AMERICAN LAW REPORTS

ALR
Federal 2d

Annotations and Cases

VOLUME 89

2014

THOMSON REUTERS™

Mat #41407341

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Any of the above searches would reveal an annotation on point for the issue of naturalization through military service, Construction and Application of 8 U.S.C.A. § 1440 Permitting Naturalization Through Active Duty Service in Armed Forces During Certain Periods of Military Hostilities, 196 A.L.R. Fed. 365.

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Eligibility of Aliens for Food Assistance Benefits Under Federal Constitutional or Statutory Provisions

by
Mark T. Roohk, J.D.

In 1996, Congress passed the Welfare Reform Act (or Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), 8 U.S.C.A. §§ 1601 et seq.), which significantly altered alien-eligibility requirements for federal public benefits, including the state-administered federal food assistance program, the Supplemental Nutrition Assistance Program (SNAP (7 U.S.C.A. §§ 2011 et seq.)). PRWORA classifies aliens into two general categories: ''qualified aliens'' and ''non-qualified aliens.'' The great majority of aliens are deemed nonqualified under PRWORA and are, with some exceptions, ineligible for federal food stamps. A year after enactment, Congress extended the states' discretionary authority to cover any legal aliens rendered ineligible for federal food stamps by PRWORA's restrictions (7 U.S.C.A. § 2016(i)). In Pimentel v. Dreyfus, 670 F.3d 1096, 89 A.L.R. Fed. 2d 603 (9th Cir. 2012), the court held that a state had no constitutional duty to provide federally ineligible aliens with state benefits and rejected an equal protection challenge to the State of Washington's termination of its own state-funded food assistance program which it had created following the enactment of PWORA. This annotation collects and discusses those cases addressing the eligibility of aliens for food assistance benefits under federal constitutional or statutory provisions.

Pimentel v. Dreyfus is fully reported at page 603, infra.

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Research References

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WEST'S KEY NUMBER DIGEST

Constitutional Law ⚿3041, 3072, 3115, 4118, 4437; Injunction ⚿1288; Public Assistance ⚿152, 154

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PRIMARY AUTHORITY

7 U.S.C.A. § 2016(i)

8 U.S.C.A. §§ 1601, 1612, 1641, 1645

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Validity, Construction, and Application of 20 C.F.R. § 656.30 (2007), Providing for Validity of and Invalidation of Labor Certifications of Aliens

by
George L. Blum, J.D.

Under the labor certification statute, any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that: (1) there are not sufficient workers who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor; and (2) the employment of such aliens will not adversely affect the wages and working conditions of workers in the United States similarly employed. The courts in a number of cases have addressed the validity, construction, and application of 20 C.F.R. § 656.30, as promulgated in 2007. In Elim Church of God v. Harris, 722 F.3d 1137, 89 A.L.R. Fed. 2d 625 (9th Cir. 2013), for example, the court held that a regulation to provide that labor certifications previously issued in connection with applications for employment-based immigrant visas, where the text of the statute did not foreclose the establishment of the expiration date for labor certifications provided sufficient notice to the employer where the amendment was announced in two public notices that focused extensively on the establishment of a new expiration date, and where the regulation was promulgated before the litigation. This annotation collects and discusses the cases that have addressed the validity, construction, and application of 20 C.F.R. § 656.30 as promulgated in 2007.

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Research References

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WEST'S KEY NUMBER DIGEST

Aliens, Immigration, and Citizenship ⚿154, 178(5)

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Federal Immigration—Affirmative Asylum Procedures Manual (FIM-

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What Constitutes "Possession" of Firearm for Purposes of 18 U.S.C.A. § 924(c)(1), Providing Penalty for Possession of Firearm in Furtherance of Drug Trafficking Crime or Crime of Violence

by
Darian B. Taylor, LL.M.

