

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

NUMBER: 06-1726

DIVISION "F"

STATE OF LOUISIANA

VERSUS

OMAR BARRIENTOS

FILED: 1-31-07

Janet Ryan
DEPUTY CLERK

JUDGMENT & REASONS

This matter came before the court upon defendant's Motion to Quash on January 19, 2007. Both parties, as well as Amici Curiae submitted memoranda and the matter was taken under advisement.

Present:

Romualdo Gonzalez and Kyle Sciafani, Attorneys for Omar Barrientos;

Melissa Crow, Attorney for the National Immigration Law Center, Pro Hac Vice;

and

Martin Bellanger, Attorney for the State.

After hearing oral arguments, reviewing all memoranda of counsel, the pleadings and facts and considering the law and the evidence,

IT IS ORDERED, ADJUDGED AND DECREED that this Court finds the following:

In March, 2006, the defendant, Omar Barrientos was stopped by police for having an expired license plate on his vehicle. According to the police report, he produced a Texas identification card, which the officer soon determined belonged to another individual. The defendant is now is charged with violation of La. R.S. 14:100.13, Operating a Vehicle Without Lawful Presence in the United States, which states:

A. No alien student or nonresident alien shall operate a motor vehicle in the state without documentation demonstrating that the person is lawfully present in the United States.

B. Upon arrest of a person for operating a vehicle without lawful presence in the United States, law enforcement officials shall seize the driver's license and immediately surrender such license to the office of motor vehicles for cancellation

and shall immediately notify the INS of the name and location of the person.

C. Whoever commits the crime of driving without lawful presence in the United States shall be fined not more than one thousand dollars, imprisoned for not more than one year, with or without hard labor, or both.

Because we find that the statute unconstitutionally preempts federal immigration law, we grant the defendant's Motion to Quash. The statute is an impermissible attempt to regulate immigration and conflicts with federal immigration law.

We are troubled that the statute seems to make it a crime for some persons lawfully within the United States to drive in Louisiana by defining "nonresident alien" and "alien student" in a way which is incompatible with the federal scheme. See 8 U.S.C. §§ 1101(a)(3), 1157, 1182(d)(5), 1231(b)(3), 1254a, 2258. Additionally, the statute's identification requirement places a burden on legal and non-legal aliens, which exceeds the standard contemplated by federal immigration law. 8 U.S.C. § 1304(e).

The statute was enacted by the Louisiana Legislature in 2002 under the chapter regarding "Prevention of Terrorism on the Highways." La. R.S. 100.11. The legislature's stated purpose was to enact laws which "compliment federal efforts to uncover those who seek to use the highways of this state to commit acts of terror and who seek to gain drivers' licenses for the purpose of masking their illegal status in this state." *Id.* However, the statute's true purpose is revealed by its notification requirement, which requires law enforcement officials to notify the Department of Homeland Security of individuals arrested under the statute in order to have removal proceedings initiated.

For the foregoing reasons, **IT IS ORDERED ADJUDGED AND DECREED** that defendant's Motion to Quash is hereby **GRANED**.

JUDGMENT READ, RENDERED AND SIGNED at Gretna, Louisiana, this 31st day of January, 2007.


JUDGE