NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 KA 2083

STATE OF LOUISIANA

VERSUS

JULIO ALTAMIRANO

DATE OF JUDGMENT: MARCH 27, 2009

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 422259, DIV. I, PARISH OF ST. TAMMANY
STATE OF LOUISIANA

HONORABLE REGINALD T. BADEAUX, III, JUDGE

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BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.

Disposition: GRANT OF MOTION TO QUASH REVERSED; REMANDED FOR FURTHER PROCEEDINGS.

Guidry, J. concurs in the portion of the opinion that finds La. R.S. 14:100.13 is not preempted by federal law and otherwise agrees with the remainder of the opinion.

KUHN, J.

Defendant, Julio Altamirano, was charged by bill of information with operating a vehicle without lawful presence in the United States, a violation of La. R.S. 14:100.13. Defendant filed a motion to quash the bill of information, arguing that La. R.S. 14:100.13 is preempted by federal law and that he is a victim of a selective police enforcement policy of profiling, targeting, and arresting Latino drivers pursuant to La. R.S. 14:100.13. Following a hearing, the trial court granted the motion to quash. The State now appeals, arguing the trial court erred in granting the motion to quash. For the reasons that follow, we reverse the trial court's ruling granting the motion to quash and remand for further proceedings.

ASSIGNMENT OF ERROR

In its sole assignment of error, the State argues that the trial court erred in granting defendant's motion to quash the bill of information. As noted by the State, the trial court's reasons for granting the motion to quash are unclear. On appeal, the State addresses both of defendant's arguments in support of the motion to quash. Noting that ***State v. Ramos***, 2007-1448 (La. App. 1st Cir. 7/28/08), 993 So.2d 281 (en banc), is controlling, the State submits that La. R.S. 14:100.13 is not preempted by federal law. The State further urges that defendant produced no evidence at the hearing on the motion to quash to support his profiling claim and that he did not contest the fact that the traffic offense for which he was initially cited was valid.

At the motion to quash hearing, defendant contended that La. R.S. 14:100.13 is preempted by federal regulations because it makes the travel of illegal aliens within the United States a criminal felony, whereas federal

regulations only make such action a civil violation of immigration laws. Defendant reasoned that the statute does not mirror federal objectives and oversteps federal law by attempting to regulate immigration matters. Defendant further contended that the statute conflicts with federal law because there is no requirement in federal law that legal aliens in the United States carry documentation of their status at all times. Defendant maintained that the Louisiana statute places a higher burden on both legal aliens and citizens than federal law does.

As additional basis to support his motion, defendant asserted that the bill of information should have been quashed because the arrest was based on profiling. Defendant concluded that his rights under the Fourth Amendment of the United States Constitution were violated. Defendant specifically argued that there was no reason for the arresting officer to inquire as to the defendant's legal status in the United States. Defendant maintained that he could have been charged with driving without a driver's license or a motor vehicle inspection sticker, noting that the lack of a sticker was the reason for the stop. He further claimed that the arrest was made without probable cause, noting that there was no indication that the officer investigated or inquired into defendant's legal status prior to the arrest or that defendant confessed that he was illegally in the United States, citing ***State v. Lopez***, 2005-0685 (La. App. 4th Cir. 12/20/06), 948 So.2d 1121, writ denied, 2007-0110 (La. 12/7/07), 969 So.2d 619.

