



April 3, 2020

Sent via electronic mail to dept1@alameda.courts.ca.gov and cfinke@alameda.courts.ca.gov.

Hon. Tara M. Desautels, Presiding Judge of Alameda County Superior Court

CC: Chad Finke, Court Executive Officer

Re: Request to lift driver's license holds based on Failure to Appear

Dear Hon. Desautels,

I hope this letter finds you safe and well. We write on behalf of our low-income, homeless, Black and Brown, and otherwise vulnerable clients whose driver's licenses are currently suspended as a result of prior alleged violations of Vehicle Code sections 40508, and/or notifications sent to the DMV under sections 40509, and 40509.5 for failure to appear in traffic court (hereinafter "Failure to Appear"). Due to the COVID-19 pandemic, which prevents low-income residents from clearing Failures to Appear, we request that the court use its discretion to release driver's license holds imposed due to Failure to Appear. Such action is appropriate due to both the inability of individuals to take action to clear such holds and the public health benefits that would result from residents regaining their ability to drive.

Vehicle Code sections 40509 and 40509.5 give courts the discretion to notify the DMV about a failure to appear. On receipt of failure to appear notifications, the DMV suspends driver's licenses pursuant to Vehicle Code section 13365. However, courts are not required to send failure to appear notifications to the DMV; courts "may" send the notifications under both sections 40509 and 40509.5. Courts also have authority to recall failure to appear notifications under the same sections. The DMV only imposes a suspension if a court uses its discretion to notify the DMV of a Failure to Appear, and the DMV must release the suspension if the court recalls its Failure to Appear notification.

Given the state of emergency, drivers have no way to "appear" and end their license suspension. In ordinary times, courts send a notification to the DMV to recall a license hold if either 1) the case is adjudicated, 2) the defendant appears in court, or 3) the defendant satisfies the order of the court. (*See* Vehicle Code sections 40509 and 40509.5.) However, the court is not currently holding traffic court hearings **and**, in a March 16 Order, instructed all traffic defendants not to appear from March 16 until at least April 7. A subsequent April 2nd order extended the court's public closure period until at least May 1. Therefore, the first two options of adjudication and appearance are not currently possible. While the March 16 court order continued traffic cases 60 days, it is unknown whether further delays may take place due to COVID-19 and an associated



diminished capacity of the court. In addition, even when the court reopens, it still may not be advisable for many defendants, especially those most vulnerable to the pandemic, to appear in court. Finally, low-income defendants practically cannot simply resolve their tickets by paying in full, especially during this time of acute economic distress.

Because it is impractical at best and impossible at worst for a low-income defendant to fulfill any of the above three actions, we request that the court operate its discretion to immediately recall all Failure to Appear notifications. The court need not alter the underlying status of any case or debt; it need only file a certificate with the DMV to clear the license holds. Other courts, such as San Francisco, have successfully completed this action.

Reinstatement of driving privileges is especially vital during the COVID-19 pandemic. While shelter-in-place is in effect, residents still must attend medical appointments, seek medical help if sick, and access grocery stores and pharmacies. Both affected individuals and the public at large benefit from individuals accomplishing these tasks from the isolated confines of a personal vehicle instead of via public transportation.

In the time of the COVID-19 global pandemic, it is even more vital for low-wage workers to have access to a vehicle, vehicle access is key to accessing and maintaining employment. One study indicated that car ownership plays a bigger role in getting a job than having a high school diploma.¹ As national unemployment is predicted to rise as high as 20% as a result of the COVID-19 pandemic,² the ability to drive will be more important than ever for low-income Californians hoping to obtain and keep employment.

Reinstatement of driving privileges during COVID-19 is a highly important racial and economic justice issue. Across California and the United States, Black and Brown people are disproportionately stopped and ticketed for driving-related offenses.³ Deeply entrenched racialized poverty makes Black and Brown people additionally vulnerable to receiving driver's license suspensions related to failures to appear.⁴ It is absolutely vital for Black and Brown Californians to have access to a vehicle in order to access healthcare, food, and employment. Black and Brown Californians are "[are] more than twice as likely as Whites and Asians to be

¹ Paul Ong (2001) "Car Ownership and Welfare-To-Work," UCTC No. 540, p. 17 – 18.

² <https://www.nbcnews.com/politics/congress/coronavirus-trump-administration-warns-20-percent-unemployment-rate-n1162601>

³ See, e.g., Alex Bender et. al., "Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California," Lawyers Committee for Civil Rights et. al., April 2015 at 19, available at <https://lccr.com/wp-content/uploads/Not-Just-a-Ferguson-Problem-How-Traffic-Courts-Drive-Inequality-in-California-4.20.15.pdf>.

⁴ See *id.* at 7.



among the working poor,”⁵ meaning they are less likely to access working from home and more likely to have no paid sick leave.⁶

For these reasons, please file certificates with the DMV immediately to recall all Failure to Appear notifications. Please confirm when you have done this. If the court needs technical assistance to accomplish this task, our office is happy to try to connect the court with other courts that have successfully cleared Failure to Appear license holds en masse.

Thank you for your consideration. We are happy to further discuss this request by email, addresses listed below.

Sincerely,

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⁵ “A profile of the working poor, 2017,” U.S. Bureau of Labor Statistics, Report 1079, Apr. 2019, *available at* <https://www.bls.gov/opub/reports/working-poor/2017/home.htm>.

⁶ Royce Dunmore, “How Coronavirus Affects Black People: Civil Rights Groups Call Out Racial Health Disparities,” Newsone, March 13, 2020, *available at* <https://newsone.com/3911611/coronavirus-affects-black-people-civil-rights-groups-racial-health-disparities/>.