no intention of really getting involved.

This same group of players have been the cheerleaders for the illegal aliens. Of course the main stream media is on their side all the way.

The media continues to try and make it sound good to the unsuspecting public. As recent as January 9th this year, some of these folks were cheerleading for the illegals who showed up at the capitol encouraging the illegals to keep up the fight and shouting we are with you and bragged about being on their side (led by Rep. Gallardo). We should be very cautious.

I am not new to this battle, I will not stand by and be a spectator to the destruction of this nation. Political dishonesty on this issue must be stopped. If they really cared they would: Secure the Border, Sanction Employers, Enforce existing laws, Stop giving benefits to those who violate our laws. Our nation is on the brink of disaster, we have a national crises.

These folks have a history, in fact everyone of them opposed Prop. 200 and lobbied to give illegals driver licenses, voted against the Matricular card, opposed ALL enforcement bills against troops on the border, for employer

sanctions (until this year), and in fact opposed every single effort to protect taxpayers or our neighborhoods, they even oppose reasonable and common sense safe guards to insure the integrity of our elections.

One thing you might note also these are the same people who want Guest worker programs (code word for Amnesty). I have consistently battled some of my good friends at the Chamber of Commerce, the Farm Bureau, the business community who want to pander for cheap labor and refuse to recognize the destruction to this nation (some wonderful people, but dead wrong on this issue). Is anyone naive enough to believe these same pro illegal alien Democrat legislators now want something done?

Here is what I am trying to do:

I am running legislation again to go after Employers who hire illegal aliens (4th straight year, with not ONE democrat in support in the past), the political dishonesty is unbelievable, Republican leadership has committed to me \$100 million for border security and enforcement. I am proposing we add 100 DPS officers to go after gangs and immigration/illegal alien enforcement, plus a 100 officers for a multi-jurisdictional gang and immigration task force, in addition to the 47 DPS officers I am proposing for DPS patrol, I am proposing adding 30 million dollars for local law enforcement in grant money IF they will enforce the law, I am appropriating \$50 million for technology (a proven radar system tied to Satellite GPS system that will track anyone with a 6 mile radius of the border) at the border to secure it. I have legislation to make a state crime (trespassing) for illegals to be in Arizona without authorization. I am also going after lending institutions that give mortgages to illegal aliens and those that rent to them. I am introducing other provisions to go toward stopping this invasion. I am requiring all agencies to verify legal status of employees of all licensed business (i.e. contractors), etc. in the state.

Below are some of my bills:

HB 2577 - EMPLOYER SANCTIONS: Illegal aliens; employment; verification (WILL NOT RELY ON FEDERAL GOVERNMENT, IT WILL BE AMENDED TO REQUIRE STATE AUDITS OF ALL EMPLOYERS WHO HAVE STATE LICENSES-IT WILL ADD A STATE CHARGE AND \$5000 FINE FOR EACH VIOLATION, 2ND TIME REVOCATION OF LICENSE PLUS THE FINES) I will add resources for random audits of employers and

1 Allows anyone who has been injured by a business who hires illegal aliens to file a civil action with the AG or County Attorney for damages.

2 Charges the County Attorneys and the Attorney General with the enforcement of the article.

3 Requires an employer to discharge an employee if it is discovered that an invalid social security number has been provided, unless an error occurred when the number was processed by the employer.

4 Allows a discharged employee ninety days to file a court action to dispute a violation.

5. States that the court may impose up to a \$5000 fine per violation of a cease and desist order.

6. Require state agencies with licensing authority to do random audits of licensees to make sure licensees, contractors, etc. are following the law;

1 Specifies that employers utilizing the Social Security's Basic Pilot Employment Verification System to verify immigration status of employees.

2 Allows for the revocation of an employer's license, certification, permit or charter if they have been sanctioned by a federal agency for knowingly hiring or employing an illegal alien.

3 Requires the Director of the Department of Administration to use the Social Security's Basic Pilot Employment Verification System to verify the immigration status of all state employees.