Any person who possesses a firearm in furtherance of a federal crime of violence or drug trafficking offense shall, in addition to the sentence imposed for the underlying offense, be sentenced to a term of imprisonment of not less than five years, pursuant to 18 U.S.C.A. § 924(c)(1). This increases to 10 years if the firearm is a short-barreled rifle or shotgun, or if it is a semi-automatic assault weapon and rises to 30 years if the weapon is a machine gun or destructive device, or if it is equipped with a silencer or muffler. The sentence may not run concurrently with sentences for other crimes and repeat offenders receive a minimum of 25 years. As a result, the question of what constitutes "possession" under this statute is frequently presented. In U.S. v. Howard, 687 F.3d 13, 89 A.L.R. Fed. 2d 635 (1st Cir. 2012), for example, the court held that there was sufficient notice given to the employer under a regulation covering labor certifications previously issued in connection with applications for employment-based immigrant visas, where the text of the statute did not foreclose the establishment of the expiration date for labor certifications, where the amendment was announced in two public notices that focused extensively on the establishment of a new expiration date, and where the regulation was promulgated before the litigation. This article collects and analyzes those federal cases in which courts determined what constitutes "possession" of a firearm under section 924(c)(1).

U.S. v. Howard is fully reported at page 635, infra.

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Research References

The following references may be of related or collateral interest to a user of this annotation.

WEST'S KEY NUMBER DIGEST

Weapons ⚿166, 167, 189, 190, 191, 192, 289, 291(1), 291(2), 293(3), 294(3), 294(6), 296, 308, 328

WESTLAW DATABASES

Criminal Justice—Law Reviews, Texts & Bar Journals (CJ-TP)
Criminal Law—Wharton (CRIMLAW)
Criminal Law News (CRIMLWNEWS)
Criminal Practice Guides (CRPGUIDE)
Criminal Practice Report (CRPREPORT)

89 A.L.R. Fed. 2d 215

Entrapment to Commit Federal Crimes of Terrorism

by
Sarah L. Harrington, J.D.

A valid entrapment defense has two related elements: government inducement of the crime, and a lack of predisposition on the part of the defendant to engage in criminal conduct. A defendant raising the entrapment defense has the burden of showing inducement, and, if inducement is shown, the prosecution has the burden of proving predisposition beyond a reasonable doubt. Predisposition, the principal element in the defense of entrapment, focuses upon whether the defendant was an unwary innocent or, instead, an unwary criminal who readily availed himself of the opportunity to perpetrate the crime. In U.S. v. Cromitie, 727 F.3d 194, 89 A.L.R. Fed. 2d 647 (2d Cir. 2013), petition for certiorari filed, 2014 WL 1458188 (U.S. 2014) and petition for certiorari filed, 2014 WL 1484922 (U.S. 2014) and petition for certiorari filed, 2014 WL 1485159 (U.S. 2014) and petition for certiorari filed, 2014 WL 1515124 (U.S. 2014), the court held that, although the confidential informant's efforts to persuade the defendant to commit domestic terrorism offenses constituted inducement for purposes of entrapment defense, the defendant's initial statements to the confidential informant revealed a preexisting design to commit terrorist acts against the interests of the United States sufficient to establish predisposition to commit charged acts of terrorism, thereby defeating the entrapment defense, even though government officers afforded him the opportunity and the pseudo weapons for striking at specific targets. This annotation collects and analyzes those cases which have discussed the defense of entrapment in a federal prosecution for a crime of terrorism.

U.S. v. Cromitie is fully reported at page 647, infra.

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Research References

The following references may be of related or collateral interest to a user of this annotation.

WEST'S KEY NUMBER DIGEST

Conspiracy ⚿51; Constitutional Law ⚿522, 1414, 3896, 4511, 4521, 4522, 4523, 4524; Criminal Law ⚿36.5, 36.6, 37(2), 37(2.1), 37(3), 37(4), 37(6), 37(6.1), 330, 569, 739.1(1), 772(6), 1916; Sentencing and Punishment ⚿89; War and National Emergency ⚿1128, 1131, 1338

WESTLAW DATABASES

Criminal Procedure (CRIMPROC)

Criminal Practice Manual (CRPMAN)

Trial Motions (MOTIONS)

Trial Pleadings (PLEADINGS)

WestlawNext® Search Query: ENTRAP! /P (TERRORIS! ("18 U.S.C.!" +3 233!)) & DA(AFT 9/3/2014)

