

NEW MEXICO IMMIGRATION LAWYER BLOG

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Illegal Questioning May Lead to Admissible Identification of Immigrants

The 10th Circuit has essentially ruled that evidence of the identify of an undocumented immigrant gained through illegal questioning will not necessarily be suppressed. Thus, felony charges of illegal reentry will stand despite the fact that the basis for those charges was gathered in violation of the 4th Amendment protections against illegal search and seizure.

The 10th Circuit Court of Appeals found in *U.S. v. Pena-Montes* that it is a violation of the 4th Amendment when a law enforcement officer continues to question the occupants of a vehicle once the officer has discovered that there was no legal basis for the traffic stop. Continued questioning of occupants of a vehicle once it is found that the traffic stop was legally unjustified constitutes an illegal search and seizure under the 4th Amendment.

The case of *Pena-Montes* involved a traffic stop in Albuquerque of a vehicle whose passenger was an immigrant who had reentered the United States illegally after prior deportation. The passenger was ultimately arrested for concealing his identity. Upon identification following his arrest, *Pena-Montes* was charged with felony illegal reentry.

The Court ruled that the continued questioning and the arrest that followed was a violation of the 4th Amendment. However, the Court could not address whether the subsequent identification should have been suppressed freeing *Pena-Montes* from the felony reentry charges.

The court stated that despite its holding on the illegality of the questioning that led to *Pena-Montes*' arrest, the court could not reach the issue of whether the identification incident to arrest should be suppressed. The Court could not reach that issue because the district court had rejected *Pena-Montes*' 4th Amendment arguments and therefore the issue had not been raised at the district court level. As such, the issue was not up on appeal.

However, the Court did reference the case of *U.S. v. Olivares-Rangel* (10th Cir. 2006) in which it was suggested that the subsequent identification would not be suppressed unless the stop and subsequent illegal questioning were directed toward identification of the defendant. Referencing *Olivares-Rangel*, the Court stated "evidence is not suppressed unless the arrest was purposefully exploited to learn the identity."

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Thus it appears that the identification of Pena-Montes will not be suppressed at the district court level despite the fact that it was illegally obtained. Moreover, upon denial of suppression of the illegal identification Pena-Montes, if the matter is appealed, it seems the Court has already spoken.

In the case that an arrest is purposefully exploited to identify an undocumented immigrant, the fact is that the immigrant may escape felony charges when in the situation of Pena-Montes, but this will not save him from removal proceedings and deportation based upon discovery of the illegal immigration status.

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