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Arizona Police Can Enforce Federal Immigration Law: Read The Case Law

Friday, April 30, 2010

By Walter Moore - Attorney

The national media are inundating airwaves and bandwidth with legal opinions on Arizona's new immigration law -- from people who are not lawyers.

We heard from a wise Latina, but it was Shakira, not Sotomayor. We also heard Mayor Villaraigosa, but he is an "undocumented lawyer:" he never passed the bar despite four tries.

Yours truly is a real lawyer, with over 25 years' experience protecting people's rights in state and federal courts. Two years ago, I had occasion to look into the law concerning the very same issues implicated by Arizona's new law.

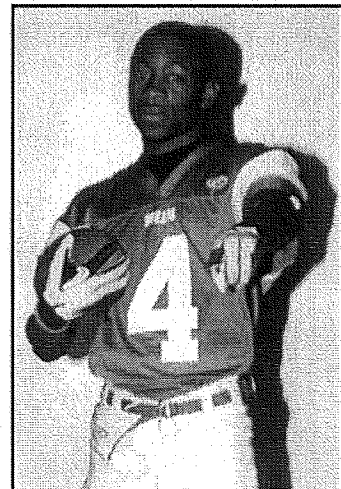
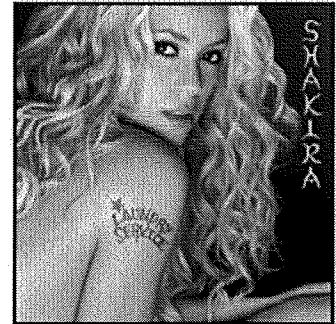
You see, two years ago, an outstanding young man named Jamiel Shaw II, who was being recruited by colleges for their football teams, was murdered two doors down from his house by an illegal alien gang member -- a criminal who should never have been in our country in the first place, and who had just been released from jail back into the community a day or two earlier rather than being deported. Jamiel's mother got the news in Iraq, where she was serving our country as a sergeant in the U.S. Army.

I had to do something about the heartbreaking, preventable murder; had to try to stop it from happening again. So I researched and drafted a proposed ordinance, which I called "Jamiel's Law," to try to spare other young people the same tragic and preventable fate. Jamiel's Law was as simple as simple gets: all it would have done was carve out an narrow exception to L.A.'s "sanctuary city" policy, aka "Special Order 40," to let the police enforce federal immigration laws against known gang members.

Then, as now, people claimed that immigration is a federal issue, and that the police cannot enforce federal law, and blah blah blah. They didn't really care about the law. They just wanted to stop anyone from doing anything about illegal immigration.

Anyway, as a real lawyer, with real experience in this field, let me de-bunk for you some of the baloney being peddled by the armies of "undocumented lawyers" on whom the media have chosen to focus. Unlike those faux attorneys, moreover, I will support what I say with actual legal authority -- you know, the way real lawyers do.

Here's what I want to get through your head: state and local police can enforce federal immigration law. Federal law does not prevent them from doing so.



Don't take my word for it. Here are federal court opinions saying so:

In 1983, the United States Court of Appeals for the Ninth Circuit -- you read that right, the *Ninth Circuit* -- concluded, in *Gonzales v. City of Peoria*, 722 F.2d 468, that, "Although the regulation of immigration is unquestionably an exclusive federal power, it is clear that this power does not preempt every state activity affecting aliens." Rather, when "state enforcement activities do not impair federal regulatory interests concurrent enforcement is authorized." The Court accordingly held "that federal law does not preclude local enforcement of the criminal provisions" of federal immigration law.

In 1984, the United States Court of Appeals for the Tenth Circuit likewise ruled, in *United States v. Salinas-Calderon*, that "[a] state trooper has general investigatory authority to inquire into possible immigration violations."

Fifteen years later, in 1999, the United States Court of Appeals for the Tenth Circuit reaffirmed its position, in *United States v. Vasquez-Alvarez*, 176 F.3rd 1294, stating, "this court has long held that state and local law enforcement officers are empowered to arrest for violations of federal law, as long as such arrest is authorized by state law."

In 2001, the United States Court of Appeals for the Tenth Circuit ruled again, in *United States v. Santana-Garcia*, 264 F.3rd 1188, "that state law enforcement officers within the Tenth Circuit 'have the general authority to investigate and make arrests for violations of federal immigration laws,' and that federal law as currently written does nothing 'to displace . . . state or local authority to arrest individuals violating federal immigration laws.' On the contrary, the Court said, "federal law 'evinces a clear invitation from Congress for state and local agencies to participate in the process of enforcing federal immigration laws.'"