PRIMARY AUTHORITY

18 U.S.C.A. §§ 2331 to 2339B

A.L.R. LIBRARY

A.L.R. Index, Due Process; Entrapment; Terrorism

West's A.L.R. Digest, Constitutional Law ⚿4523; Criminal Law ⚿36.6, 37(6.1), 569

Actions by state official involving defendant as constituting "outrageous" conduct violating due process guaranties, 18 A.L.R.5th 1

Burden of proof as to entrapment defense—state cases, 52 A.L.R.4th 775

Entrapment to commit crime with view to prosecution therefor, 18 A.L.R. 146

Adequacy of Defense Counsel's Representation of Criminal Client Regarding Entrapment Defense—Federal Cases, 42 A.L.R. Fed. 2d 145

Validity, Construction, and Application of 18 U.S.C.A. sec. 2332a Prohibiting Use or Threat, Attempt, or Conspiracy to Use Certain Weapons of Mass Destruction, 199 A.L.R. Fed. 1

Validity, Construction, and Application of 18 U.S.C.A. sec. 2339A, Proscribing Providing Material Support to Terrorists, 197 A.L.R. Fed. 1

89 A.L.R. Fed. 2d 261

Application of Transfer of Offenders Treaty Between the United States of America and Canada on Execution of Penal Sentences, U.S.-Can., Mar. 2, 1977, 30 U.S.T. 6263

by
Mark T. Roohk, J.D.

The Transfer of Offenders Treaty Between the United States of America and Canada on Execution of Penal Sentences, Art. I, III, March 2, 1977, 1978 WL 182456, 30 U.S.T. 6263, also known as the Prisoner Transfer Treaty, outlines the process of transferring prisoners between the two countries. The preamble of the Treaty states that its purpose is to enable offenders, with their consent, to serve sentences of imprisonment or parole or supervision in the country of which they are citizens, thereby facilitating their successful reintegration into society. The Treaty outlines certain requirements which must be met by the offenders to be eligible for transfer, as well as procedures to be followed by both countries. In Gandy v. Colorado Dept. of Corrections, 2012 COA 100, 284 P.3d 898, 89 A.L.R. Fed. 2d 695 (Colo. App. 2012), a Colorado state court discussed several of these requirements and procedures in a case in which a Canadian offender was denied a transfer request based on application of a Colorado regulation. The court held that application of the regulation both abrogated the Treaty and violated the Supremacy Clause. This annotation collects and discusses all the cases in which courts have considered the Transfer of Offenders Treaty.

Gandy v. Colorado Dept. of Corrections is fully reported at page 695, infra.

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89 A.L.R. Fed. 2d 281

Issues Arising in Chapter 20 Bankruptcy Proceedings

by
James L. Buchwalter, J.D.

Bankruptcy debtors who have recently filed a Chapter 7 petition often also file for relief under Chapter 13, with the hope of skirting the restrictions that Chapter 7 imposes on avoiding certain liens and discharging certain types of unsecured debts. Thus, these so-called "Chapter 20" cases may allow for "stripping off" junior mortgage liens under certain circumstances, an issue that has recently become prominent with many homeowners currently "underwater" on their residential loans. In In re Waterman, 469 B.R. 334, 89 A.L.R. Fed. 2d 707 (D. Colo. 2012), the court ruled that although a "Chapter 20" debtor's ineligibility for discharge in his latest Chapter 13 case did not render him per se ineligible to strip a creditor's lien, the bankruptcy court still had an independent duty to determine whether the debtor's plan, which provided for "stripping off" of a junior deed-of-trust lender's wholly unsecured lien upon his residence, satisfied all the requirements for plan confirmation, including the Bankruptcy Code's "good faith" requirement.

In re Waterman is fully reported at page 707, infra.

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Research References

The following references may be of related or collateral interest to a user of this annotation.

WEST'S KEY NUMBER DIGEST

Bankruptcy ⚿3718(4)

WESTLAW DATABASES

2005 Bankruptcy Reform Legislation with Analysis (BAPCPA)

Chapter 13 Practice and Procedure (CHAP13PP)

Consumer Bankruptcy Manual (CONSBKRML)

89 A.L.R. Fed. 2d 357

Construction and Application of Federal Credit Union Act of 1934 (FCUA) (12 U.S.C.A. §§ 1751 to 1795k)

by
Elizabeth D. Lauzon, J.D.

