probable cause was sufficient to support his traffic stop and any subsequent arrest. Rodriguez's constitutional rights were not violated even if his detention was an arrest, since the initial stop was permissible. *United States v. Rodriguez-Rodriguez,* No. 07-2214, 2008 WL 5340311 (10th Cir. Dec. 24, 2008).

Extra-Jurisdictional Arrests

Engleman, while staying with his parents in Oklahoma, noticed some prowlers and dialed 911. The call was routed to the local county sheriff's office, located in Arkansas, and Deputy Sheriff Murray and others were sent to investigate. The call was taken from a telephone number with an area code assigned to northwestern Arkansas, and the address given was a street address in Arkansas. While en route, the officers learned of an outstanding warrant for Engleman. The officers arrived and informed the parents about the warrant, and located Engleman in the home. Both Engleman and his father took the position that, as the house was actually in Oklahoma, not in Arkansas, the officers could not arrest Engleman. (Arkansas law authorized law enforcement officers to execute its arrest warrants "in any county in the state," but did not authorize out-of-state arrests.) Nonetheless, the officers arrested Engleman and took him to the county jail. Engleman brought suit under 42 U.S.C. § 1983, alleging that the officers used excessive force in violation of the Fourth Amendment, and that the arrest in Oklahoma was unreasonable under the Fourth Amendment: by arresting him in Oklahoma on an Arkansas warrant, Deputy Murray exceeded his jurisdictional authority, which violated Engleman's Fourth Amendment right to be free from unreasonable seizures. In the course of litigation, a satellite positioning system revealed that, while the postbox for the Engleman property was in Arkansas, the actual house itself was located in Oklahoma. The defendants moved for summary judgment, arguing that they were entitled to qualified immunity.

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Inside IMLA *continued from page 5*

These revenues help support our advocacy program and some of our other services, such as this magazine and our e-newsletters. The revenues also support some of our newer projects. As you know, we have started some groups for people with common interests. These groups include dedicated listservs and regular conference calls. The groups include "code enforcement," "coastal communities," "capital cities," "sports cities," "university cities/college towns," "counties," and will include "border communities," and "young lawyers." While the listservs are fairly inexpensive to operate, the conference calls are another matter. These groups provide great opportunities for our members to network with attorneys in other communities with common interests and common practice areas. We need additional revenues to sustain them.

Enough whining! We have a terrific program planned for the Seminar in April and we are already developing, with the City of Miami, a program for the Annual Conference that will be one of our best ever. If you have a construction project that has been affected by the economic slowdown and is late, in default, or you have claims, you will not want to miss our Annual Construction Law program, scheduled for March 1–3, 2009 in San Diego. **ML**

The Americans with Disabilities Act *continued from page 11*

Accord, Jarvis v. Potter, 500 F.3d 1113, 1121-22 (10th Cir. 2007) (court upholds termination of a postal worker who suffered from post-traumatic stress disorder, PTSD, and who would physically attack coworkers who startled him, under a "direct threat" defense).
37. *Id.* at 1087.
38. Sista v. CDC Ixis North America, Inc., 445 F. 3d 161 (2d Cir. 2006).
39. *Id.* at 169-74.
40. 117 F. 3d 351, 353 (7th Cir. 1997).
41. *Sista,* 445 F. 3d at 172-73. *But see* Husowitz v. Runyon, 942 F. Supp. 822, 832 (E.D.N.Y. 1996) (noting the Second Circuit rejects the distinction between a handicapping condition and specific conduct resulting from the condition in determining if an employer's decision to take action against an employee is based on the plaintiff's disability, relying on *Teahan v. Metro-North Commuter R.R. Co.*, 951 F. 2d 511, 515-17 (2d Cir. 1991)).
42. The majority of municipal employees have property interests in their employment, requiring cause for discharge. *See, e.g.*, Gilbert v. Homar, 520 U.S. 924, 928-29 (1997) (employees who can be discharged only for cause have a constitutionally-protected property interest in their tenure and cannot be fired without due process).
43. Generally, "just cause" factors include: (1) whether the employee had forewarning or foreknowledge of possible disciplinary consequences of his misconduct; (2) whether the employer's policy or rule is reasonably related to the orderly, efficient, and safe operation of the agency; (3) whether a fair investigation was conducted prior to imposing discipline; (4) any proof of misconduct; (5) whether the policy or rule was applied evenhandedly to all similarly-situated employees; (6) whether the punishment fit the severity of the conduct, in light of progressive discipline; and (7) any mitigating circumstances. *See* Discipline & Discharge in Arbitration, 33-35 (Norman Brand, ed., BNA Books 1998).
44. *See* Pence v. Tenneco Auto. Operating Co., Inc., 169 Fed. App. 808, 811 (4th Cir. 2006) (upholding an employer's decision to send an employee to the employer's doctor for medical evaluation for egregious behavior before interviewing him).
45. An excellent resource that addresses these questions is Beth Bates Holliday, Annotation, *Use of "Last Chance" or "Return to Work" Agreements Under Americans with Disabilities Act,* 6 A.L.R. Fed. 2d 453 (2005).
46. *See supra,* note 33. **ML**

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Cases *continued from page 37*

The district court accepted the magistrate's recommendation to grant summary judgment for the other officers, and as to the finding that Murray did not use excessive force and that the seizure was reasonable, but denied the motion with respect to Deputy Murray. He appealed, arguing that he was entitled to qualified immunity because it was objectively reasonable to believe that he was arresting Engleman in Arkansas.