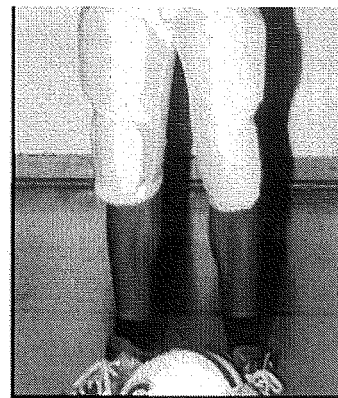
In 2001, the United States Court of Appeals for the Eighth Circuit held, in *United States v. Rodriguez-Arreola*, 270 F.3rd 611, that a state trooper did not violate the defendant's rights by questioning him about his immigration status after pulling him over for speeding.

In 2002, the United States Court of Appeals for the Tenth Circuit held, in *United States v. Favela-Favela*, 41 Fed. Appx. 185, that a state trooper did not violate the defendant's rights by asking questions about his immigration status, after pulling the defendant over for a traffic violation and noticing there were 20 people in the van the defendant was driving.

In 2005, the United States Supreme Court held, in *Muehler v. Mena*, 544 U.S. 93, that police officers who handcuffed a gang member while they executed a search warrant for weapons, did not violate her rights by questioning her about her immigration status. The Court explained, "[E]ven when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual; ask to examine the individual's identification; and request consent to search his or her luggage."

In 2005, the United States Court of Appeals for the Tenth Circuit confirmed again, in *United States v. Hernandez-Dominguez*, 1 Fed. Appx. 827, that "[a] state trooper [who has executed a lawful stop] has general investigatory authority to inquire into possible immigration violations."

in 2008, the United States District Court for the Eastern District of Missouri held, in *Gray v. City of Valley Park*, 2008 U.S. Dist LEXIS 7238, *affirmed* 2009 U.S. App. LEXIS



12075, that federal law did not preempt a local ordinance suspending the business license of any business that hires illegal aliens.

In 2008, the United States District Court for the District of New Jersey concluded, in *Rojas v. City of New Brunswick*, 2008 U.S. Dist. LEXIS 57974, that, "As a general matter, state and local law enforcement officers are not precluded from enforcing federal statutes. Where state enforcement activities do not impair federal regulatory interests concurrent enforcement activity is authorized." The Court accordingly held that a city and its police department had authority to investigate and arrest people for possible violations of federal immigration laws.

I could go on and on, but you get the idea.

The people whose legal opinion matters are the men and women who wear black robes, and they have ruled, again and again and again that federal law lets local police enforce federal immigration law. So the next time some wanna-be lawyer tells you that federal law prevents local police from enforcing immigration laws, I want you to remember this two-word legal term: "*Prove it!*"

15 Comments

Gary Aminoff

I am not a lawyer, Walter, but I agree with your conclusion. Here is something further in support. Article IV, Section 4 of the Constitution reads:
Section 4 - Republican government

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

The United States government is supposed to protect the states against invasion. There is precedent that when the United States does not fulfill its duties under the Constitution, the States can fulfill that obligation in place of the Federal government. It seems that there is Constitutional justification under Article IV, Section 4.

Friday, April 30, 2010 - 11:50 PM

Walter Moore

The President -- like the one before him -- is violating his oath of office when it comes to immigration. He is not making even a good-faith effort to enforce our laws.

Saturday, May 1, 2010 - 12:11 AM

Undocumented American

"undocumented lawyers" is a good one!

Of course local law enforcement must enforce federal laws. Where did this crack of "" about local police not having to enforce federal laws come from?

I'm just an "undocumented lawyer", but to take it a step further, if states and local jurisdictions do NOT enforce federal laws or federal court orders, federal authorities, be they the Congress, the federal courts, or the President have the power to supercede state authority and FORCE the states to enforce federal law.

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Is Immigration Exclusively A "Federal Issue?"

Tuesday, April 27, 2010

By Walter Moore

You've heard people claim that immigration is a "federal issue."

The people who make that claim are usually the same people who oppose any efforts by federal, state or local government to combat illegal immigration.

But whether you agree or disagree with them about policy, are they right about the law? Is immigration really a "federal issue?"

The answer is "yes and no."

