
APPEAL NO. B214390

COURT OF APPEAL OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

RUDY MORENO,
Petitioner-Appellant

vs.

WILLIAM J. BRATTON, *et al.*,
Respondents-Appellees

LOS ANGELES POLICE DEPARTMENT
Real Party in Interest

ON APPEAL FROM THE FINAL JUDGMENT OF
THE LOS ANGELES COUNTY SUPERIOR COURT
CASE NO. BS108317
THE HONORABLE DAVID YAFFE

APPELLANT'S OPENING BRIEF

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**CERTIFICATE OF INTERESTED
ENTITIES OR PERSONS**

Counsel hereby discloses, pursuant to Rule of Court 8.208, that
the following entities or persons may have an interest in this case:

Petitioner-Appellant Rudy Moreno

Respondent-Appellee William J. Bratton (in his official
capacity as Chief of Police of the Los Angeles Police
Department)

Respondent-Appellee John Mack (in his official capacity as
President of the Los Angeles Board of Police Commissioners)

Respondent-Appellee Alan J. Skobin (in his official capacity as
Vice-President of the Los Angeles Board of Police
Commissioners)

Respondent-Appellee Shelley Freeman (in her official capacity
as a member of the Los Angeles Board of Police
Commissioners)

Respondent-Appellee Andrea Ordin (in her official capacity as
a member of the Los Angeles Board of Police Commissioners)

Respondent-Appellee Anthony Pacheco (in his official capacity
as a member of the Los Angeles Board of Police
Commissioners)

Real Party in Interest Los Angeles Police Department

Attorneys for Petitioner-Appellant

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**STATEMENT OF THE CASE AND
FACTUAL BACKGROUND**

This case arises from the failure of the Los Angeles Police Department to follow California law. California Health & Safety Code Section 11369 requires that a person arrested for certain, specific narcotics offenses be reported to federal immigration authorities if there is reason to believe the arrestee is not a United States citizen. Specifically, Section 11369 states:

Where there is reason to believe that any person arrested for a violation of Section 11350, 11351, 11351.5, 11352, 11353, 11355, 11357, 11359, 11360, 11361, 11363, 11366, 11368 or 11550, may not be a citizen of the United States, the arresting agency shall notify the appropriate agency of the United States having charge of deportation matters.

Health & Safety § 11369.

Petitioner-Appellant (“Petitioner”), a resident and taxpayer of Los Angeles, brings this action pursuant to Section 526a of the Code of Civil Procedure to compel Respondents-Appellees (collectively the “LAPD”) to comply with Section 11369 or desist from creating an atmosphere of non-cooperation with federal immigration authorities that deters compliance with § 11369. The LAPD answered the

Petition, the parties filed briefs with the trial court, and, on December 16, 2008, a hearing was held in the matter.

The LAPD contends that it complies with Section 11369. According to the LAPD, when an arrestee is booked, a booking employee, who is either a civilian detention officer or, if a civilian detention officer is not available, the arresting officer, enters the arrestee's vital information into an LAPD computer database known as the Decentralized Automated Booking Information System ("DABIS"). CT at 67-68 and 82, ¶¶ 2-3. This information is obtained from a Field Identification card completed by the arresting officer and/or by questioning the arrestee. *Id.* at 82, ¶ 3. If the arrestee was born outside of the United States, an "X" is entered in the first position in the "birthplace" field on the computerized booking form. *Id.* at 67-68 and 82, ¶ 3. The arrestee is then fingerprinted and photographed. *Id.* at 82, ¶ 4.

After the booking information is placed into DABIS, it is automatically transmitted electronically from DABIS to a computer system used by the County of Los Angeles known as the Automated Justice Information System. ("AJIS"). CT at 67-68 and 84, ¶¶ 2-3.