4 Prohibits a procurement officer from awarding a contract to a contractor or subcontractor that employs an illegal alien.

5 Requires that before a contract is awarded, contractors and subcontractors must utilize the Social Security's Basic Pilot Employment Verification System to verify the immigration status of their employees and to provide a signed affirmation to the procurement officer, indicating that the verification has been completed.

6 Adds the amount of salary or other compensation paid to an illegal alien to the Arizona adjusted gross income.

HCR2044 (copy of HB 2577) EMPLOYER SANCTIONS (NOT GIVEN A NUMBER YET) - (INCASE GOVERNOR DOES NOT SIGN HB 2577 IT WILL GO TO THE VOTERS: Illegal aliens; verification; employment

HB 2582 (CLEAR ACT AND ENFORCEMENT) Border security; council; appropriation \$50 million (also contains the Clear Act that the governor vetoed because of not funding so she said) NO agency who has a de facto sanctuary policy against arresting or working ICE will get one penny of this money:

Includes the Clear Act (make it clear local law enforcement knows they inherent authority to enforce immigration law) Authorizes peace officers to investigate, apprehend, detain or remove aliens in the United States in the enforcement of immigration laws. Adds 100 DPS officers to the Gang and Immigration Enforcement Division this bill creates (in addition to what we have already authorized for Gang squad). The bill establishes the Border Security Council to provide grants to political subdivisions for costs associated with immigration enforcement and creates the Border Security Fund. Sets up a Council of two Sheriffs, two County Attorneys (including Any Thomas), two Police Chiefs, DPS Director, AG and two legislators (as advisors), etc. to review grant applications and make sure any money given out is to agencies enforcing the law.

Appropriates the following sums from the general fund in fiscal year 2006-2007:

\$15,000,000 to the Fund for grants to counties for incarceration cost of illegal aliens if they have no sanctuary policy.
\$15,000,000 to the Fund for grants to city, town and county law enforcement agencies for immigration enforcement purposes (if they have an aggressive policy about arresting illegal aliens).

\$10,000,000 to DPS (100 additional Officers) for the expansion of the Gang Intelligence Team Enforcement Mission (GITEM) into a Gang and Immigration Intelligence Team Enforcement mission (GITEM). The expanded GAITER would include new functions relating to immigration enforcement, such as border security, personnel, incarceration infrastructure and physical barriers. The Director of DPS is required to keep GAITER fully staffed and must also coordinate with local law enforcement officials.

\$10,000,000 to DPS (another 100 officers) for additional patrol officers for border security in southern Arizona.

HB 2579 National Guard on the Border: Appropriations We will pay to put them on the border now. This is in response to the Governors However, a review of statements she and her folks have made throughout her term show Napolitano has a bigger eye toward reelection than securing the border. It is hard to know what to believe from this governor because she is constantly changing directions,, Arizona has the resources to pay for this important function today and we are willing to do it now.

Waiting for the federal government to pay is a way to avoid putting the Guard on the border. She declared an Emergency a short time ago and did not call out the National Guard (if she believed it was a true emergency the first thing one usually does is call out the National Guard). The federal government should pay, but we can lose sight of the fact that every day we delay hurts the citizens of this state and cost money.

HB 2578 border radar; lease; appropriation Appropriates \$50,000,000 from the General Fund to the Department of Emergency and Military Affairs (DEMA) to lease or purchase a ground-based radar system integrated with cameras for the purpose or protection of Arizona's southern border and stipulates that DEMA determine the location and implementation of the radar system with the cooperation and consultation of: the Department of Public Safety, the United States Border Patrol, military facilities on the border, nearby Indian Reservations, Bureau of Land Management, local sheriffs and chiefs of police near the border, and private property owners on the border.

HB 2589 Illegally entering Arizona; trespass Makes it a Class 1 Misdemeanor for a foreign citizen to enter the state, provided that person is in the United States illegally.