In 1934, the Federal Credit Union Act (FCUA) (15 U.S.C.A. §§ 1751 to 1795k) was enacted to establish a system of credit unions to facilitate the stabilization of the nation's credit structure and to achieve an increased availability of loans. Courts have construed and applied the FCUA to ensure that the credit union system is fair to the banking public. Thus, in In re Perez, 440 B.R. 634, 73 U.C.C. Rep. Serv. 2d 257, 89 A.L.R. Fed. 2d 717 (Bankr. D. N.J. 2010), the court held that because a federal credit union's power to make loans as granted under the Federal Credit Union Act of 1934 (FCUA) (12 U.S.C.A. § 1757(5)), preempts state law, including any state Uniform Commercial Code (U.C.C.) provision that conflicts with the Act, the deposit account held by the debtor at the credit union qualified as ''member account'' as defined by the FCUA (12 U.S.C.A. § 1752(5)), allowing the credit union, pursuant to (12 U.S.C.A. § 1757(11)), to automatically perfect a statutory lien on the account the moment that the credit union's loan to the debtor originated. This annotation collects and analyzes cases construing and applying the Federal Credit Union Act (FCUA) of 1934 (15 U.S.C.A. §§ 1751 to 1795k).

In re Perez is fully reported at page 717, infra.

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Research References

The following references may be of related or collateral interest to a user of this annotation.

WEST'S KEY NUMBER DIGEST

Bankruptcy ⚿2580.1, 2704; Building and Loan Associations ⚿1, 2, 3.1, 5(1), 6(2), 7.1, 15, 23(1), 24, 26, 27(2), 28, 33(1), 40, 41(2), 42(6), 43, 45(1), 48; Consumer Credit ⚿1, 2, 16; Deposits and Escrows ⚿31; Federal Courts ⚿232; Labor and Employment ⚿1307; States ⚿18, 19; Taxation ⚿2218; United States ⚿33, 41, 53, 57; Usury ⚿1, 2(1), 5, 42

WESTLAW DATABASES

Regulatory Guidance—All Consumer Banking Summaries (BANK-CON-

89 A.L.R. Fed. 2d 475

Construction and Application of Rule 4(f)(2)(C) of Federal Rules of Civil Procedure Authorizing Foreign Service on Individual by Method Calculated to Give Notice Unless Prohibited by Foreign Country's Law

by
Erin Forst, J.D.

Fed. R. Civ. P. 4(f) sets forth the methods for serving process on individuals in a foreign country. Fed. R. Civ. P. 4(f)(2)(C)(i) provides for service by delivering a copy of the summons and complaint to the individual personally. Fed. R. Civ. P. 4(f)(2)(C)(ii) provides for service by having the clerk of court send service to the individual using any form of mail requiring a signed receipt. Both methods are only permitted where they are not prohibited by the foreign country's law. Courts have been divided over the interpretations of certain words in these provisions, such as what constitutes "mail" and what "prohibit" means. For example, in SignalQuest, Inc. v. Tien-Ming Chou, 284 F.R.D. 45, 82 Fed. R. Serv. 3d 1023, 2012 DNH 90, 89 A.L.R. Fed. 2d 729 (D.N.H. 2012), the court rejected an interpretation of "unless prohibited by the foreign country's law" that would allow service only where the foreign country's law expressly provided for the method used by the plaintiff and said that a method of service was permitted unless the foreign country's law expressly barred that method. This annotation collects and analyzes those federal cases which have construed or applied Fed. R. Civ. P. 4(f)(2)(C) authorizing foreign service on an individual by a method calculated to give notice unless prohibited by the foreign country's law.

SignalQuest, Inc. v. Tien-Ming Chou is fully reported at page 729, infra.

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§ 20 —Fed. R. Civ. P. 4(f)(2)(C)(ii)

Research References

The following references may be of related or collateral interest to a user of this annotation.