Preemption

The Supremacy Clause of the U.S. Constitution requires the invalidation of any state legislation that burdens or conflicts in any manner with any federal laws or treaties. ***See*** U.S. Const. art. VI, cl. 2. Federal law has exclusive jurisdiction to regulate matters of naturalization and immigration. ***See*** U.S. Const. art. I, sec. 8, cl. 4. In ***DeCanas v. Bica***, 424 U.S. 351, 96 S.Ct. 933, 47 L.Ed.2d 43 (1976), the Supreme Court established three tests to use in determining whether a state statute related to immigration is preempted: (1) constitutional preemption, (2) field preemption, and (3) conflict preemption. Pursuant to ***DeCanas***, if a statute fails any one of the three tests, it is preempted by federal law. ***League of United Latin American Citizens v. Wilson***, 908 F. Supp. 755, 768 (C.D. Cal. 1995), outlined the tests provided in ***De Canas*** as follows:

> Under the first test, the Court must determine whether a state statute is a "regulation of immigration." Since the "[p]ower to regulate immigration is unquestionably exclusively a federal power," [***DeCanas v. Bica***, 424 U.S.] at 354, 96 S.Ct. at 936, any state statute which regulates immigration is "constitutionally proscribed." [***DeCanas***, 424 U.S.] at 356, 96 S.Ct. at 936.
>
> Under the second test, even if the state law is not an impermissible regulation of immigration, it may still be preempted if there is a showing that it was the "clear and manifest purpose of Congress" to effect a "complete ouster of state power-including state power to promulgate laws not in conflict with federal laws" with respect to the subject matter which the statute attempts to regulate. [***DeCanas***, 424 U.S.] at 357, 96 S.Ct. at 937. In other words, under the second test, a statute is preempted where Congress intended to "occupy the field" which the statute attempts to regulate.
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> Under the third test, a state law is preempted if it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." [***DeCanas***, 424 U.S.] at 363, 96 S.Ct. at 940 (citing ***Hines v. Davidowitz***, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941)). Stated differently, a statute is preempted under the third test if it conflicts with federal law making compliance with both state and federal law impossible. ***Michigan Canners &***

Freezers v. Agricultural Marketing and Bargaining Board, 467 U.S. 461, 469, 104 S.Ct. 2518, 2523, 81 L.Ed.2d 399 (1984); ***Florida Lime & Avocado Growers v. Paul***, 373 U.S. 132, 142-43, 83 S.Ct. 1210, 1217-18, 10 L.Ed.2d 248 (1963).

The issue raised herein presents a question of law and is, therefore, subject to *de novo* review. ***See State v. Smith***, 99-0606, p. 3 (La. 7/6/00), 766 So.2d 501, 504. In construing La. R.S. 14:100.13, we consider two established rules of statutory construction: (1) all criminal statutes are construed strictly, and (2) the words of a statute must be given their everyday meaning. ***See State ex rel. Robinson v. Blackburn,*** 367 So.2d 360, 363 (La. 1979) and La. R.S. 14:3.

Louisiana Revised Statutes 14:100.13 provides as follows:

> A. No alien student or nonresident alien shall operate a motor vehicle in the state without documentation demonstrating that the person is lawfully present in the United States.
>
> B. Upon arrest of a person for operating a vehicle without lawful presence in the United States, law enforcement officials shall seize the driver's license and immediately surrender such license to the office of motor vehicles for cancellation and shall immediately notify the INS of the name and location of the person.
>
> C. Whoever commits the crime of driving without lawful presence in the United States shall be fined not more than one thousand dollars, imprisoned for not more than one year, with or without hard labor, or both.

Louisiana Revised Statutes 14:100.13 was enacted by 2002 La. Acts 1st Ex. Sess. No. 46, § 1. As part of the same act, the legislature enacted La. R.S. 14:100.11, which sets forth the findings of the legislature and the purpose of La. R.S. 14:100.12 et seq.:

> A. The legislature finds that the devastating consequences of the barbaric attacks on September 11, 2001 on the World Trade Center and the Pentagon as well as the pervasive bomb threats and biological terrorism in various parts of the country were committed for the purposes of demoralizing and destabilizing our society and creating a climate of fear. These heinous deeds designed to kill,

maim, and strike terror into the hearts of innocent citizens of this country cannot be tolerated, nor can those less violent acts to the infrastructure of our state which are designed to intimidate, confuse, and disrupt everyday commerce and the delivery of goods and services to the populace be permitted.

