

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 22 1981

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
MAURICIO EMILIO HENRIQUEZ,)
)
Defendant.)

Jack C. Silver, Clerk
U. S. DISTRICT COURT

No. 81-CR-103-BT

O R D E R

This matter comes before the Court on defendant's Motion to Dismiss. For the reasons set forth below, the motion is granted and the cause dismissed.

Defendant was arrested with three other persons on October 12, 1981, after the automobile in which they were traveling was stopped by a United States Border Patrol agent at the eastern terminus of the Will Rogers Turnpike in northeastern Oklahoma. Upon questioning from the Border Patrol agent, defendant admitted he had entered the United States without inspection and possessed no alien registration documentation. A complaint was then filed against defendant alleging a violation of 8 U.S.C. §1304(e). Subsequently, following the granting of defendant's Motion to Transfer, the complaint was withdrawn and an information filed alleging the same offense.

Section 1304(e) of Title 8 of the United States Code provides, in pertinent part, as follows:

"Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d)* of this section."

* Subsection (d) reads as follows:

"Every alien in the United States who has been registered and fingerprinted under the provisions of this chapter shall be issued a certificate of alien registration or an alien registration receipt card in such form and manner and at such time as shall be prescribed under regulations issued by the Attorney General."

Defendant asserts, prior to his arrest, he had neither registered as an alien nor submitted to fingerprinting, and the Government does not controvert this statement. Defendant argues he cannot, therefore, be charged with the failure to possess "any" registration documentation "issued to him" under the foregoing statute because none was ever issued to him.

Most fundamental to American criminal jurisprudence is the principle that penal statutes must be strictly construed and one is not to be subjected to penalty unless the words of the statute plainly impose it. See, e.g., United States v. Campos-Serrano, 404 U.S. 293, 297 (1971); Keppel v. Tiffin Savings Bank, 197 U.S. 356, 362 (1905). This canon of construction does not, of course, require that every criminal statute be given the narrowest possible meaning in complete disregard of the purpose of the legislature. United States v. Campos-Serrano, 404 U.S. at 298; United States v. Bramblett, 348 U.S. 503, 510 (1955). Nevertheless, the precise language of the statute must not be deprived of all force. The principle of strict construction of criminal statutes demands some determinate limits be established based upon the actual words of the statute. United States v. Campos-Serrano, 404 U.S. at 298-99.

The statute here in question, 8 U.S.C. §1304(e), clearly requires each alien eighteen years of age and over to have in his personal possession "any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d) of this section." Subsection (d) thereof provides that each alien who has been registered and fingerprinted shall be issued a certificate or receipt card. It is apparent to the Court §1304(e) is intended to apply only to aliens who have been registered and fingerprinted and who have

thus been issued a certificate or receipt card. To hold §1304(e) applicable to aliens who have never been issued any such documentation would require the Court to disregard completely the phrase "issued to him", stripping the precise language of the statute of its plain meaning. Without a strong indication of a contrary legislative intent, the Court is unwilling to do such violence to the language of §1304(e).

The Court has examined the legislative intent underlying §1304(e) and finds it consonant with today's holding. As the United States Supreme Court noted in United States v. Campos-Serrano, 404 U.S. 293 (1971), the essential purpose of an alien registration receipt card is to identify the bearer as a lawfully registered alien residing in the United States, and to govern the alien's activities and presence within this country. 404 U.S. at 299-300. This being so, §1304(e) applies only to aliens who have registered and been issued a certificate of alien registration or an alien receipt card. The Court takes note of the fact that all aliens are required to apply for registration and be fingerprinted under a separate statute, 8 U.S.C. §1302(a)*, and the penalty for the willful failure to do so is punishable by a penalty more severe than that provided for in §1304(e).** It is, therefore, apparent the Congress made distinct provisions for registered aliens failing to carry their registration documents, and aliens failing ever to register in the first place.

* Section 1302(a) of Title 8, U.S.C., reads as follows:

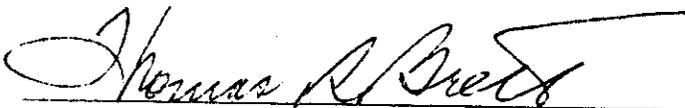
"It shall be the duty of every alien now or hereafter in the United States, who (1) is fourteen years of age or older, (2) has not been registered and fingerprinted under section 1201(b) of this title or section 30 or 31 of the Alien Registration Act, 1940, and (3) remains in the United States for thirty days or longer, to apply for registration and to be fingerprinted before the expiration of such thirty days."

** See 8 U.S.C. §1306(a).

Accordingly, inasmuch as defendant's assertion that he has never registered as required is uncontroverted, the Court must conclude the information filed against defendant alleging a violation of 8 U.S.C. §1304(e) is fatally defective.

IT IS THEREFORE ORDERED defendant's Motion to Dismiss on the ground of a defective information is hereby sustained and the cause dismissed.