West's Key Number Digest

Patents ⚿291; Process ⚿62, 76, 83

Westlaw Databases

Federal International Law—Rules (FINT-RULES)
Federal Rules of Civil Procedure, Rules and Commentary (FRCP-RC)
Federal Rules Decisions Multibase (FRD)
Federal Rules Decisions Articles (FRD-ART)
Federal Rules Decisions Cases (FRD-CS)
Federal Rules Decisions Rules (FRD-RULES)
Litigation of International Disputes in U.S. Courts (LOID)
Federal Rules (US-RULES)
WestlawNext® Search Query: 4(f)(2)(C) & DA(AFT 09/04/2014)

Primary Authority

Fed. R. Civ. P. 4(f)(2)(C)

A.L.R. Library

A.L.R. Index, Constructive or Substituted Service; Process and Service of Process
West's A.L.R. Digest, Process ⚿62, 76, 83
Service of Process Via Computer or Fax, 30 A.L.R.6th 413
Comment Note.—Federal or state law as controlling, in diversity action, whether foreign corporation is amenable to service of process in state, 6 A.L.R.3d 1103
Manner of service of process upon foreign corporation which has withdrawn from state, 86 A.L.R.2d 1000
Rule 4(d)(5), Federal Rules of Civil Procedure, relating to service upon an officer or agency of the United States, 73 A.L.R.2d 1008
Construction and Application of Racketeer Influenced and Corrupt Organizations Act (RICO) Nationwide Service of Process Provision, 18 U.S.C.A. § 1965, 65 A.L.R. Fed. 2d 21

89 A.L.R. Fed. 2d 515

Preemptive Effect of Civil Service Reform Act

by
Deborah F. Buckman, J.D.

The Civil Service Reform Act (CSRA) was enacted in 1978 to comprehensively overhaul the outdated and disorganized civil service system by creating a new framework for evaluating adverse employment actions against federal employees and presenting an integrated scheme of both administrative and judicial review of challenged personnel practices. It forbids ''prohibited personnel practices,'' defined as any ''personnel action'' taken for an improper motive by someone who has authority to take personnel actions. Because it is comprehensive and intended to provide the exclusive procedure for challenging federal civil service personnel decisions, the CSRA generally will preclude and preempt any actions brought outside its parameters in the federal courts. There are, however, some decisions which hold that civil service employees' actions were not preempted. In Murphree v. American Federation of Government Employees, AFL-CIO, 850 F. Supp. 2d 1256, 89 A.L.R. Fed. 2d 739 (N.D. Ala. 2012), for example, the court held that the CSRA did not preempt claims of defamation, invasion of privacy, and intentional infliction of emotional distress. This annotation collects and discusses all the cases which address the question of the CSRA's preemptive effect.

Murphree v. American Federation of Government Employees is fully reported at page 739, infra.

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Who Constitutes "Owner" for Purposes of Limitation of Liability Act, 46 U.S.C.A. § 30505(a)

by
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Under the Limitation of Liability Act, 46 U.S.C.A. § 30505 (formerly codified at 46 App. U.S.C.A. § 183), a vessel owner's liability for certain claims is limited to the value of the vessel and pending freight, in the absence of the owner having privity or knowledge. The owner of a vessel can petition under the Limitation of Liability Act to be exonerated from liability, or have liability limited, for any damages arising from accidents involving the owner's vessels. In determining who is an "owner" within the meaning of the Limitation of Liability Act, courts have considered who pays for storage of the vessel and who skippers the vessel, as well as who has possession and control of the vessel. In In re Aloha Jetski, LLC, 920 F. Supp. 2d 1143, 2013 A.M.C. 53, 89 A.L.R. Fed. 2d 757 (D. Haw. 2013), the court found that the sole member of the limited liability company (LLC) in question, which was the title-holder of the vessels, was the "owner" within the meaning of the Limitation of Liability Act. He was the person ultimately responsible for the vessels' maintenance and operation, and the only person with the authority to act on behalf of the LLC. As such, the owner and LLC were entitled to invoke the protection of the Act. This annotation collects and discusses all the cases in which the courts determined who is an "owner" within the meaning of 46 U.S.C.A. § 30505(a).

In re Aloha Jetski is fully reported at page 757, infra.

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The following references may be of related or collateral interest to a user of this annotation.

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