The U.S. Court of Appeals for the Eighth Circuit reversed the denial of summary judgment. Engleman was required to proffer sufficient evidence to raise a genuine issue of material fact about whether a reasonable officer would have known that Deputy Murray's conduct violated a clearly established right. There were no material issues of fact, and, in the circumstances, notwithstanding the prohibition on executing an arrest warrant outside of the arresting officer's jurisdiction, it was objectively reasonable for an officer in Deputy Murray's position to have believed that he was executing the warrant in Arkansas. The 911 system identified Engleman's call as originating from a telephone number with an Arkansas area code and an Arkansas address and mailing address. The arrest warrant had been issued in Arkansas and stated that Engleman resided at 24512 Van Fleet Road in Arkansas, the same address that the officers were being called to. The fact that Engleman advised the officers they were in Oklahoma was not dispositive, as the "protests of a resisting arrestee generally do not make an objectively reasonable arrest unreasonable." Accordingly, Deputy Murray's actions were objectively reasonable in light of the law and the information he possessed at the time, and he was entitled to qualified immunity. *Engleman v. Murray*, 546 F. 3d 944 (8th Cir. 2008). ML

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Supreme Court *continued from page 18*

of the questions presented does not warrant plenary review here." Opposing the motion to affirm, the utility district noted that the "appeal puts before the Court the most federally invasive law in existence," arguing that the 2006 reenactment of §5 is not a congruent and proportional response to present-day voting-rights circumstances; it was, rather, an improper and unconstitutional extension of a response appropriate to the scope and scale of problems two generations past into a never-ending future." Specifically, it points out that the "America that has elected Barack Obama as its first African-American president is far different than when §5 was first enacted in 1965. Appellees barely acknowledge the deep-rooted societal change, preferring to assume that conditions remain similarly dire despite overwhelming evidence to the contrary. There is no warrant for continuing to presume that jurisdictions first identified four decades ago as needing extraordinary federal oversight through §5 remain uniformly incapable or unwilling to fulfill their obligations to faithfully protect the voting rights of all citizens in those parts of the country."

Clearly, this case has important implications for states and local governments; the question is, how will the Supreme Court weigh in? ML

Federal *continued from page 28*

inherent authority.[16] The final third of the brief focuses on the Province of British Columbia. In Canada, federal and provincial governments split up the responsibility for environmental policy. British Columbia passed, and received royal assent for, a law that enables the adoption of California's regulations.[17] Unfortunately, the law will not be effective unless California is permitted to utilize its own adopted standards. This action by the Province demonstrated the brief's argument that the problem of climate change is one that requires "international, national, and subnational efforts."

It is anyone's guess as to how far this case will go. During his campaign, President Obama stated that he would have approved California's waiver request, and the new EPA Administrator will certainly start the approval process.[18] As we've seen before, it's another waiting game, but when the issue is global warming, just how long can we wait?

Notes

1. Massachusetts v. EPA, 127 S. Ct. 1438 (2007).
2. Clean Air Act, 42 U.S.C. § 7521 (West 2008).
3. No. 08-1178, 2008 WL 416849 (D.C. Cir., filed on May 5, 2008).
4. IMLA is participating in a brief managed by the Constitutional Accountability Center, along with the National Association of Counties, National League of Cities, National Conference of State Legislatures, National Association of Clean Air Agencies, American Planning Association, City of New York, King County (Washington), and the Canadian Province of British Columbia. *Brief for National Conference of State Legislatures, International Municipal Lawyers Association, et al. as Amici Curiae Supporting Petitioners, California v. EPA*, No. 08-1171, 2008 WL 416849 (D.C. Cir., filed on May 5, 2008).
5. California State Motor Vehicle Standards, 73 Fed. Reg. 12156 (Mar. 06, 2008). Under the law, automakers will have to reduce greenhouse gas emissions by 30% by 2016.
6. 42 U.S.C. § 7543(a) (West 2008).
7. 42 U.S.C. §7543(b) (West 2008).
8. *Id.*
9. California State Motor Vehicle Standards, 73 Fed. Reg. 12,156 (Mar. 06, 2008).
10. *Id.* at 12160.
11. Order re: *California v. EPA*, No 08-70011 (9th Cir. July 25, 2008).
12. The brief is available at http://www.theusconstitution.org.
13. IMLA brief, citing *Motor & Equip. Mfrs. Ass'n, Inc. v. EPA*, 627 F. 2d 1095, 1115 (D.C. Cir. 1979).
14. IMLA brief, citing statement of Sen. Murphy, 113 Cong. Rec. S32,476 (1967).
15. 73 Fed. Reg. 12,163 (Mar. 06, 2008).
16. IMLA brief at 12.
17. *Greenhouse Gas Reduction (Vehicle Emissions Standards) Act*, S.B.C. 2008, c. 21.
18. Zachary Coile, *Obama Expected to Back Auto-Emission Waiver*, San Francisco Chronicle, Nov. 11, 2008, at A1. ML