

CRIMINAL CITATIONS AT THE BORDER

By W. SCOTT RAILTON*

U.S. Customs and Border Protection (CBP) has many options for concluding an inspection at the border.¹ The most common outcome is the person inspected is admitted to the United States. Sometimes, they are paroled into the United States rather than "admitted" due to some legal defect in the person's admissibility. And then there are those who are turned away. Some are allowed to withdraw their application for admission. Others are denied entry without paperwork. Some are provided a Notice of Refusal Admission/Parole (Form I-160A). Some are issued a Notice to Appear in immigration court. Still others are placed in expedited removal and barred from seeking re-entry without consent of the U.S. government for a period of years—usually five years.

Add to this list the criminal citation, which looks like a traffic ticket.² On its header, the Violation Notice says

* W. Scott Railton practices immigration and border law at Cascadia Cross-Border Law in Bellingham, Washington and can be contacted at srailton@cascadia.com. Scott, Greg Boos, Heather Fathali and Halley Fisher recently worked on a case involving a criminal citation issued at a local port of entry, prompting this advisory. Since that time, a few additional violation notices have been noted, both from CBP and the National Park Service. A similar version of this advisory was originally prepared for the 2023 AILA NW Regional Conference, in an effort to raise awareness for immigration practitioners of the local use of criminal citations by federal agencies.

¹ On a typical day in 2022, CBP processes 868,867 passengers and pedestrians: 263,000 air passengers and crew, 58,549 boat passengers and crew, and 547,318 incoming land travelers. For the same "typical day," there are 1,152 "enforcement encounters" at ports of entry. See *Snapshot: A Summary of CBP Facts and Figures*, U.S. Customs and Border Protection, 2022, available at <https://www.cbp.gov/sites/default/files/assets/documents/2023-May/cbp-snapshot-fy2022-stats.pdf>.

² Indeed, the Central Violations Bureau's website calls the violation notices "tickets" on their website. See "About My Ticket" at <https://www.cvb.uscourts.gov/pay-ticket/about-my-ticket>. (9/12/23 reviewed). See also <https://www.cvb.uscourts.gov/sites/default/>

"United States District Court Violation Notice." It appears to be a civil violation, mainly because it can be dealt with by paying a nominal penalty. The recipient is presented with the choice of paying a de minimis fine (e.g., \$80) and not appearing in court; or appearing in court. The violation notice can be provided with other agency paperwork, such as a Notice of Refusal of Admission.

The violation notice is a trap for noncitizens due to the broad and longstanding immigration consequences of some convictions. The purpose of this brief advisory is to alert practitioners to this CBP practice. Issuing criminal citations has not been a common practice in the past at northwest ports of entry, at least related to misrepresentation.

The violation notice is a form that any federal agency can use for charging a violation of federal statute, regulation, or state law. The violation notices are issued on federal land and enclaves, such as national parks and military installations. It is not limited to CBP's use.

For example, this violation notice is used by national park rangers to cite someone for illegally possessing marijuana in federal parks and lands (e.g., campsite), in violation of 36 CFR § 2.35(b)(2).³ The Immigration and Nationality Act makes inadmissible "any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of...a violation of (or a conspiracy or attempt to violate)

[files/2022-11/CVB-Sample-Violation.pdf](#), for sample ticket. (10/30/23 reviewed.)

³ 36 CFR 2.35(b)(2) states:

(b) Controlled substances. The following are prohibited:

(1) The delivery of a controlled substance, except when distribution is made by a practitioner in accordance with applicable law. For the purposes of this paragraph, delivery means the actual, attempted or constructive transfer of a controlled substance whether or not there exists an agency relationship.

(2) The possession of a controlled substance, unless such substance was obtained by the possessor directly, or pursuant to a valid prescription or order, from a practitioner acting in the course of professional practice or otherwise allowed by Federal or State law.

any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21).” A noncitizen who pays the fine presented on this violation notice form instead of contesting the matter in a court hearing may later encounter serious immigration consequences.

