

SCOTUS To Hear Case Involving Identity Theft and Illegal Immigration

August 8, 2019 - The US Supreme Court has decided to hear a case involving illegal immigration and identity theft; with big implications for identity theft victims. The circumstances surrounding the case (Kansas v. Garcia) really aren't in dispute. But a previous decision by the Supreme Court several years is muddying the water. That decision, which relied on the Constitution's Supremacy Clause limited states abilities to cooperate with the federal government on certain law enforcement issues; especially where immigration is concerned. Although the pundits are now screaming that the decision to hear the Garcia case is horrible news for "immigration advocates" (whatever that means) illegal immigration is nothing more than a red-herring here, but the case's outcome could have tremendous significance for victims of identity theft. Depending upon the decision, the court may do a tremendous amount of good or immeasurable harm, with very little room left in between.

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The Case

The facts here are very straight forward. There are three defendants who the State of Kansas tried to prosecute for identity theft. They stole other people's real social security numbers and used them to obtain employment. They provided those stolen SSNs to prospective employers by writing them down on federal I9 forms that are used to verify employment eligibility in the United States. None of that is disputed.

The issue is that Immigration Reform and Control Act (IRCA) of 1986 states that "any information contained in or appended to such form, can only be used to enforce specifically named federal crimes. The defendants have argued that this means Kansas can't prosecute them for identity theft because they listed the SSN's on the I9 forms at the time they were hired. That argument proved successful with the Kansas State Supreme Court which decided that the federal law having to do with I9's preempted state identity theft laws. Case closed! Well, not so fast.

The state court's ruling relied on another Supreme Court case that overturned an Arizona law which required state police to cooperate with federal immigration authorities. In that case, SCOTUS determined that it could even be illegal for states to cooperate with the federal government on enforcement issues that are constitutionally assigned to the federal government, i.e., immigration. But as you'll see shortly, immigration has little to do with Garcia.

Kansas Argument

The argument that the state of Kansas is making is just as straight forward as the facts above. They aren't attempting to prosecute the defendants based on what they put in their I9 forms. Instead, Kansas is saying that it is against the law for anyone to use a stolen SSN to file state tax returns, do business with the state, to obtain benefits or a state issued ID.

That all sounds perfectly reasonable.

In fact, to read the federal law the way that the Kansas State Supreme Court did would automatically convey a blanket immunity to absolutely anyone who provided stolen information on an I9 form. That's probably one of the reasons the state has taken their case into the federal courts.
Immigration Status is Irrelevant to Kansas v. Garcia

Yes, you read that correctly. The fact that the defendants in this case are in the United States illegally is irrelevant to the matter at hand, not that you would know that by listening to the news reports about it. In fact, there are a lot of reporters screaming that if the Supreme Court overturns the lower court decisions it will be an assault against "immigrants." But they don't know what they are talking about.

Every single person in the United States who is offered a job is required by law to fill out an I9 form. It doesn't matter if you are a US citizen, a guest worker here on a visa. And it doesn't matter if you are an illegal immigrant either. Every employer is required to submit their I9 paperwork to the federal government.

If the US Supreme Court comes away from this case agreeing with the Kansas Supreme Court, that decision would make virtually every law against identity theft unenforceable nationwide. You or I would simply have to apply for a job using false documents we would be free commit identity theft using that false information. All that gaming the system would require is one false application - even though you may have no intention of keeping the job. From that point on it would be impossible for the state to prosecute us for filing false tax returns or committing other forms of identity theft, as long as the information used to commit the crime was the same information we provided on the form. How long do you think it will take criminals to figure that out? After all, it's a get out of jail free card!

I don't imagine that there is a sole in this country that believes this was the outcome intended by congress or the White House when IRCA was signed into law three decades ago. And I don't imagine that SCOTUS would be happy with the consequences of upholding the state court's decision. If they did that, it would provide just about anyone sitting in jail today for identity theft immediate grounds for appeal. Let's hope they get this decision right!

by Jim Malmberg

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