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United States Attorneys

Bulletin

Published by Executive Office for United States Attorneys
Department of Justice, Washington, D.C.

VOL. 25 May 27, 1977 NO. 11

UNITED STATES DEPARTMENT OF JUSTICE

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POINTS TO REMEMBER

UNITED STATES ATTORNEYS' MANUAL--BLUESHEETS

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4/28/77	9-101.000	Domestic Operations Guidelines for the Drug Enforcement Administration: Comments on Selected Provisions
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(Executive Office)

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UNITED STATES ATTORNEYS' MANUAL--GOVERNMENT PROPERTY

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(Executive Office)

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INTERSTATE AGREEMENT ON DETAINERS

The note on United States v. Scallion, 548 F.2d 1168 (5th Cir. 1977), 27 USAB 189 (No. 10, May 13, 1977), correctly stated that the court rejected the holding of United States v. Mauro, 544 F.2d 588 (2d Cir. 1976) and Esola v. Groomes, 520 F.2d 830 (3rd Cir. 1975) that the service of a writ of habeas corpus ad prosequendum was the equivalent to filing a detainer, and operated to call the provisions of the Interstate Agreement on Detainers into play. It failed to warn, however, that the court also explicitly rejected the Government's contention that Congress intended that the United States be a party to the Agreement only as a "sending state." The court stated, "We are unable to detect such intent. * * * To the extent that the United States makes use of a detainer, it is a 'Receiving State' subject to the terms of the Agreement." It is therefore anticipated that, when the situation arises, this court will follow United States v. Ford, 550 F.2d 732 (2d Cir. 1977); see also United States v. Ricketson, 498 F.2d 367 (7th Cir.), cert. denied, 419 U.S. 965 (1974), and hold that, once a detainer is filed, the subsequent service of a writ of habeas corpus ad prosequendum constitutes a "request" within the meaning of the Agreement.

(Criminal Division)

CRIMINAL DIVISION
Assistant Attorney General Benjamin R. Civiletti

Fiallo v. Bell, 45 U.S.L.W. 4385 (U.S. April 26, 1977) (No. 75-6297).

Immigration and Nationality Act of 1952; Illegitimacy

The Supreme Court upheld the constitutionality of Sections 101(b)(1)(D) and 101(b)(2) of the Immigration and Nationality Act of 1952, as amended, which exclude the relationship between an illegitimate child and its natural father from the preferential immigration status accorded to a "child" or "parent" of a United States citizen or a legal permanent resident alien. Although declining to hold, as the government suggested, that the substantive determinations of Congress relating to the admission of aliens are an inappropriate subject for judicial review, the Court did reaffirm the long-established rule that decisions concerning who may enter this country and under what conditions are inherently political in nature and subject only to a narrow review in the courts.

In finding the distinctions in Section 101(b) to be proper the Court declined to further "probe and test the justifications of the legislative decision." Thus, although nowhere articulated in the Act's legislative history, the Court found that the challenged classifications may have flowed from a congressional perception that most illegitimate child-natural father relationships would be marked by an absence of close family ties, as well the serious problems of proof in paternity determinations. In supplying an underlying rationale for Section 101(b)'s distinctions, the Court underscored the premise that "legislative distinctions in the immigration area need not be as 'carefully tuned to alternative considerations' . . . as those in the domestic area."

Attorney: Robert Erickson
FTS 739-2646

CIVIL DIVISION
Assistant Attorney General Barbara Allen Babcock

M. T. Goble v. Veterans Administration, ____ F.2d ____ (C.A. 5, No. 75-4249, decided April 26, 1977). DJ 151-73-1145.

Veterans Education Benefits

The Fifth Circuit, adopting our arguments, has just rejected a constitutional attack on the federal statute which requires that vocational training schools seeking to enroll veterans demonstrate that 50 percent of their graduates obtained employment in the field for which they were trained. Plaintiff had argued that the statute served no legitimate governmental purpose inasmuch as eventual employment of any individual is dependent on many factors unrelated to the quality of the school.

Attorney: Michael F. Hertz (Civil Division), FTS 739-3418

Johnson v. United States, ____ F.2d ____ (C.A. 4, No. 76-2072, decided May 4, 1977). DJ 170-35-44.

Attorney's Fees; Title VII

In this federal employee Title VII case, the agency originally rejected plaintiff's complaint as untimely, the district court reversed and remanded for an administrative hearing, and at the administrative level on remand the plaintiff was successful. The plaintiff returned to court and obtained an award of attorney's fees, including fees for work done at the administrative level. The Fourth Circuit has rejected our contention that fees under Title VII could not be awarded for administrative level work. The court based its holding exclusively on the fact that the work here was undertaken pursuant to a court remand. The court left open the question of whether fees were proper in the more usual case where administrative proceedings occur prior to suit. The issue in the latter context is pending in the D.C., Sixth, and Ninth Circuits.

