

# Pearl Meadows Mushroom Farm, Inc. v. Nelson

United States District Court for the Northern District of California

December 11, 1991, Decided ; December 11, 1991, Filed; December 17, 1991, Entered

No. C-82-1896 JW

**Reporter:** 1991 U.S. Dist. LEXIS 19726

PEARL MEADOWS MUSHROOM FARM INC., et al.,  
Plaintiffs, v. ALAN NELSON, Commissioner, Immigration  
and Naturalization Service, et al., Defendants.

**Judges:** [\*1] INFANTE, WARE

**Opinion by:** EDWARD A. INFANTE; JAMES WARE

## Opinion

### DECLARATORY JUDGMENT

Pursuant to 28 U.S.C. § 2201, the Settlement Agreement ("Agreement") entered into by the parties to this action, and the Court's approval of the parties' Agreement at a hearing held on December 11, 1991,

IT IS HEREBY DECLARED AS FOLLOWS:

#### A. ENTRY INTO WORKPLACES DURING WORKPLACE SURVEYS

A workplace entry by INS Agents other than an entry into a public area, open field (except as specified in Section 287(e) of the Immigration and Nationality Act, 8 U.S.C. § 1357(e)), or solely for the purposes of obtaining consent, is valid only when based on a valid warrant, valid consent, or valid exigent circumstances.

##### 1. Valid Warrant in Workplace Surveys

a. A warrant of inspection and its supporting affidavit or affidavits is valid only when it provides "sufficient specificity and reliability to prevent the exercise of unbridled discretion by law enforcement officials," and "narrows down the field of potentially vulnerable persons to those employees whom INS might reasonably believe to be aliens." Blackie's House of Beef v. Castillo, 659 F.2d 1211, 1225 (D.C. Cir. 1981), cert. denied, 455 U.S. 940 (1982); [\*2] International Molders' and Allied Workers' Local Union No. 164 v. Nelson, 799 F.2d 547, 552-53 (9th Cir. 1986). The warrant is valid when restricted to a single business premises and only when it provides a reasonable restriction on the time it can be executed (e.g., within 10 days of authorization and during daylight hours), and only when it permits searches where the objects of the searches (e.g., illegal aliens), are likely to be found. Blackie's House of Beef v. Castillo, supra, 659 F.2d at 1226.

b. Any INS civil warrant authorizing the seizure or arrest of a person or persons is valid only when it names or particularly describes each person to be seized pursuant to the particularly requirement of the Fourth Amendment. Such a warrant is valid only when it is based on probable cause to believe that each such person is an alien illegally present in the United States. International Molders v. Nelson, supra, 799 F.2d at 552 n.5. A civil warrant authorizing seizure of "others" in addition to the named and particularly described persons, is valid only when it specifies that, although the identity of such "others" is [\*3] not known, no such person or persons will be detained until after agents have established reasonable, articulable, and individualized suspicion of illegal alienage, and that no such person or persons will be arrested until after agents have established individualized probable cause of illegal alienage. Cf. Ybarra v. Illinois, 444 U.S. 85, 91 (1979); Andresen v. Maryland, 427 U.S. 463, 478-84 (1976).

##### 2. Valid Consent to Enter a Workplace

Consent to enter a workplace is valid only when it is voluntary; when it is not "coerced by explicit or implicit means, by implied threat or covert force," Schneckloth v. Bustamonte, 412 U.S. 218, 228 (1973), and when agents do not conduct themselves in a manner that would leave the person asked with a reasonable belief that he or she has no choice but to consent to entry.

Although there is no requirement that an agent advise an employer or employer's representative of the right to refuse consent to enter a workplace, consent is not valid when an agent expressly or impliedly suggests that an employer will face retaliation if he or she declines to consent.

When agents have no warrant, but [\*4] intend to obtain consent upon arrival at the work site rather than ahead of time, if they arrive or conduct themselves in a manner that would deliberately provoke flight by workers, then such flight is not valid to justify entry. International Molders v. Nelson, supra, 799 F.2d at 554.

##### 3. Valid Exigent Circumstances in Workplace Surveys

If flight by workers is deliberately provoked by agents in order to justify entries into workplace premises, such flight

does not constitute valid exigent circumstances. *Id.* Exigent circumstances are not deliberately caused if, for example, one or more INS Agents wear a uniform (including a weapon), wear other clothing identifying them as INS Agents, or drive vehicles bearing indicia of the INS at reasonable speeds under the circumstances.

#### B. *Valid Detentions During Workplace Surveys*

1. Absent a valid seizure or arrest warrant or valid exigent circumstances, agents may detain a person during a workplace survey for civil immigration purposes only if they possess reasonable, articulable, and individualized suspicion of (1) a person's illegal alienage, or (2) an alien's failure to carry immigration documents on his person [\*5] that he is required to carry by law. Detentions of persons claiming possession of immigration documentation which is not in their immediate possession is valid so long as the detention "lasts only so long as is necessary to carry out its purpose and the investigative methods used [are] the least intrusive means readily available to confirm or dispel the officer's suspicion." *Martinez v. Nygaard*, 831 F.2d 822, 827 (9th Cir. 1987). The reasonableness of the detention is determined by considering "all the circumstances." *Id.* at 828.

2. Agents at or near workplace entrances may validly question persons entering or leaving, *see INS v. Delgado*, 466 U.S. 210 (1984), so long as such agents do not prevent ingress or egress of persons unless the agents possess at least enough cause to justify a detention.

#### C. *Valid Arrests During Workplace Surveys*

Absent a valid seizure or arrest warrant or valid exigent circumstances, a civil immigration arrest of an alien

unlawfully present in the United States by an INS Agent is valid only when based on probable cause and when that person "is likely to escape before a warrant can be obtained [\*6] for his arrest" as that phrase is used in Section 287(a)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1357(a)(2).

#### D. *Persons Detained*

A valid detention, arrest, or seizure of a person cannot be based solely on that person's ethnic characteristics. *See United States v. Brignoni-Ponce*, 422 U.S. 873 (1975).

#### E. *Use of Force*

The valid use of force to effect a detention or arrest does not include the use of excessive or unnecessary force. The valid use of force means use of only such force as is reasonable "in light of the facts and circumstances confronting" the officer, "including the severity of the [offense], whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham v. Connor*, 109 S. Ct. 1865, 1872 (1989).

Dated: 12-11-91

EDWARD A. INFANTE

United States Magistrate - Judge

Dated: 12-11-91 JAMES WARE

United States District Judge