The Supreme Court explained in 1975, in *DeCanas v. Bica*, that federal law does not necessarily preempt all state laws affecting immigration:

Power to regulate immigration is unquestionably exclusively a federal power. But the Court has never held that every state enactment which in any way deals with aliens is a regulation of immigration and thus per se pre-empted by this constitutional power, whether latent or exercised.

* * *

States possess broad authority under their police powers to regulate the employment relationship to protect workers within the State. Child labor laws, minimum and other wage laws, laws affecting occupational health and safety, and workmen's compensation laws are only a few examples.

The Supreme Court and other courts have upheld a variety of state laws affecting immigration, and have struck down other laws. Here are a few examples:

Laws Against Hiring Illegal Aliens. The Supreme Court ruled in *DeCanas* that California -- yes, California! -- could enforce a state law which prohibited employers from knowingly hiring illegal aliens "if such employment would have an adverse effect on lawful resident workers." Likewise, in 2008, the United States Court of Appeals for the Ninth Circuit ruled, in *Chicanos Por La Causa, Inc. v. Napolitano*, that Arizona could revoke the business licenses of employers caught knowingly hiring illegal aliens.

Laws Limiting Job Opportunities For Legal Aliens. States can regulate the employment not just of illegal aliens, but also, in certain circumstances, of legal aliens, as well. In 1978, the United States Supreme Court ruled, in *Foley v. Connelie*, that the State of New York could lawfully refuse to hire anyone but U.S. citizens to serve as state police officers. Likewise, in 2005, the United States Court of Appeals for the Fifth Circuit ruled, in *LeClerc v. Webb*, that Louisiana was entitled to refuse to let legal, nonimmigrant aliens become lawyers.

Laws Denying A Public Education To Illegal Alien Children. You have presumably heard people say that

the Supreme Court has ruled that states must provide a free public education to illegal alien children. Before you accept that proposition, however, let me urge you to take the time to read the case itself, namely, Plyler v. Doe, a 1981 decision.

If you read it carefully, you will find the Court did not hold that states have an absolute obligation to provide such an education. Rather, the Court said that the state involved in that particular lawsuit, namely, Texas, had failed to produce sufficient evidence to prove that educating illegal alien children imposed a significant burden on the state. Consider, for example, the following passage from the case:

There is no evidence in the record suggesting that illegal entrants impose any significant burden on the State's economy. To the contrary, the available evidence suggests that illegal aliens underutilize public services, while contributing their labor to the local economy and tax money to the state fisc.

The Court then pointed out, "the record in no way supports the claim that exclusion of undocumented children is likely to improve the overall quality of education in the State." Instead, Texas had "failed to offer any credible supporting evidence that a proportionately small diminution of the funds spent on each child [which might result from devoting some state funds to the education of the excluded group] will have a grave impact on the quality of education."

Hence, the Court based its decision on the evidence presented in that particular case. If another state, say, California, presented credible evidence showing that its schools have indeed been decimated by the illegal alien invasion, the Court's decision seems to leave open the door for a different result.

* * *

What does it all mean? It means that, as you follow developments in Arizona in coming weeks, bear in mind that states can indeed pass laws on immigration, but there are limits. The lawyers on both sides will be inundating the United States District Court in Arizona with briefs and evidence. Meanwhile, some in Congress will presumably try to render the issue moot by amending federal immigration law to preempt Arizona's and other states' immigration laws.

Immigration is a federal issue, all right. But it's also a state issue, a legal issue, a policy issue and a political issue.

8 Comments

VenturaCapitalist

Excellent, Walter THANK YOU!!!
Re: Plyler v. Doe, the world is a lot different now than it was in 1981.

Wednesday, April 28, 2010 - 08:55 AM

Walter Moore

My pleasure. Thanks for reading and commenting!

Wednesday, April 28, 2010 - 11:55 AM

Pat

Walter
1. Then why are we educating illegal alien students in California?
It seems to me that educating illegal alien students is now a huge burden

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Put Up Or Shut Up: LA Should Stop Buying Arizona Power Or Shut Up About Boycott

Thursday, April 29, 2010

By [Walter Moore](#)

Villaraigosa, Hahn, Reyes, Garcetti and the rest of L.A.'s sanctimonious Spring Street Gang have resolved to boycott Arizona because of that state's new immigration law.

Really?

Do any of our local Philosopher Kings realize that the City of Los Angeles, through the Department of Water and Power, buys 21% of the power generated by a coal plant in Arizona?