The violation notice is not exclusively used for criminal matters. The same violation notice can be used for a traffic violation. The form requires that the officer cite the offense and the CFR, USC, or State code that applies. The referenced law must be reviewed to assess the immigration consequences of the citation.

The back of the violation notice provides instructions for making payment online at www.cvb.uscourts.gov or by mail to the Central Violations Bureau in San Antonio, Texas.

The violation notice says on the back:

“By paying the amount due, you may be admitting to a criminal offense, and a conviction may appear in a public record with adverse consequences to you. You have a right to know more about the charge against you and may obtain a complete statement of the charge by calling the Central Violations Bureau at 800-827-2982. By paying the amount due, you waive your right (1) to contest this violation notice, (2) to a trial, and (3) to be represented by counsel.”

As per CVB's website, operated by the Administrative Office of the U.S. Courts, “The Central Violations Bureau (CVB) is a national center charged with processing U.S. District Court Violation Notices (tickets) issued and payments received for offenses committed on federal property, like national parks and military installations, or for violations of federal law that occur elsewhere.”⁴

If payment is not made, within 4 to 8 weeks, the matter is scheduled for Federal District Court, and a Notice to Appear is issued to the Defendant. The Notice to Appear again presents the opportunity to make payment in lieu of appearance, with a detachable payment stub at the bottom of the notice that may be mailed to the CVB. The notice contains the same warnings about waiving rights and possible adverse consequences if payment is made. These warnings are vague and, in fine print, and easily ignored.

Procedures for docketing will vary depending on where the jurisdiction where the citation is issued. For example, suppose CBP issues the citation at a western port of

entry in Washington State (e.g., Blaine, Point Roberts, Sumas, Lynden). In that case, the matter will be calendared in Seattle for a once-a-month docket for CVB cases before a District Court magistrate. The U.S. Government has regular counsel representing the regional offices of federal agencies on this docket. Although the U.S. District Court holds hearings in Bellingham, based on recent experience, the case will be heard in Seattle.

To represent the client, it is necessary to enter a Notice of Appearance⁵ via the District Court's Case Management/Electronic Case Files system (CM/ECF) and then to engage in a vigorous criminal defense. The case will be titled “United States of America v. <Your Client>.”

In a recent case of local CBP origin, a noncitizen defendant was cited for “Improper entry by Alien- 1st offense.” in violation of 8 USC § 1325(a)(3). This statute concerns unlawful entry and states:

(a) Improper time or place; avoidance of examination or inspection; misrepresentation and concealment of facts

Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) **attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both**, and, for a subsequent commission of any such offense, be fined under title 18, or imprisoned not more than 2 years, or both. (bold added)

At bottom, the charge on prong three of the statute (in bold) is a criminal petty offense charge for willful misrepresentation, with a maximum penalty of six months imprisonment and/or fine. This is not a civil violation. If the Defendant paid the nominal fine, they would have a conviction on their record for this statute, which likely establishes one or more inadmissibility bases for future immigration applications (e.g., crime involving moral turpitude; misrepresentation).

Of course, the Immigration and Nationality Act has its own inadmissibility bar for willful misrepresentation. INA § 212(6)(c) states:

⁵ For the U.S. Courts' Appearance of Counsel form, visit <https://www.uscourts.gov/forms/attorney-forms/appearance-counsel>. This is not a G-28.

⁴ See <https://www.cvb.uscourts.gov/>

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

Where there is a §212(6)(c) misrepresentation violation at the border, CBP has the statutory authority to place the applicant for admission into expedited removal and bar them from re-entry for five years.⁶ This civil sanction is an effectual bar to re-entry for the noncitizen.

It is much more common to see CBP levy the expedited removal sanction in a case of misrepresentation at the border. It will usually be the more suitable approach for the U.S. government, as a criminal defendant has a right to mount a legal defense.