Second/subsequent violations are Class 4 felonies.

Requires that the arresting authority secure fingerprints Allows the arresting authority to detain the offender and transfer the offender to the proper federal agency or refer the offender for prosecution

HCR 2037 : emergency management; border wall; appropriation Requires the Department of Emergency and Military Affairs (DEMA) to enter into contracts to build a wall along Arizona's southern border to control illegal immigration and establishes the border wall security fund under the administration of DEMA, which will consist of legislative

appropriations, monies collected by the Department of Revenue from an 8% tax on all electronic transfers of money into Arizona from any foreign country, and gifts and grants.

Allows DEMA to accept donations of services, labor or equipment for the building and maintenance of the wall, and the State Treasurer to invest and divest monies in the fund, with all monies earned from invested to be credited back to the fund.

HB2586 Licenses; illegal aliens

Prohibits an agency or political subdivision from issuing any license to an illegal alien.

Defines "illegal alien" as any person who is not a citizen or national of the United States and who is unlawfully present or unlawfully residing in the United States.

Defines "license" as the whole or a part of any agency or political subdivision permit, certificate, approval, registration, charter or similar form of permission as required by law.

HB 2580 Illegal aliens; serious felonies; bail - HELD WITH NO BOND (the companion bill to the HCR passed last year to be on the ballot in '06 to be voted on) Requires that after a person is brought to a law enforcement agency for incarceration, the agency shall determine that person's country of origin and that if the person is not a United States citizen, the agency shall notify the person's country of origin unless the person waives the notification and is allowed to do so. Any failure or inability of an agency to provide this notice does not:

Affect the admissibility of any statements.

Affect the voluntaries of a guilty plea.

Affect the validity of a conviction.

Afford a defendant any rights in any proceeding related to deportation, exclusion or denial of naturalization.

Prohibits a person in custody from being eligible for bail if the person has been charged with a Class 1-4 felony or aggravated DUI and has entered or remained in the United States illegally.

Requires that for the purposes of determining the method of release or the amount of bail, the judicial officer take into account whether the accused has entered or remained in the United States illegally in addition to whether the accused's residence is in Arizona, another state, or outside of the United States Contains a conditional enactment requiring voter approval (tied to HCR

2028 from last year).

HB 2587 (Stop mortgages to illegal aliens) Loan applications; taxpayer identification numbers Prohibits lenders from providing loans to persons when utilizing their federal individual taxpayer identification numbers as a method of identifying the loan recipient. Lenders may request borrower's individual tax identification number after executing the loan agreement if the borrower is ineligible to receive a social security number under federal law.

Representative Russell Pearce, R-18, Mesa, AZ, Chairman of House Appropriations Committee

-----Original Message-----

From: Kobach, Kris W. [mailto:KobachK@umkc.edu]

Sent: Monday, February 20, 2006 6:53 PM

To: Russell K. Pearce

Subject: Help with SB 1157

Rep. Pearce,

We met in October at the Maricopa County conference on immigration. I was formerly Counselor to US Attorney General John Ashcroft, serving as his chief advisor on immigration law, 2001-03. I am currently a Professor of Law at the Univ. of Missouri (KC) School of Law. (I am also the lead attorney suing the Kansas Board of Regents for giving in-state tuition to illegal aliens, and co-counsel in the California class action suit on the same subject.)

I have been following the progress of SB 1157 in the AZ legislature. I see that it passed the Senate and is headed for the House. I understand that MALDEF and the open borders crowd has been arguing that SB 1157 impermissibly

interferes with the federal government's authority to regulate immigration law. They also claim that it is subject to the same infirmities as the NH law. They are wrong on both counts. If you can use my help, either providing expert testimony on behalf of the bill, or defending it in some other way, let me know.

Unfortunately most attorneys in state AG offices are not familiar enough with the complexities of immigration law to mount a credible defense of statutes like SB 1157.

Keep fighting the good fight.

Kris Kobach
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