It gets even better. The power plant is operated by "SRP," the Salt River Project, which "is two entities: the Salt River Project Agricultural Improvement and Power District, a political subdivision of the state of Arizona; and the Salt River Valley Water Users' Association, a private corporation."

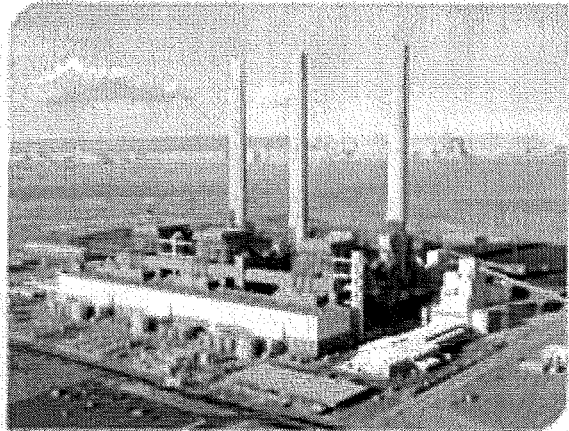
Don't you love it? The City of Los Angeles is not just dependent on Arizona power, but on power from a plant operated by a political subdivision of the state of Arizona itself!

So how about it, Mr. Mayor and City Council Members? Are you going to put up, or shut up? Are you going to stop buying Arizona power, or are you going to stop calling for a boycott of Arizona?

Do you *really* equate Arizona with Nazi Germany and Apartheid South Africa, or was that all just BS to distract L.A.'s taxpayers from the fact that you just PERMANENTLY raised our rates?

If your goal was to change the subject from that DWP rate hike, I've got some very bad news for you: your proposed boycott, if you carry it out, will require you to approve another rate hike, higher than the most recent one, to buy power from someone other than the sovereign state of Arizona.

Karma's a real bitch sometimes, isn't it?



SRP®

Navajo Generating Station

Operator: SRP

Location: Navajo Indian Reservation near Page, AZ

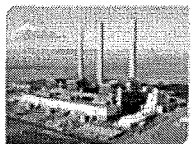
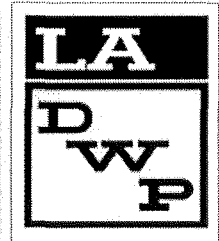
Participant summary:

U.S. Bureau of Reclamation	24.3%
SRP	21.7%
Los Angeles Dept. of Water and Power	21.2%
Arizona Public Service Co.	14.0%
Nevada Power	11.3%
Tucson Electric Power	7.5%

Service area: Navajo Generating Station (NGS) serves electric customers in Arizona, Nevada and California. The station also supplies energy to pump water through the Central Arizona Project.

Description: Coal-fired generating station.

Capacity: 2,250 megawatts from three 750 MW units.

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The Dishonest Debate About Arizona And Amnesty

Sunday, May 2, 2010

By [Walter Moore](#) - Attorney

Have you noticed how completely dishonest the people attacking [Arizona's new law](#) are?

For example, they try to play the "Nazi" card by claiming Arizona's laws would require people to "show their papers."

In fact, federal law already requires aliens over the age of 18 to carry "papers" showing they are in the country legally. Section 1304(e) of Title 8 of the United States Code already makes it a crime to fail to do so:

(e) Personal possession of registration or receipt card; penalties

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. Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed \$100 or be imprisoned not more than thirty days, or both.

Under federal law, moreover, an alien's failure to produce his registration certificate already gives an law enforcement officer probable cause to arrest him. Don't take my word for it: read the decision issued in 2006 by the United States District Court, entitled [United States v. Cuevas-Robledos](#) (Case No. 05-CR-248-BR).

The rest of us, moreover, already "show our papers" routinely when lawfully stopped by the police. What's the first thing the police officer says when he pulls you over for speeding? "License and registration."

And that brings us to another phony argument the opponents make, about the circumstances under which an Arizona police officer could ask people to show their papers. The statute authorizes a police officer to inquire into a person's immigration status when he has "reasonable suspicion" to believe that person may be violating federal immigration law.



The opponents claim the term "reasonable suspicion" is incomprehensible, and lends itself to abuse. For example, today on L.A.'s KNX 1070 AM radio, a self-proclaimed "legal analyst" from Orange County, California, actually claimed that "reasonable suspicion" is a new term that courts have only recently started using.