Attorney: John M. Rogers (Civil Division), FTS 739-4792

Ingram v. Califano, ____ F.2d ____ (C.A. 5, No. 76-1346, decided February 25, 1977, rehearing denied, April 7, 1977). DJ 178-1-65; May v. Califano, ____ F.2d ____ (C.A. 5, No. 76-3504, decided April 27, 1977). DJ 178-1-223.

Black Lung Act

In these cases, the Fifth Circuit adopted our arguments, on behalf of HEW, that a coal miner must establish that he became totally disabled by black lung by June 30, 1973 in

order to qualify for federally funded benefits. In addition, the court in May accepted our position that all other issues must be resolved on remand by the district court. This marks a departure from the unanimous practice of the other circuits which have simply remanded black lung cases en masse to the Department of HEW.

Attorney: Mark H. Gallant (Civil Division), FTS 739-5325

LAND AND NATURAL RESOURCES DIVISION
Assistant Attorney General Peter R. Taft

Ogunquit Village Corporation v. Davis, ___ F.2d ___ (C.A. 1, No. 76-1925; April 20, 1977). DJ 90-1-4-1185.

National Environmental Policy Act

After the Soil Conservation Service had reconstructed the sand dune at Ogunquit Beach in Maine, the village and others charged, inter alia, that the finished project was esthetically offensive and violated NEPA in two respects: the fill material was incompatible with the white sand on the beach and the original dune, and the dune's shape was trapezoidal, instead of gently undulating. The challenge to the dune's shape, the district court found, was barred by laches. With respect to the incompatible sand, while the district court found that the EIS was inadequate, it ruled that NEPA did not authorize post-completion relief, and, therefore, dismissed for failure to state a claim and for lack of jurisdiction. Finding that the Service had acted in good faith, and had not intended to circumvent NEPA, the court of appeals affirmed. It left to Congress resolution of post-completion problems.

Attorneys: Jacques B. Gelin and Gary B. Randall (Land and Natural Resources Division), FTS 739-2762 and 2845

M. S. v. 255.25 Acres in Monroe County, Mo. (Montray), ___ F.2d ___ (C.A. 8, Nos. 76-1645, 76-1646 and 76-1647; April 20, 1977). DJ 33-26-482-450.

Condemnation; National Environmental Policy Act

In this interlocutory appeal, the court ruled that the Corps of Engineers has substantial leeway to vary plans for a dam project submitted to Congress which formed the basis for the statute authorizing the project, but that it would be appropriate for the district court to hold a hearing on the issue of whether the Corps' plans were within that leeway. The court also held that landowners could not raise NEPA or other environmental statutes in defense of a condemnation action, particularly here where they had alleged no environmental interest or harm. Appeal was permissible, the court said, without a final judgment "where the ruling involved is fundamental to the future conduct of the case * * *."

Attorney: Edward J. Shawaker (Land and Natural Resources Division), FTS 739-4497

U.S. v. 403.14 Acres in St. Clair County, Mo. (Sites), ___ F.2d ___ (C.A. 8, No. 76-1930; April 20, 1977). DJ 33-26-472-2784.

Condemnation

Under the clearly erroneous standard of review, the court rejected the landowners' appeal challenging the commission's report as containing inadequate findings and as lacking evidentiary support. The court articulated the "before and after" valuation rule in partial taking cases, commenting that, if followed, no separate award or determination need be made for "severance damages."

Attorney: Eva R. Datz (Land and Natural Resources Division), FTS 739-2827.

Coalition for Responsible Regional Development v. Coleman, ___ F.2d ___ (C.A. 4, No. 76-1400; April 11, 1977). DJ 90-1-4987.

Section 4(f) Highway Act; National Environmental Policy Act

The Court of Appeals affirmed the district court's dismissal of an action to enjoin construction of a state-financed bridge over the Ohio River. The court held that the Secretary of Transportation (1) had correctly found no feasible and prudent alternative bridge location under 49 U.S.C. sec. 1653(f); (2) was not required to prepare an EIS on a speculative highway connection to the bridge; and (3) properly determined that the bridge would have no effect on a nearby property of historical significance.

Attorney: Kathryn A. Oberly (Land and Natural Resources Division), FTS 739-2756.

United Family Farmers, Inc. v. Kleppe, ___ F.2d ___ (C.A. 8, No. 76-1532; April 7, 1977). DJ 90-1-4-92.

Reclamation Law; Excess Lands

Affirming denial of an injunction against construction of the initial phase of a Missouri River reclamation-irrigation project in South Dakota, the court agreed with Interior's repeal-by-implication interpretation of 1914 and 1926 statutes

permitting construction to commence, even though excess landowners had not contracted to transfer their excess lands, but prohibiting water delivery to excess lands absent such contracts.

