

Undocumented Alien's 4th Amendment Protections during ICE Detention

Description

Certainly, there is a great deal of discussion among law enforcement, the media, and the public concerning ICE operations at large employment centers. Do undocumented workers have 4th Amendment protections in these situations and, if so, can evidence of alienage be suppressed if improperly secured by officers or ICE agents at the scene? Let's take a look at the facts in the *Cruz*^[1] case and see what the 9th Circuit had to say.

FACTS

Acting on a tip received two years earlier, ICE agents applied for a search warrant to search for "employment-related documents" at Micro Solution Enterprises – a business that manufactured printer cartridges in the Los Angeles area. In addition to the search warrant, the agents applied for and received arrest warrants for eight MSE employees. The warrants were issued and the agents began drafting a plan. The plan and internal documents called for over 100 agents to execute the warrants and also called for buses, vans, and detention beds to support the expected detention of 150 to 200 potential arrestees.

ICE agents executed the warrants and advised all of the workers that no one was permitted to leave. All of the exits were blocked and anyone wishing to use bathroom facilities were escorted by an ICE agent. Men and women were separated and then further separated into groups of workers who had authorization papers and those who did not. The Defendant, Perez Cruz, was in the line of undocumented workers and was subsequently frisked and handcuffed. Cruz was then interrogated and admitted that he did not have proper credentials and came here illegally from Mexico in 1998.

Cruz was transported to a detention center where he was questioned and later released. Per an ICE press release, Perez Cruz was one of 130 workers arrested for immigration violations.

A month later Cruz was summoned to appear at a removal hearing where evidence of his birth certificate and the statements he made on the night of his arrest were entered into evidence. ICE agents obtained the birth certificate as a result of information learned from Cruz during his detention. Cruz sought to have the evidence and his statements suppressed, claiming that this initial detention was improper. The Immigration Judge granted the motion finding that the agents had violated ICE regulations by detaining him. The government appealed and the Board of Immigration Appeals overruled the Immigration Judge, finding that the agents were authorized under *Michigan v Summers*^[2] to secure the premises and direct employees to stop working and identify themselves. Based on the BIA decision, the Immigration Judge entered a removal order against Cruz. This appeal to the 9th Circuit followed.

9th Circuit Findings

In its opinion the 9th Circuit addressed two questions – Were Cruz's statements and the ensuing birth certificate simply evidence of Cruz's identity or were they evidence of alienage, and (2) Was Cruz's initial detention during the execution of the search warrant an impermissible seizure in violation of 4th

Amendment protections?

With respect to question one, it is well established that the “body of the suspect or his identity” is not suppressible even if the seizure itself was illegal. However, statements or documents evidencing alienage is considered evidence that is protected under the 4th Amendment. During his initial questioning Cruz stated he was born in Puebla, Mexico. ICE agents were able to secure Cruz’s birth certificate as a result of that statement. The court determined that the birth certificate and Cruz’s statements could be suppressed if his initial seizure was improper.

The court then addressed Cruz’s initial seizure and continued detention. Typically, the Exclusionary Rule does not apply in immigration proceedings, however, the rule may apply where the “detention constituted either a violation of an ICE regulation or an egregious violation of the 4th Amendment”. The court determined that the ICE agents’ actions in this case violated both. First, the court pointed to an ICE regulation that requires an agent to have “Reasonable Suspicion” of criminal activity or the fact that a person is an alien illegally in the country before detaining them. Under the circumstances presented the agents did not have sufficient particularized facts to detain Cruz.

With respect to question two, the search warrant itself, the court determined that the search warrant was an administrative warrant sought to secure documents of possible wrongdoing. As such, the agents could not use an administrative warrant seeking documents as a ruse to get to their actual objective – securing the arrests of over 100 employees. The 9th Circuit then ordered that Cruz’s removal hearing be terminated without prejudice.

WRAP UP

Looking past the political implications of this case, there are some legal lessons to be learned here – even if this was a 9th Circuit case. First and foremost, officers need to be upfront about the objectives of their investigation. Courts can quickly ferret out, as they did here, the real motives behind a search warrant execution. If officers are issued a warrant seeking documents, and your operations plan devotes 90% of the resources to detaining and arresting over 100 people, the court may see this as a pretext for an otherwise improper detention.

This issue can also occur where officers may be “assisting” on an administrative matter with a non-law enforcement agency. In these situations, officers need to understand that they may not have the same level of authority to detain people as they have when executing a criminal search warrant.

1. *Cruz, v Barr*, 2019 US App. LEXIS 17674 (9th Cir CA June 2019) [?](#)
2. *Michigan v. Summers*, 452 U.S. 692 (1981) [?](#)

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