Wrong again.

The United States Supreme Court coined the term 42 years ago in *Terry v. Ohio*, and federal courts have applied it ever since, including in cases involving violations of federal immigration law. The "reasonable suspicion" argument is thus just as dishonest as the "Nazi" argument.

Another dishonest argument made by the opponents of Arizona's law is that because immigration is a federal matter, state and local police should stay out of it. In fact, federal courts have ruled, again and again, that federal law authorizes state and local police to enforce federal immigration law. State and local police have already been enforcing immigration laws for decades.

The opponents of Arizona's law invariably close their dishonest argument by claiming that we need a "pathway to citizenship" whereby people here illegally will pay a fine and "go to the back of the line" -- without having to leave the country to do so.

This, too, is dishonest. We already have a pathway to citizenship. Millions and millions of people have followed that pathway, and became citizens by complying with our laws, not violating them.

The "back of the line," moreover, is not here in America. The "back of the line" is at countries all over the world, where law-abiding people apply to United States Embassies for the privilege of entering our nation.

So how about we have an honest debate on this issue? How about all the people opposing Arizona's law drop the dishonest arguments, and simply admit that they want open borders?

Let them explain why it is supposedly in America's interest to let people who entered the country illegally stay here. Let them explain why they want not just state government to stay out of immigration, but federal government, too. Let them convince us to refrain from building a wall along our border and, indeed, to refrain even from patrolling it.

That the opponents of Arizona's new law are unwilling to make their case on the merits, and instead prefer to call people "Nazis," and "racists," speaks volumes about the weakness of their case. The same goes for their attempt to coerce Arizona, through a boycott, into repealing its law.

The reason the opponents of Arizona's law make dishonest arguments and urge a boycott is simple: they know they cannot persuade people if they confine themselves to honest arguments based on law and fact.

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Walter Moore: New law doesn't cancel 'reasonable suspicion'

By Walter Moore Walter Moore is an author and attorney who finished second in the March 2009 L.A. mayoral race.
Posted: 04/27/2010 09:28:21 PM PDT
Updated: 04/27/2010 09:31:27 PM PDT

DID Arizona just end civil liberties for Latinos? In a word, "no."

Arizona's new law states, "where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person."

If you haven't had the pleasure of spending three years in law school, you may think the term "reasonable suspicion" is a meaningless, contrived term.

In fact, "reasonable suspicion" is a legal standard that dates back to 1968, when the United States Supreme Court adopted it in a case called Terry v. Ohio.

That case established that the police need "reasonable suspicion" before detaining or "patting down" a person. An experienced detective detained and patted down three men who appeared to be "casing" a store to rob it. Lo and behold, they were carrying guns. The court held that the detective's conduct did not violate the Fourth Amendment's proscription against unreasonable searches and seizures.

But how does the "reasonable suspicion" standard apply to illegal immigration?

There are cases galore on that subject. For decades, federal, state and local law enforcement officials have been questioning, detaining and arresting people they suspected of violating federal immigration laws. As a result, there is a body of law describing what does, and does not, constitute "reasonable suspicion" of immigration law violations.

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In 1975, for example, the Supreme Court ruled, in United States v. Brignoni-Ponce, that border officers on a roving patrol could not stop a car merely because "its three occupants appeared to be of Mexican descent." The court did, however, identify other factors that could justify stopping a car based on suspicion of immigration violations, including: proximity to the border; erratic driving or obvious attempts to avoid officers; information about recent border crossings; an extraordinary number of passengers; and observing persons trying to hide.

There have been many other cases decided in the 35 years since then, but you get the idea. "Reasonable suspicion" is not some completely goofy, arbitrary term. Rather, it is a legal standard used to establish when and to what degree the government may intrude upon our privacy to enforce our laws.

The police cannot lawfully detain you merely because of your race, the political view expressed on your bumper sticker, etc. It takes more than that to meet the "reasonable suspicion" threshold.

Is it possible that in the future, a court will find that some Arizona police officer lacked reasonable suspicion before detaining someone he or she suspected of violating our immigration laws? Of course. But does that mean we must forgo the enforcement of our immigration laws and sit idly by while millions of people break those laws? Of course not.

The mere possibility that sometimes people who are here legally may have to endure the "burden" of producing a valid driver's license does not mean we, as a nation, must forgo enforcement of our immigration laws.

