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## **Court: Immigration status can have role in sentencing**

**By Howard Fischer**  
*CAPITOL MEDIA SERVICES*

Judges are free to impose harsher sentences on criminals who are in this country illegally, the Arizona Court of Appeals ruled Friday.

In a unanimous decision, the three-judge panel rejected arguments by the attorney for Andres C. Alire, a 46-year-old Mexican national, that his immigration status is irrelevant to his punishment. Alire was convicted of driving under the influence in Pima County.

Appeals Court Judge Peter Eckerstrom said sentencing judges have wide latitude to consider all sorts of factors.

State Rep. Ben Miranda, D-Phoenix, said he believes the decision is wrong. Miranda, an attorney, said the ruling improperly muddies the line between the jurisdictions of state and federal courts.

He said the only thing the judge should be entitled to do is put a "hold" on Alire, turning him over to immigration authorities at the end of his sentence.

Court records show that Alire was convicted of aggravated driving while intoxicated. Under Arizona law, the offense, a Class 4 felony, normally would carry a sentence of 2.5 years in state prison.

But Pima County Superior Court Judge Clark Munger said there were "aggravating circumstances" that merited nearly doubling that, to 4.5 years behind bars. Munger listed Alire's prior felony conviction, his degree of intoxication and the fact that he had fled before the trial.

At sentencing, however, Munger said that "apparently, Mr. Alire feels that what he is here to do is come to the United States illegally, drive drunk and endanger the citizens of this country through his intoxication repeatedly and making his living distributing 50 kilograms or more of marijuana."

There was no explanation in the appellate ruling for the judge's references to marijuana distribution.

Alire appealed his sentence, saying the court had improperly considered his nationality. But Eckerstrom, writing for the Appeals Court, said Munger made reference only to Alire's immigration status.

Eckerstrom said there is no evidence that Munger did consider that in imposing the longer prison term. But he said a trial judge is entitled to weigh as a factor the fact that a defendant is here illegally.

"Entering the United States without valid immigration status is a violation of the laws of this country," Eckerstrom wrote. He said state law allows a sentencing judge to consider "any other factor that the court deems appropriate to the ends of justice."

State lawmaker Miranda said the ruling, in essence, imposes an additional penalty on someone solely because of his entry status. "That is reserved for the federal courts," he said.

He also said that someone who is an illegal entrant actually may have some right to remain, perhaps being eligible for asylum.

"Maybe he or his attorney is not entitled to articulate that in the criminal matter," Miranda said.

The ruling comes only one day after the Arizona House Judiciary Committee voted to let judges deny bail to some people accused of felonies, based solely on their immigration status. That measure now goes to the full House.

Miranda said both Friday's ruling and Thursday's committee action are signs that the nation's immigration laws need to be reformed.

In the appellate ruling, Eckerstrom wrote there is no discrimination in deciding to consider someone's legal right to be in this country.

"There is a critical distinction between immigration status as it relates to nationality and immigration status as it relates to illegal activity," Eckerstrom wrote. "Placed in context, the trial court's remarks here were clearly directed at Alire's disregard for the laws of this country."

Alire's attorney could not be reached for comment late Friday to determine whether an appeal to the Supreme Court will be filed.

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