The Los Angeles Sheriff Department (“LASD”) has modified AJIS to cause an automatic notification of all arrests of foreign-born persons by County of Los Angeles law enforcement agencies, including the LAPD, to the Law Enforcement Support Center (“LESC”), which is an office the U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement (“ICE”) located in Williston, Vermont. *Id.* at 68 and 85, ¶ 5. The LAPD admits that this system was put in place by the LASD, not the LAPD. *Id.* at 67. The LAPD does not claim to provide any other type of arrestee notification to ICE.

The trial court found in favor of the LAPD, concluding in a December 16, 2008 minute order that:

The uncontested evidence before the court is that the LAPD records in its computer system as to every person arrested whether that person is or is not foreign born, if that information can be obtained by examining the arrestee, and that the information in the LAPD computer system is electronically transmitted to the Los Angeles Sheriff’s Department, and by that department to the Immigration & Customs Enforcement Agency of the United States Department of Homeland Security.

Petitioner does not explain why that evidence shows or indicated noncompliance with the statute or what

additional action petitioner contends is necessary in order to comply with the statute.

Clerk's Transcript ("CT") at 89-90. For the reasons set forth herein, the trial court's ruling should be reversed.

ARGUMENT

I. Standard of Review.

This case presents a traditional petition for mandamus pursuant to Code of Civil Procedure Section 1085. The standard of review of such actions is *de novo*:

In reviewing the trial court's ruling on a writ of mandate (Code Civ. Proc., § 1085), the appellate court is ordinarily confined to an inquiry as to whether the findings and judgment of the trial court are supported by substantial evidence. However, the appellate court may make its own determination when the case involves resolution of questions of law where the facts are undisputed.

Smith v. Los Angeles County Board of Supervisors, (2002) 104 Cal. App. 4th 1104, 1115 (citations and internal quotation marks omitted); *see also Environmental Charter High School v. Centinela Valley Union High School Dist.* (2004) 122 Cal. App. 4th 139, 145, 146 ("when an appellate court is asked to resolve questions of law on

undisputed facts, then the standard of review requires an independent analysis.”) (citation and internal quotation marks omitted).

In this regard, appellate courts do not undertake a review of the trial court’s findings or conclusions. Instead, they “review the matter without reference to the trial court’s actions.” *Friends of the Old Trees v. Department of Forestry & Fire Protection*, (1997) 52 Cal. App. 4th 1383, 1393 (citations omitted). In a mandamus proceeding, where a question of law is concerned “trial and appellate courts . . . perform the same function and the trial court’s statement of decision has no conclusive effect” upon the court. *Smith*, 104 Cal. App. 4th at 1115 (citations and internal quotation marks omitted). “Concurrently, application of a statute to a set of facts raises questions of law to which de novo review applies.” *Ranchwood Cmty. P’ship v. Jim Beat Constr. Co.*, (1996) 49 Cal. App. 4th 1397, 1408 (citation omitted). In conducting its de novo review, “the applicable record will be redefined and reevaluated.” *Smith*, 104 Cal. App. 4th at 1115.

II. The LAPD Does Not Comply with § 11369.

When the Legislature enacted Section 11396, it obviously was concerned about addressing narcotics crimes. If there was reason to believe a person arrested on narcotics charges may not be a U.S. citizen, the Legislature wanted the arrestee brought to the attention of federal deportation officials. It did not purport to require that arresting agencies make any determination about an arrestee's citizenship, but it clearly believed that highlighting these particular arrestees could help to address the scourge of illegal narcotics in the State of California. As the Court of Appeal recently found in a substantially similar case involving the San Francisco Police Department, the statute

reflects a legislative conviction that federal deportation of persons arrested for selling or using narcotics and reasonably believed to be noncitizens could be effectuated with much greater 'certainty and celerity' (if federal authorities determined they were unlawfully present in this country) than the prosecution and conviction of such persons for violation of state narcotics laws, and that exposure of such persons to swift imposition of that civil penalty would help 'stamp out illicit drug traffic' in California.