Bottom line: We can have a legitimate debate about Arizona's new law, and about immigration generally. But

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the "show us your papers" nightmare scenario is a ruse. "Reasonable suspicion" is nothing new. It has been established law for over 40 years now. So let's put a "Terry stop" to the "show me your papers" argument.

More questions

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Why Is Villaraigosa Still Trading With "Nazi Arizona?"

Friday, May 7, 2010

By [Walter Moore](#)

Hey, Villaraigosa, Hahn, Reyes and all the rest of you: I'm calling you out on your phony Arizona boycott.

You talked the talk, but as far as I can tell, you have yet to walk the walk.

Have you stopped buying power from that [Arizona power plant](#)?

Why not?

After all, you're the ones who called the people of Arizona Nazis for passing a law to let their police enforce federal law. So if Arizona is Nazi Germany, what are you? Nazi collaborators?

Was all that "boycott" talk that just BS to get you publicity? It sure seems like it, because you haven't boycotted Arizona at all.

"Do as I say, not as I do" is hypocrisy. Are you hypocrites?

It's time for you to hold another press conference, and tell the people of the world why you continue to do business with people you deem Nazis. I can't wait to hear you explain that one.



Download the petition to recall Villaraigosa.

6 Comments

[DerailAmnestydotcom](#)

Proclamations of all types are commonly about appearances and "for show" when they come from the lips of elected office holders in Los Angeles. Substance? That's not something that plays to the strengths of Councilmen Garcetti, Hahn, Zine and the rest of the crew (including your mayor).

Saturday, May 8, 2010 - 10:56 AM

Kell

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Download the Villaraigosa recall petition.

Is City Council Painting Itself Into A Corner With Arizona Boycott Or Just Diverting Attention?

Tuesday, May 11, 2010

By Walter Moore

How much would the Arizona boycott cost the City of Los Angeles?

The City Council has no idea, but will vote on the boycott tomorrow anyway.

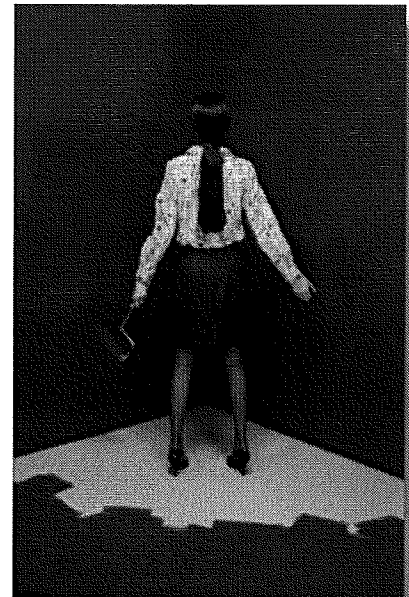
The City Council's Chief Legislative Analyst has issued a memo identifying 48 contracts worth over \$56 million. But there's a footnote in the memo noting that "[d]ata from the DWP was not available at the time this report was written."

A footnote?

He should have put a big banner at the top of the report, warning, "RED ALERT: THE DWP BUYS 21% OF THE OUTPUT OF AN ARIZONA POWER PLANT!"

Then again, it won't matter at all. There won't be any real boycott.

Rather, this is all grand-standing. The career politicians will call people in Arizona Nazis, thereby diverting attention away from the budget mess they themselves have made, and away from their plan to transfer your valuable public assets to their cronies at fire-sale prices.



Current City Contracts with Arizona-Based Companies		
Reporting Agency	Amount	No. of Companies (Contracts)
Controller (All City Non-Proprietary Departments)	\$ 7.70 M	14 (35)
Harbor Department	\$25.60 M	4 (4)
Community Redevelopment Agency/LA	\$.02 M	2 (2)
Department of Water and Power*		
Los Angeles World Airport (LAWA)	.08 M	3 (3)
LAWA (Airlines)	\$22.88 M	2 (4)
TOTAL	\$ 56.28 M	25 (48)

**Data from DWP was not available at the time this report was written.*

1 Comment 

david barron

Disgusting how these elected representatives are so disrespectful to the voters of Los Angeles. I never thought we would use the word "corruption" so often, when speaking about our City officials.

What a meddler this mayor is, concerning himself with Arizona, while his own city is accelerating into a nose dive. He continues to confirm my suspicion, that he doesn't care about anyone but himself and certainly could care less of the bloody slaughter taking place on our southern borders.

david barron
SFValley

david barron

Tuesday, May 11, 2010 - 11:19 PM

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