B. The legislature further finds that it is imperative that state laws be enacted to complement federal efforts to uncover those who seek to use the highways of this state to commit acts of terror and who seek to gain drivers' licenses or identification cards for the purposes of masking their illegal status in this state. Accordingly, the legislature finds that state law must be strengthened with a comprehensive framework for punishing those who give false information in order to obtain drivers' licenses or identification cards from the office of motor vehicles of the Department of Public Safety and Corrections, to limit the issuance of such documentation to correspond to the time limits placed by the federal Immigration and Naturalization Service on documentation, and to make operating a motor vehicle in this state when not lawfully present in the United States a crime.

The state of Louisiana is vested with the authority to regulate its public roads and highways under its police power, provided that the legislation does not prove repugnant to the provisions of the state or national constitutions. ***See Kaltenbach v. Breaux***, 690 F.Supp. 1551, 1553 (W.D. La. 1988).

The presumption is that Congress does not intend to preempt state law, unless it speaks with clarity otherwise. ***See Rice v. Santa Fe Elevator Corp.***, 331 U.S. 218, 230, 67 S.Ct. 1146, 1152, 91 L.Ed. 1447 (1947). Congress has exercised its power over immigration in the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq. (the "INA"). The INA is a comprehensive scheme that regulates the authorized entry, length of stay, residence status, and deportation of aliens. ***See Gonzales v. City of Peoria***, 722 F.2d 468, 474-75 (9th Cir. 1983), overruled on other grounds by ***Hodgers-Durgin v. de la Vina***, 199 F.3d 1037 (9th Cir. 1999). The INA delegates enforcement duties to the Immigration and

Naturalization Service ("INS"). Because the federal government bears the exclusive responsibility for immigration matters, the states "can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states." ***Takahashi v. Fish and Game Comm'n***, 334 U.S. 410, 419, 68 S.Ct. 1138, 1142, 92 L.Ed. 1478 (1948). ***See also Plyler v. Doe***, 457 U.S. 202, 225, 102 S.Ct. 2382, 2399, 72 L.Ed.2d 786 (1982) (noting that the States enjoy no power with respect to the classification of aliens).

8 U.S.C. § 1304(e) states:

> 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.

This federal law requires aliens eighteen years of age or over who are legally present in the United States to carry documentation of proof of alien registration at all times. Thus, as evidenced by 8 U.S.C. § 1304(e), the defendant incorrectly asserted at the motion to quash hearing, and the Fourth Circuit in ***Lopez*** incorrectly determined, that La. R.S. 14:100.13A places a burden on aliens that is not contemplated by federal immigration law.

Moreover, La. R.S. 14:100.13 is not a constitutionally impermissible regulation of immigration because it does not involve a state determination of who should be admitted into the country or the conditions under which a legal entrant may remain. Louisiana Revised Statutes 14:100.13 involves a determination of who may lawfully operate a vehicle in this state. The criminal act prohibited is the

operation of a vehicle by an alien without proper documentation of lawful presence. Further, nothing indicates that by the immigration laws Congress intended a complete ouster of the state's power to regulate requirements for legal operation of a vehicle on its public roads and highways. Finally, La. R.S. 14:100.13 does not conflict with federal law. Rather, La. R.S. 14:100.13 complements and augments federal law by reporting to the INS anyone caught without evidence of legal status. ***See State v. Reyes***, 2007-1811, p. 10 (La. App. 1st Cir. 2/27/08), 989 So.2d 770, 776-77. Thus, insofar as the trial court's ruling was based on the preemption argument, the trial court erred in granting the defendant's motion to quash the bill of information.