ENTERED this 27th day of December, 1981.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 22 1981

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) No. 81-CR-102-BT
)
 DAVID ANTONIO MENDEZ-LOPEZ,)
)
 Defendant.)

O R D E R

This matter comes before the Court on defendant's Motion to Dismiss. For the reasons set forth below, the motion is granted and the cause dismissed.

Defendant was arrested with three other persons on October 12, 1981, after the automobile in which they were traveling was stopped by a United States Border Patrol agent at the eastern terminus of the Will Rogers Turnpike in northeastern Oklahoma. Upon questioning from the Border Patrol agent, defendant admitted he had entered the United States without inspection and possessed no alien registration documentation. A complaint was then filed against defendant alleging a violation of 8 U.S.C. §1304(e). Subsequently, following the granting of defendant's Motion to Transfer, the complaint was withdrawn and an information filed alleging the same offense.

Section 1304(e) of Title 8 of the United States Code provides, in pertinent part, as follows:

"Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d)* of this section."

* Subsection (d) reads as follows:

"Every alien in the United States who has been registered and fingerprinted under the provisions of this chapter shall be issued a certificate of alien registration or an alien registration receipt card in such form and manner and at such time as shall be prescribed under regulations issued by the Attorney General."

Defendant asserts, prior to his arrest, he had neither registered as an alien nor submitted to fingerprinting, and the Government does not controvert this statement. Defendant argues he cannot, therefore, be charged with the failure to possess "any" registration documentation "issued to him" under the foregoing statute because none was ever issued to him.

Most fundamental to American criminal jurisprudence is the principle that penal statutes must be strictly construed and one is not to be subjected to penalty unless the words of the statute plainly impose it. See, e.g., United States v. Campos-Serrano, 404 U.S. 293, 297 (1971); Keppel v. Tiffin Savings Bank, 197 U.S. 356, 362 (1905). This canon of construction does not, of course, require that every criminal statute be given the narrowest possible meaning in complete disregard of the purpose of the legislature. United States v. Campos-Serrano, 404 U.S. at 298; United States v. Bramblett, 348 U.S. 503, 510 (1955). Nevertheless, the precise language of the statute must not be deprived of all force. The principle of strict construction of criminal statutes demands some determinate limits be established based upon the actual words of the statute. United States v. Campos-Serrano, 404 U.S. at 298-99.

The statute here in question, 8 U.S.C. §1304(e), clearly requires each alien eighteen years of age and over to have in his personal possession "any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d) of this section." Subsection (d) thereof provides that each alien who has been registered and fingerprinted shall be issued a certificate or receipt card. It is apparent to the Court §1304(e) is intended to apply only to aliens who have been registered and fingerprinted and who have

thus been issued a certificate or receipt card. To hold §1304(e) applicable to aliens who have never been issued any such documentation would require the Court to disregard completely the phrase "issued to him", stripping the precise language of the statute of its plain meaning. Without a strong indication of a contrary legislative intent, the Court is unwilling to do such violence to the language of §1304(e).

The Court has examined the legislative intent underlying §1304(e) and finds it consonant with today's holding. As the United States Supreme Court noted in United States v. Campos-Serrano, 404 U.S. 293 (1971), the essential purpose of an alien registration receipt card is to identify the bearer as a lawfully registered alien residing in the United States, and to govern the alien's activities and presence within this country. 404 U.S. at 299-300. This being so, §1304(e) applies only to aliens who have registered and been issued a certificate of alien registration or an alien receipt card. The Court takes note of the fact that all aliens are required to apply for registration and be fingerprinted under a separate statute, 8 U.S.C. §1302(a)*, and the penalty for the willful failure to do so is punishable by a penalty more severe than that provided for in §1304(e).** It is, therefore, apparent the Congress made distinct provisions for registered aliens failing to carry their registration documents, and aliens failing ever to register in the first place.

* Section 1302(a) of Title 8, U.S.C., reads as follows:

"It shall be the duty of every alien now or hereafter in the United States, who (1) is fourteen years of age or older, (2) has not been registered and fingerprinted under section 1201(b) of this title or section 30 or 31 of the Alien Registration Act, 1940, and (3) remains in the United States for thirty days or longer, to apply for registration and to be fingerprinted before the expiration of such thirty days."

** See 8 U.S.C. §1306(a).

Accordingly, inasmuch as defendant's assertion that he has never registered as required is uncontroverted, the Court must conclude the information filed against defendant alleging a violation of 8 U.S.C. §1304(e) is fatally defective.

IT IS THEREFORE ORDERED defendant's Motion to Dismiss on the ground of a defective information is hereby sustained and the cause dismissed.

ENTERED this 22nd day of December, 1981.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF OKLAHOMA

United States District Court for

United States of America vs.

DWAYNE KERR a/k/a James DeWayne
Kerr

NORTHERN DISTRICT OF OKLAHOMA

DEFENDANT

DOCKET NO. **81-CR-114-C**

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR
12 21 1981

COUNSEL

WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

WITH COUNSEL

Tom Coleman, Court Appointed

(Name of counsel)

PLEA

GUILTY, and the court being satisfied that
there is a factual basis for the plea,

NOLO CONTENDERE,

NOT GUILTY

There being a finding/verdict of

NOT GUILTY. Defendant is discharged
 GUILTY.

