



Iowa General Assembly

2017 Legal Updates

Legislative Services Agency – Legal Services Division

www.legis.state.ia.us

http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20170609/15-0671.pdf

Purpose. Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.

STATE CRIMINAL ENFORCEMENT RELATING TO AN UNDOCUMENTED NONCITIZEN

Filed by the Iowa Supreme Court

June 9, 2017

State v. Martinez

No. 15-0671

http://www.iowacourts.gov/About_the_Courts/Supreme_Court/Supreme_Court_Opinions/Recent_Opinions/20170609/15-0671.pdf

Factual Background and Prior Proceedings. The State attempted to prosecute Martha Martinez (defendant) for using false documents to obtain federal employment authorization. The defendant is an undocumented noncitizen brought to Muscatine, Iowa, by her parents in 1997 as an 11-year-old child. The defendant has continuously lived in Iowa, is the mother of four children who are citizens of the United States, and was granted deferred action under the Department of Homeland Security's Deferred Action for Childhood Arrivals (DACA) program. When the defendant turned 17 years of age, she used another person's birth certificate and social security number to obtain a driver's license. In 2013, the defendant used her fictitious driver's license and social security card to obtain employment at a local business in Muscatine. Also in 2013, the defendant applied for and received temporary lawful immigration status under the DACA program, and became eligible to obtain a social security number and an Iowa driver's license in her own name. In March 2014, the defendant applied for and obtained a driver's license in her own name using her newly issued social security card. The Iowa Department of Transportation (DOT), apparently using facial recognition software, recognized a similarity between her photograph taken on her valid driver's license and earlier photographs taken when she obtained her fictitious driver's license and began an investigation.

The State charged the defendant with identity theft in violation of Iowa Code section 715A.8 and forgery in violation of Iowa Code section 715.2(1). The defendant filed a motion to dismiss citing *Arizona v. United States*, 567 U.S. 387 (2012), arguing that federal law preempted her prosecution under the Iowa identity theft and forgery statutes. The State distinguished the *Arizona* case from the present case arguing that the Arizona statute criminalized failure to comply with federal noncitizen registration requirements while the state criminal charges filed against the defendant were independent of federal law. The district court denied the defendant's motion to dismiss, concluding that the charges against the defendant were state crimes independent of the defendant's immigration status. The Iowa Supreme Court (Court) granted the defendant's application for interlocutory review.

Issue. Whether the State can criminally prosecute an undocumented noncitizen brought to the United States as a child, who applied for and was granted deferred action under the federal DACA program, for the prior use of false documents in order to obtain employment.

Analysis. The Court held in a 4-3 decision that the Supremacy Clause of the United States Constitution preempts state law under the facts in this case. The federal government has broad power over the subject of immigration and the status of noncitizens, based in part to establish uniform enforcement of federal immigration law. The Court emphasized that the federal government has enacted numerous laws relating to the status of unauthorized noncitizens and the employment of such noncitizens.

With respect to the identity theft and the forgery charges, the Court concluded both statutes as applied in this case were preempted by federal immigration law under the doctrine of preemption. More specifically, the Court concluded that the

identity theft charges are subject to “field” preemption because the federal government occupies the field and has chosen to fully regulate immigration. Additionally, the Court concluded that Iowa’s identity theft statute is subject to conflict preemption which occurs when a state statute disrupts the establishment of a uniform federal enforcement regime.

In applying preemption principles to the relevant Iowa law, the Court concluded that Iowa’s forgery statute is a mirror image of the federal immigration law and thus the forgery statute is facially preempted by the federal immigration law. The Court stated that such mirror-image statutes are preempted because the forgery statute would impermissibly divest federal authorities of the exclusive power to prosecute forgery crimes at the federal level.

The Court further noted that Iowa’s identity theft statute is not a mirror image of the federal immigration statute and is not facially preempted by federal immigration law. However, the identity theft statute is subject to field preemption as applied to the facts of this case. The Court stated that the identity theft statute is preempted to the extent the statute regulates document fraud committed to allow an unauthorized noncitizen to work in the United States in violation of federal immigration law. The Court further stated that current federal immigration law is a comprehensive statute that brought the regulation of noncitizen employment under the umbrella of federal immigration policy. Because the federal government occupies the field regarding employment of unauthorized noncitizens, the Court concluded that the State in this case is barred under the doctrine of field preemption and cannot prosecute the defendant for identity theft related to false documentation supplied to the defendant’s employer. The Court determined that the prosecution of the defendant is a matter of federal rather than state law.

The Court further noted that Iowa’s identity theft statute is subject to conflict preemption in this case, and concluded that the full purposes and objectives of Congress in the employment of unauthorized noncitizens includes the establishment of a comprehensive system of control with a unified discretionary enforcement regime. Local enforcement of laws regulating employment of unauthorized noncitizens would result in a patchwork of inconsistent enforcement that would undermine the “harmonious whole” of national immigration law. The Court determined that federal authorities in this case appear to be willing to defer any potential federal immigration action based on equitable and humanitarian grounds because the defendant came to the United States as a child, was educated in Iowa, has no criminal record, has four children who are citizens, voluntarily entered the DACA program, and is a productive member of society. The Court further determined that the state prosecutor in this case “seems to have a different philosophy” than federal authorities which leads to a less harmonious system of federal immigration law related to unauthorized employment.

Concurrences. Chief Justice Cady agreed with the majority opinion but chose to write a separate concurring opinion to emphasize that while the State could prosecute an unauthorized noncitizen for a variety of conduct related to forgery or identity theft, the conduct in this case is tied to a narrow area controlled by Congress, and therefore preempted by Article VI, Clause 2 of the United States Constitution.

Justice Wiggins also agreed with the majority opinion but wrote a separate concurring opinion to address the issue of prosecutorial discretion. Justice Wiggins noted that as the defendant approached adulthood, the defendant had to figure out a way to survive in a new country. It was not the defendant’s choice to come to the United States. Justice Wiggins stated that a prosecutor is an administrator of justice and has a duty to seek justice and not merely a conviction. Ultimately, the discretion to prosecute is not up to local prosecutors, it is up to the United States government to exercise discretion and appropriately seek justice.

Dissent. Justice Mansfield’s dissent emphasized that the majority opinion establishes an exemption from generally applicable Iowa law for the exclusive benefit of unauthorized noncitizens seeking employment in our state. He further emphasized that an American citizen who works in this state under a false name may be prosecuted but a foreign national who works in this state under a false name to avoid detection is immune from prosecution. He concluded this is an incorrect reading of federal preemption law. He noted that the defendant in this case received the benefits of preemption but would not qualify for DACA because the defendant committed identity theft and forgery. Additionally, Justice Mansfield argued there are no proclamations from federal officials expressing the view that states should not prosecute identity theft and forgery committed by unauthorized noncitizens seeking employment. Kansas and Missouri recently failed to recognize federal preemption of their state forgery and identity theft laws because such laws are broad-based, neutrally applied, and cover certain categories of fraudulent conduct that are considered a traditional state police power. Furthermore, states have a legitimate interest in the integrity of state-issued forms of identification and avoiding misuse. Justice Mansfield reasoned that under the majority opinion, the defendant cannot be prosecuted for using false documents to seek employment, but could be prosecuted using those same false documents to cash a check issued by the defendant’s employer, and when a court decision rests on such a diaphanous distinction, it creates another reason to question the majority opinion in this case.

LSA Monitor: Joe McEniry, Legal Services, (515) 281-3189