



August 1, 2016

VIA EMAIL AND US MAIL

Brian P. Kelly
Secretary, California State Transportation Agency
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Jean Shiomoto
Director, Department of Motor Vehicles
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Re: Unlawful Suspension of Driver's Licenses

Dear Secretary Kelly and Director Shiomoto,

The Department of Motor Vehicles ("DMV") must stop suspending driver's licenses of people too poor to pay traffic fines and fees. The current process for suspending driver's licenses for failures to pay or contest traffic tickets violates statutory and constitutional mandates, and is harmful to low-income communities and communities of color.

Vehicle Code Section 13365 – which governs when the DMV can suspend a license for failure to pay or failure to appear – permits suspension only “[u]pon receipt of notification of a violation of subdivision (a) or (b) of Section 40508.” Section 40508, in turn, concerns the offense of “willfully violating” a promise to appear or “willfully failing” to pay fines or bail. Thus, under the governing statute, the DMV may not suspend a person's driver's license upon simple notice that a person has failed to appear or pay a traffic ticket: it only has power to suspend if it receives notice from a court under Section 40508, which requires willfulness.

It is our understanding based on inquiries with superior courts that courts throughout the state are not properly determining whether a traffic defendant's conduct violates Section 40508 (because they are not considering the necessary element of willfulness) and are instead simply sending notice to the DMV under Vehicle Code Sections 40509 and 40509.5 of failures to appear or pay traffic tickets. Absent receiving "notification of a violation of . . . Section 40508," the DMV lacks authority to suspend licenses for failure to pay or appear and is violating Section 13365.

Even if courts provide the DMV with purported notices of violations of Section 40508, the suspensions are unlawful because courts throughout the state do not make the willfulness determination required by Section 40508 and by the constitutional guarantees of due process and equal protection. *See Bell v. Burson*, 402 U.S. 535, 542 (1971) (due process requires that a state consider essential statutory elements for driver's license suspension before suspending the license); *Bearden v. Georgia*, 461 U.S. 660, 673-74 (1983) (revoking probation where defendant lacks resources to pay fine violates "fundamental fairness" component of due process); *Williams v. Illinois*, 399 U.S. 235, 242 (1970) (holding that state criminal statute as applied to defendant "works an invidious discrimination solely because he is unable to pay the fine"). Notably, the Department of Justice recently recognized the serious constitutional issues raised by license suspensions. In its March 2016 "Dear Colleague" letter, the federal Department of Justice warned that "automatic license suspensions premised on determinations that fail to comport with *Bearden* and its progeny may violate due process." Available at: <https://www.justice.gov/crt/file/832461/download>.

We do not suggest that the DMV must make the willfulness determination when courts fail to do so. Instead, the DMV, as the state actor enforcing the suspension scheme, is properly subject to injunction if the court's determinations of failure to pay or appear violate either statutory or constitutional law. *See, e.g., Blair v. Pitchess*, 5 Cal.3d 258, 268 (1971) (official who carries out acts pursuant to court order is subject to injunction if court order is unconstitutional); *Chaloux v. Killeen*, 886 F.2d 247, 251-52 (9th Cir. 1989) (Sheriffs enforcing garnishment law are properly enjoined if garnishment scheme unconstitutional).

Our advocacy and litigation (*see* Complaint, enclosed) has led some courts to put a moratorium on referrals to the DMV for license suspension and to review their forms and procedures, and the Legislature is currently considering a bill to address these practices. All such changes, however, will take time. In the meantime, many individuals continue to have their licenses suspended illegally, and many more already suffer from unlawfully suspended licenses.

Due to racial profiling by law enforcement and other biases built into the system, people of color are disproportionately stopped and cited for traffic violations,

disproportionately subject to license suspensions, and disproportionately arrested for driving on suspended licenses. See “Stopped, Fined, Arrested: Racial Bias in Policing and Traffic Courts in California” (2016), available at <http://wclp.org/resource/stopped-fined-arrested-racial-bias-in-policing-and-traffic-court-in-california/>.

Driver’s license suspensions make it harder for people to get and keep jobs, harm credit ratings, and create a downward spiral of economic hardship. For low-income and indigent drivers, fines and fees create an insurmountable obstacle to the reinstatement of driver’s licenses. See “Not Just a Ferguson Problem: How Traffic Court is Driving Inequality” (2015), available at: <http://www.lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.8.15.pdf>.

The practice of suspending licenses for failure to pay or appear has also been an economic failure, particularly as it applies to low-income persons, resulting in billions of dollars in court-debt that realistically will never be paid. The American Association of Motor Vehicles Administrators recommended the repeal of laws requiring the suspension of driving privileges for non-safety related reasons. See “Best Practices Guide to Reducing Suspended Drivers” (2013), available at: <http://www.aamva.org/Suspended-and-Revoked-Drivers-Working-Group/>.

We ask that the DMV *immediately cease* suspending driver’s licenses for failure to pay and failure to appear under Section 13365 until there is a system in place to ensure that all courts provide legally-required procedural protections, and that the DMV create a process for reinstating licenses previously suspended, including those of our clients Shavonna Monique Johnson, Emmanuel Johnson, and others.

We ask that you respond to this letter by no later than August 15. We are open to discussing these matters directly with you, and to providing reasonable time to make necessary reforms. However, absent sufficient commitments and timely reforms, we will seek judicial remedies.

Sincerely,

/s/

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ACLU of Northern California

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encs: Complaint, *Rubicon Programs v. Solano County Superior Court*.