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of **having violated Title 18,
U. S. C., Section 401(3).**

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: ~~The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of~~

IT IS ORDERED that the Defendant is fined the sum of \$100.00. IS IS FURTHER ORDERED that the Defendant is granted Seven (7) days from this date to pay fine or Defendant will be committed until released pursuant to law.

SPECIAL
CONDITIONS
OF
PROBATION

**FILED
DEC 21 1981**

**Jack C. Silver, Clerk
U. S. DISTRICT COURT**

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

U.S. District Judge

U.S. Magistrate

H. Dale Cook

Date **12-21-81**

CERTIFIED AS A TRUE COPY ON

THIS DATE **12-21-81**

BY R. Miller
() CLERK
 DEPUTY

FILED

DEC 18 1981 *dm*

UNITED STATES DISTRICT COURT

NORTHERN District of OKLAHOMA

Jack C. Silver, Clerk
U. S. DISTRICT COURT

United States of America

vs.

MARCUS ANDRE BROWN,
a/k/a MARCUS, and
JOHN DOE, a/k/a DARRELL
BROWN,

Criminal No. 81-CR-110-B ✓

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal
Procedure and by leave of court endorsed hereon the United States
Attorney for the Northern District of Oklahoma
hereby dismisses the indictment against
(indictment, information, complaint)
John Doe aka Darrell Brown defendant.

CLOSES

RE: DOE

[Signature]
Assistant United States Attorney

Leave of court is granted for the filing of the foregoing dismissal.

[Signature]
United States District Judge

Date: *12-17-81*

FORM OBD-113

DOJ

8-27-74

FILED
IN OPEN COURT

DEC 9 1981

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES DISTRICT COURT

NORTHERN District of OKLAHOMA

United States of America

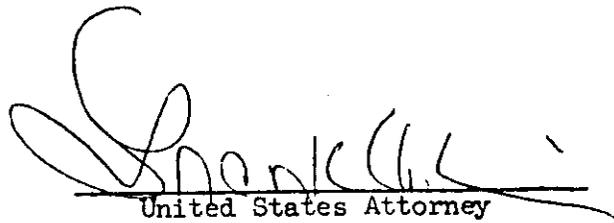
vs.

BUELL HALEY MASSINGALE

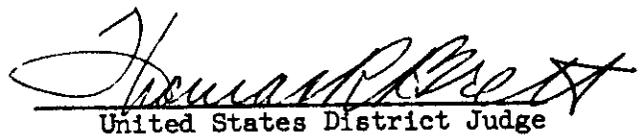
Criminal No. 81-CR-100

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and by leave of court endorsed hereon the United States Attorney for the Northern District of Oklahoma hereby dismisses the Indictment, Counts II thru XII against (indictment, ~~information, complaint~~) BUELL HALEY MASSINGALE defendant.


United States Attorney

Leave of court is granted for the filing of the foregoing dismissal.


United States District Judge

Date:

DOJ

FORM OBD-113

8-27-74

United States District Court for

United States of America vs.

DEFENDANT } JOSEPH LEONARD COX, JR.

NORTHERN DISTRICT OF OKLAHOMA

DOCKET NO. 81-CR-84-E

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO-245 (6/74)

In the presence of the attorney for the government the defendant appeared in person on this date MONTH 12 DAY 1 YEAR 81

COUNSEL WITHOUT COUNSEL WITH COUNSEL George Briggs, Retained

PLEA GUILTY, and the court being satisfied that there is a factual basis for the plea, NOLO CONTENDERE, NOT GUILTY

FILED DEC - 1 1981

There being a finding/verdict of GUILTY.

FINDING & JUDGMENT Defendant has been convicted as charged of the offense(s) of having violated Title 18, U.S.C., Section 922(h) & 924(a), as charged in the indictment.

SENTENCE OR PROBATION ORDER The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

TWO (2) YEARS.

IT IS FURTHER ORDERED that the defendant may become eligible for parole at such time as the Parole Commission may determine as provided in T. 18, USC, Sec. 4205(b)(2).

SPECIAL CONDITIONS OF PROBATION IT IS FURTHER ORDERED that the execution of sentence is deferred to January 4, 1982, at which time the defendant is to report to the designated institution via his own transportation. Prior to such date, the defendant is to communicate with the U. S. Marshal's office in regard to the location of designated institution.

ADDITIONAL CONDITIONS OF PROBATION In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION The court orders commitment to the custody of the Attorney General and recommends, placement in an institution which provides a drug and alcohol rehabilitation program.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY U.S. District Judge X U.S. Magistrate

S/ JAMES O. ELLISON

James O. Ellison Date 12-1-81

CERTIFIED AS A TRUE COPY ON

THIS DATE

BY () CLERK () DEPUTY