Attorney: Martin Green (Land and Natural Resources Division), FTS 739-2736

Save Our Wetlands v. Corps of Engineers, ___ F.2d ___ (C.A. 5, No. 75-1750; April 4, 1977). DJ 90-5-1-6-28.

National Environmental Policy Act; Laches

The Corps, after determining that no EIS was required, issued a dredging permit to a developer which allowed him to construct an interior canal system for his lakeside housing development. Nineteen months later the plaintiffs brought an action alleging that the Corps violated NEPA by issuing the permit without filing an EIS. Affirming the district court, the court of appeals found the action to be barred by laches.

Attorney: Robert L. Klarquist (Land and Natural Resources Division), FTS 739-2754

Rosebud Sioux Tribe v. Kneip, ___ U.S. ___, 97 S. Ct. 1361 (1977). DJ 90-2-0-720.

Indians

The Court affirmed an Eighth Circuit decision that it was the "intent of Congress" to disestablish three quarters of the Rosebud Sioux Reservation with the passage of three surplus land acts in 1904, 1907 and 1910.

Attorneys: H. Bartow Farr (Assistant to the Solicitor General), FTS 739-2035 and Neil T. Proto (Land and Natural Resources Division), FTS 739-3888

Blanchette v. EPA, ___ F.2d ___ (C.A. 2, No. 75-4117; March 21, 1977). DJ 90-5-2-3-686.

Clean Air Act

The Trustees of the Penn Central Transportation Company sought to invalidate EPA's promulgation of an implementation plan for air pollution sources owned, operated by or under contract with the Connecticut Transportation Authority. The

primary issue was whether EPA was required to prepare an inflation impact statement before promulgating the plan. The court of appeals held that no EIS was required because the cost of the plan was less than the threshold amount used to determine whether a proposed action is "major."

Attorney: Kathryn A. Oberly (Land and Natural Resources Division), FTS 739-2856

J. L. Block v. Andrus, ___ F.2d ___ (C.A. 9, No. 75-2928; March 29, 1977). DJ 90-1-18-1056.

Mining

In a per curiam opinion, the court of appeals reversed and remanded this mining case to Interior for further proceedings. The court held that a remand was necessary in order to allow the mining claimant an opportunity to present evidence bearing on the "hypothetical market test" announced in Meluzzo v. Morton, 534 F.2d 860 (C.A. 9, 1976).

Attorney: Charles E. Biblowit (Land and Natural Resources Division), FTS 739-2956

U.S. v. State of California State Water Resources Control Board, ___ F.2d ___, C.A. 9, No. 75-3554; April 1, 1977). DJ 90-1-2-1016.

Reclamation Law

The Ninth Circuit affirmed the district court's judgment that the United States need not apply to the State Water Resources Control Board for permits to appropriate unappropriated water. The court found that the language of Section 8 of the Reclamation Act of 1902 evinces no intent that the United States secure state permits and, in light of the Supreme Court's recent decisions in Hancock v. Train, 426 U.S. 167, and EPA v. State Water Resources Control Board, 426 U.S. 200, no such intent may be implied. The district court had also held that the United States must "comply with the forms of state law" to allow the state to decide if there is sufficient unappropriated water available for the project and to give the state notice of the scope of the project. The court of appeals agreed with this result but modified the lower court's judgment insofar as it relied on comity, rather than the legal requirements of Section 8, to reach this result.

Attorney: Carl Strass (Land and Natural Resources Division), FTS 739-2720

Alabama State Tenants Organization v. Bass, ___ F.2d ___ (C.A. 5, No. 2905; March 30, 1977). DJ 90-1-4-1114.

National Environmental Policy Act, Highway Act, Civil Rights Act

In a case dealing with the potential extension of an interstate highway through Birmingham, Alabama, the court of appeals rejected nine separate allegations that federal and state officials had violated, inter alia, NEPA, the Federal Aid Highway Acts and the Civil Rights Act of 1964. Although judgment in favor of the Government was affirmed as to six of the claims, the court noted that the parties apparently had resolved their dispute and, in view of the improbability that the road would be extended into the city, it dismissed the remaining claims without prejudice.

Attorney: Neil T. Proto (Land and Natural Resources Division), FTS 739-3888

Albert Thomas v. Andrus, ___ F.2d ___ (C.A. 9, No. 76-1548; March 28, 1977). DJ 90-1-18-1082.

Standing

Owners of surface rights (a cattle grazing homestead and a Taylor grazing lease) contested the validity of a mining claim on the land. The Department of the Interior found the mining claim invalid and the district court upheld that decision. The court of appeals affirmed, holding that the surface owner had standing to bring such a mining contest in the Department of the Interior, and that the Department's decision was based on substantial evidence.

Attorney: Edward J. Shawaker (Land and Natural Resources Division), FTS 739-4497

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