A person who receives a violation notice may wish to contest the charge in federal court, as is their right. If this is the case, a threshold decision to be made by the immigration attorney and client is whether the immigration attorney should continue to represent in the matter. The citations may be docketed as "petty offenses," and so they sit on the lesser end of the criminal charge spectrum. A vigorous defense involves the full protection of rights, the strategic application of criminal discovery rules, negotiation, and perhaps trial and appeal. Seeking co-counsel or assistance from a criminal defense organization (e.g., U.S. Federal Defender's Office, National Association of Criminal Defense Lawyers, Washington Defender Association) may be prudent, as may be referring the matter to an attorney who practices criminal law.

Another consideration is whether to file a Freedom of Information Act request immediately. CBP maintains recordings of some of its activities at the border, but some recordings are not retained in perpetuity. A recording may be helpful for defense. If a recording is sought, it is vital to reach out to the border as soon as possible and ask that the recording be preserved.

Rule 58 of the Federal Criminal Rules of Procedure provides the Federal Court procedures for misdemeanors and petty offenses.⁷ CVB violations are often "petty of-

fenses," a federal description for a lesser offense. As to Rule 58, it is said, "In practice, Rule 58 is honored mostly in the breach. The district court practices range from informal negotiation between an agency representative and the accused to a rigid application of all the Federal Rules of Criminal Procedure."⁸

FRCP Rule 58(b)(2)(H) provides "that a defendant who is not a United States citizen may request that an attorney for the government or a federal law enforcement official notify a consular officer from the defendant's country of nationality that the defendant has been arrested—but that even without the defendant's request, a treaty or other international agreement may require consular notification."

A final caveat. If payment is made, defenses may still be available. The immigration consequences of each violation will have to be specifically analyzed. There may be due process defenses that can be raised, as to notice. For example, in the 1990s, the Legacy INS issued a memo that mere citation for a customs seizure of cannabis does not impute inadmissibility bars.⁹ Nevertheless, it is reasonable to advise clients that payment of a citation may have serious immigration consequences despite the nominal fine.

CONCLUSION

Be careful if a noncitizen client receives a violation notice (aka "ticket") from U.S. Customs and Border Protection or any federal agency. Payment instead of court may have longstanding immigration consequences. The citation may reflect a criminal charge. Contesting the citation requires appearing in federal court before a U.S. magistrate and prosecutor and mounting a legal defense. It may be prudent to consult or associate with an attorney with federal criminal defense experience who is familiar with the specific CVB docket, as regional court practices vary. A violation notice represents a possible criminal charge under U.S. federal law and needs to be handled with care.

Appended:

- Sample U.S. District Court Violation Notice

⁶ 8 USC §1225(b)(1)(A)(i); 8 CFR 235.3; et al. See also, *Everything Expedited Removal*, published by National Immigration Litigation Alliance, at <https://immigrationlitigation.org/wp-content/uploads/2023/04/2023.04.20-Everything-Expedited-Removal.pdf> (verified Sept. 11, 2023).

⁷ *The Federal Rules of Criminal Procedure*, available at <https://www.uscourts.gov/sites/default/files/rules-of-criminal-procedure.pdf>

⁸ Warner, Mary C. "The Trials and Tribulations of Petty Offenses in the Federal Courts." *NYUL Rev.* 79 (2004): 2417, at 2429.

⁹ *7 Legal Opinion: Your CO 235-C Memorandum of October 25, 1991: Excludability Under Customs Zero Tolerance Fines*, T. Alexander Aleinikoff, to Michael D. Cronin and Donna Kay Barnes, published January 20, 1995.

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**United States District Court
Violation Notice**

(Rev. 1/2019)

Location Code	Violation Number	Officer Name (Print)	Officer No.
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YOU ARE CHARGED WITH THE FOLLOWING VIOLATIONS

Date and Time of Offense MM/DD/YY	Offense Charged <input type="checkbox"/> CFR <input type="checkbox"/> USC <input type="checkbox"/> State Code
Place of Offense	
Offense Description: HAZMAT <input type="checkbox"/>	

DEFENDANT INFORMATION		Phone: () -	
Last Name	First Name	M.I.	
Street Address			
City	State	Zip Code	Date of Birth MM/DD/YY
Drivers License No.	CDL <input type="checkbox"/>	D.L. State	Social Security No.
<input type="checkbox"/> Adult <input type="checkbox"/> Juvenile	Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	Hair	Eyes
Height		Weight	