Fonseca v. Fong (2008) 167 Cal. App. 4th 922, 940-41.¹

The LAPD argued below that it complies with Section 11369 by putting an “X” in the “birthplace” field on a computerized booking form that the LASD, not the LAPD, makes available to ICE through a County of Los Angeles database. The “X” purportedly indicates that an arrestee was born outside the United States. This is done for *all* foreign-born arrestees regardless of any other information the LAPD might possess about whether a particular arrestee may or may not be a U.S. citizen. The LAPD’s argument, essentially, is that “even though we don’t do it correctly, the end result is the same.” Reporter’s Transcript (“RT”) at page A-9, line 2-4. Not only does the LAPD not do it correctly, but the end result is not the same.

Again, the statute requires that an *arresting agency* notify federal deportation authorities about the arrest of a person on specific narcotics charges where there is reason to believe the person *may not*

¹ The Court of Appeal in *Fonseca* also found that the statute is an anti-narcotics measure, not an immigration enforcement measure. 167 Cal. App. 4th at 940-41. It applies equally to immigrants and non-immigrants. A person subject to the statute could just as easily be a tourist, student, or other non-immigrant visa-holder as he or she could be a lawful permanent resident alien or an illegal alien.

be a citizen of the United States. While the LASD might notify ICE about foreign-born arrestees held in its jail system, the LASD is not the relevant “arresting agency” for purposes of this lawsuit.² It is only the jailor. The Legislature obviously could have required all *jailors* in the State of California to notify federal deportation authorities about foreign-born arrestees held in their jail systems, but it did not do this. Instead, it required that *arresting agencies* notify federal deportation authorities about the arrest of persons on specific narcotics charges if the *arresting agency* has reason to believe the arrestees may not be U.S. citizens. One reason for requiring *arresting agencies* to highlight these particular arrestees for federal deportation authorities is that the Legislature could have found an *arresting agency* was more likely than a *jailor* to possess relevant information about a particular arrestee’s citizenship.

In addition, indicating that a person was born outside the United States says little, if anything, about whether the person is or is not a U.S. citizen. Millions of U.S. citizens were born outside the United States. *See, e.g.,* Teresa Watanabe, “Newest Citizens Reshape

² Plaintiff makes no claims about persons arrested by the LASD.

Politics; The U.S. Sees a Record Surge,” *Los Angeles Times*, May 11, 2009 at A1. Governor Schwarzenegger, Governor Jennifer M. Granholm of Michigan, and U.S. Senator John McCain of Arizona are famous examples of this undeniable fact. It also is possible for persons born in the United States to relinquish their U.S. citizenship (*see* 8 U.S.C. § 1481) or for persons born in the United States to not be entitled to U.S. citizenship. *See* U.S. Const., amend. XIV, sec. 1 (“All persons born or naturalized in the United States, *and subject to the jurisdiction thereof*, are citizens of the United States and the State wherein they reside.”) (emphasis added). Again, the Legislature could have required that federal deportation authorities be notified of *all* foreign-born arrestees, but it did not do so. Rather, it required notification for persons arrested on specific narcotics charges where the arresting agency has *reason to believe* the arrestee *may not be a U.S. citizen*. In short, even if the LAPD notified ICE directly about all of its foreign-born arrestees, it would still fail to comply with the statute because it does not highlight for ICE those persons arrested on

narcotics charges whom it has reason to believe may not be U.S. citizens.³ Instead of a needle, ICE gets the whole haystack.

There are any number of ways an arresting officer may develop a reasonable belief that an arrestee is not a U.S. citizen. First and foremost, an arrestee may simply tell the arresting officer that he or she is not a U.S. citizen. An officer also may discover facts leading him or her to believe an arrestee is not a U.S. citizen. An Australian tourist arrested in West Hollywood for purchasing ecstasy may produce a foreign passport when asked for identification. A search incident to an arrest in Echo Park of a Filipino national on cocaine charges may yield a “green card” bearing the arrestee’s name, photograph, and other identifying information.⁴ A Saudi national attending UCLA on a student visa may try to appeal to an arresting officer’s sympathies by pleading that he or she will be sent home and

³ The LAPD cannot *prohibit* or in any way *restrict* officers from providing information about a person’s citizenship or immigration status to ICE. 8 U.S.C. §§ 1373 and 1644.