Racial Profiling

An officer must have a reasonable and articulable suspicion to stop an individual. In determining reasonableness, the court must consider whether the facts known to the officer at the time of the stop would warrant an officer of reasonable caution to believe that the action taken was appropriate. ***Terry v. Ohio***, 392 U.S. 1, 21-22, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889 (1968). A police officer may briefly seize a person if the officer has an objectively reasonable suspicion, supported by specific and articulable facts, that the person is, or is about to be, engaged in criminal conduct or is wanted for past criminal acts. Louisiana Code of Criminal Procedure article 215.1A provides that an officer's reasonable suspicion of crime allows a limited investigation of a person. As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred. ***Whren v. U.S.***, 517 U.S. 806, 810, 116 S.Ct. 1769, 1772, 135 L.Ed.2d 89 (1996).

In ***Whren***, the defense contended that a police officer will almost invariably be able to catch any given motorist in a technical violation, and that this creates the temptation to use traffic stops as a means of investigating other law violations, as to which no probable cause or even articulable suspicion exists. The defendants, who were both black, further contended that police officers might decide which motorists to stop based on decidedly impermissible factors, such as the race of the car's occupants. To avoid this danger, they asserted, the Fourth Amendment test for traffic stops should be not whether probable cause existed to justify the stop; but rather, whether a police officer, acting reasonably, would have made the stop for the reason given. ***Whren***, 517 U.S. at 810, 116 S.Ct. at 1773. To guard against the potential for such abuse, the U.S. Supreme Court concluded that a stop is unconstitutional (i.e., a violation of the Equal Protection Clause) based on considerations such as race. ***See Whren***, 517 U.S. at 813, 116 S.Ct. at 1774.

The Equal Protection Clause prohibits race-based selective enforcement of the law only when such enforcement has a discriminatory effect and is motivated by a discriminatory purpose. To show a violation of the Equal Protection Clause, a claimant must prove that the actions involved had a discriminatory effect and were motivated by a discriminatory purpose. ***Chavez v. Illinois State Police***, 251 F.3d 612, 635-36 (7th Cir. 2001). To prove discriminatory effect, the claimants are required to show that they are members of a protected class, that they are otherwise similarly situated to members of the unprotected class, and that they were treated differently from members of the unprotected class. ***Chavez***, 251 F.3d at 636. A party may show that he was similarly situated yet treated differently by

identifying individuals who received disparate treatment or by using statistics to demonstrate a significant disparity. ***Chavez***, 251 F.3d at 636. When statistics are introduced, they must address the issue of whether one class is being treated differently than others similarly situated. ***Chavez***, 251 F.3d at 638. Supreme Court precedent also suggests that minority motorists alleging that a pretextual traffic stop constituted a denial of equal protection must show that similarly situated Caucasian motorists could have been stopped, but were not. ***See Chavez***, 251 F.3d at 637-41.

At the motion to quash hearing, defense counsel stated that he thought defendant was stopped because he did not have an inspection sticker. Defendant did not present any evidence that he is a member of a protected class who is otherwise similarly situated to members of the unprotected class, and that he was treated differently from members of the unprotected class. There is nothing in the record to indicate that the officers blatantly acted with a discriminatory purpose. The record reveals that defendant did not possess a driver's license at the time of the stop. And nothing establishes that he possessed any documentation demonstrating his lawful presence in the United States. Thus, the police officers had probable cause to believe that defendant was operating a motor vehicle in the state without documentation demonstrating his lawful presence in the U.S., which was a violation of La. R.S. 14:100.13. Defendant has failed to raise an inference of purposeful discrimination or a *prima facie* showing of discrimination. Accordingly, insofar as the trial court based its ruling in favor of the motion to quash the bill of information on the racial profiling claim, the record does not support such a basis and the trial court erred in granting the defendant's motion to

quash. The State's assignment of error has merit and we reverse the trial court's ruling. The matter is remanded for further proceedings.

DECREE

For these reasons, the trial court's ruling, granting defendant's motion to quash the bill of information is reversed. The matter is remanded to the trial court for further proceedings.

GRANT OF MOTION TO QUASH REVERSED; REMANDED FOR FURTHER PROCEEDINGS.