VEHICLE	VIN:	CMV <input type="checkbox"/>
Tag No.	State	Year
Make/Model	PASS <input type="checkbox"/>	Color

APPEARANCE IS REQUIRED	APPEARANCE IS OPTIONAL
A <input type="checkbox"/> If Box A is checked, you must appear in court. See instructions.	B <input type="checkbox"/> If Box B is checked on the front of your violation notice, you must pay the fine or appear in court.
PAY THIS AMOUNT AT www.cvb.uscourts.gov →	\$ _____ Forfeit Amount + \$30 Processing Fee
	\$ _____ Total Collateral Due

YOUR COURT DATE

(If no court appearance date is shown, you will be notified of your specific court date by mail.)

Court Address	Date
	Time

My signature signifies that I have received a copy of this violation notice. It is not an admission of guilt. I promise to appear for the hearing at the time and place instructed or in lieu of appearance pay the total collateral due.

X Defendant Signature

Instructions

- Keep this copy for your records -

Phone Number: 800-827-2982

Email: info@cvb.uscourts.gov

- A. If Box A on the face of this Violation Notice is checked, you must appear in court at the date, time and place shown. If no date, time and place are shown then you will be notified by mail of when and where to appear. You must notify the Central Violations Bureau in writing if you change your address. If you have not received a "Notice to Appear" within 60 days, call the CVB at 800-827-2982.
- B. If Box B is checked on the face of this Violation Notice, you must do one of the following:
1. Pay a fixed sum in lieu of appearing in court. To end your case without appearing in court, submit payment on-line (www.cvb.uscourts.gov), by phone (800-827-2982), or by mail. Checks or money orders should only be mailed to the address below. Include a copy of your Violation Notice with your payment. Do not send cash. Write the violation number and location code that appear on the top front portion of the Violation Notice on your check or money order and make it payable to the "Central Violations Bureau". Keep a copy of the violation notice for your records. Make your payment within 30 days of your hearing date.

By paying the amount due you may be admitting to a criminal offense and a conviction may appear in a public record with adverse consequences to you. You have a right to know more about the charge against you and may obtain a complete statement of the charge against you and may obtain a complete statement of the charge by calling the Central Violations Bureau at 800-827-2982. By paying the amount due you waive the right (1) to contest this violation notice, (2) to a trial, and (3) to be represented by counsel.

If you are charged with a motor vehicle violation, your payment may be reported to your state's motor-vehicle or driver-licensing agency. As a result, points may be assessed against your driving record, your license or registration may be suspended, and additional fees may be imposed by your state. A drivers-education course may be an option to avoid these consequences. If you are interested in a driver-education course, do not pay the amount due. Call the Central Violations Bureau at 800-827-2982 for further information.

OR

2. Appear in court. If a date, time and place for you to appear in court is shown on the front of this Violation Notice, you must appear in court at that time. If no date is shown, you will be notified by mail of the date and time to appear. You must notify the Central Violations Bureau in writing if you change your address. If you have not received a "Notice to Appear" within 60 days, call the Central Violations Bureau at 800-827-2982. If you appear before the court and plead guilty, or are convicted after trial, the court may impose any penalty of the law authorizes, not limited to the amount due shown on the violation notice, and will add a special assessment of \$5, \$10, or \$25 for each offense.

NOTICE

If you fail to pay the amount due or to appear in court on the date and time scheduled, the United States District Court may issue a summons ordering you to appear or issue a warrant for your arrest. If you are charged with a motor-vehicle violation, the court may also report your failure to pay or appear to your state's motor-vehicle or driver-licensing agency, which may affect your driving privileges, or your vehicle registration, or both.

Pay Online at:
www.cvb.uscourts.gov

Address:
Central Violations Bureau
P.O. Box 780549
San Antonio, TX 78278-0549

Phone Number: 800-827-2982

Email: info@cvb.uscourts.gov