⁴ Every permanent resident alien over the age of eighteen is required by law to carry a certificate of alien registration or alien registration receipt card at all times. 8 U.S.C. § 1304(d). Failure to do so is a misdemeanor. *Id.*

punished severely if convicted of possession of heroine. None of these examples requires the arresting officer to make a determination about the arrestee's citizenship or immigration status, but in each case the officer clearly possesses knowledge that gives him or her reason to believe the arrestee may not be a U.S. citizen.

There also are any number of ways an arresting officer may have reason to believe an arrestee is not a U.S. citizen even though the arrestee may have been born in the United States. A child born in Bellingham, Washington but raised in Vancouver, British Columbia and who later joins the Canadian military may very well be a Canadian citizen, not a U.S. citizen. *See* 8 U.S.C. § 1481(3)(B) (a person may lose U.S. citizenship by serving as a commissioned or non-commissioned officer in the armed forces of a foreign state). An arresting officer may have substantial reason to believe such a person vacationing in Los Angeles and arrested on narcotics charges is not a U.S. citizen, but no notification of the arrest would be made to ICE because the person was born in the United States.

A child born in Washington, D.C. to Japanese diplomats is not a U.S. Citizen. *United States v. Wong Kim Ark* (1898) 169 U.S. 649,

682 (children born in the United States to parents who are foreign diplomats do not obtain U.S. Citizenship under the 14th Amendment). If such a person were to return to the United States as an adult and be arrested in Los Angeles on narcotics charges, the arresting officer may have substantial reason to believe the arrestee is not a U.S. citizen, but, again, no notification would be made to ICE because the person was born in the United States.

There are many possible scenarios under which an officer making a narcotics arrest in Los Angeles, a crossroads for people from all over the world, could properly discover facts that cause the officer to reasonably believe an arrestee may not be a U.S. citizen. The LAPD's practice of placing an "X" in a box to indicate foreign birth fails to convey to ICE the information the Legislature wants ICE to have. Nor is it at all apparent that ICE would ever discover this same information at some later point in time. Thus, LAPD fails to comply with Section 11369.

CONCLUSION

Of all the persons arrested in the State of California, the Legislature has mandated that arresting agencies highlight for federal deportation authorities those persons arrested for narcotics violations where there is reason to believe the arrestees may not be U.S. citizens. Identifying all arrestees who happen to be foreign born simply does not highlight those arrestees who may not be U.S. citizens. Consequently, the LAPD does not comply with the statute. The trial court's decision should be reversed, Petitioner's Petition for a Writ of Mandate should be granted, and the LAPD must be ordered to comply with Section 11369.

Dated: August 28, 2009

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE
PURSUANT TO RULE 8.520(c)

I certify that pursuant to Rule 8.520(c), the attached brief is proportionally spaced, has a typeface of 14 points or more and contains 2,469 words.

Dated: August 28, 2009

Sterling E. Norris
Sterling E. Norris 1PJD

PROOF OF SERVICE

I am a citizen of the United States and employed by Judicial Watch, Inc. in the City of Washington, District of Columbia. I am over the age of 18 and am not a party to the within action. My business address is 501 School Street, S.W., Suite 700, Washington, DC 20024.

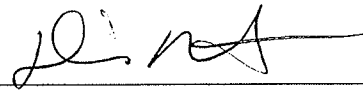
On August 28, 2009, I served a copy of the within document described as: **APPELLANT'S OPENING BRIEF**

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Washington, D.C. addressed as set forth below.
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I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed on August 28, 2009 at Washington, D.C.

A handwritten signature in black ink, appearing to read 'D. Rothstein', written over a horizontal line.

David F. Rothstein

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