



April 1, 2020

Judicial Council
455 Golden Gate Avenue
San Francisco, CA 94102

Sent via email

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

To whom it may concern,

I hope this letter finds you safe and well. We write on behalf of our low-income, homeless, 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 Judicial Council order courts to release driver's license holds imposed due to Failure to Appear. We also request that courts not initiate new Failure to Appear holds during the state of emergency. 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.

The Judicial Council has authority to create statewide and local orders and rules. Given that COVID-19 affects the entire state; that people living in one area of the state may have a license hold directed by a court in a different part of the state; and that inconsistent policies between jurisdictions leads to significant confusion among court users, we encourage the Judicial Council to use this authority in creating a statewide order in the interest of fair and efficient administration of justice.

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 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.

Courts must 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. Many courts throughout the state are not currently holding traffic court hearings and have instructed traffic court defendants to not appear. In these jurisdictions, the first two options of adjudication and appearance are not currently possible. A minority of courts are still hearing traffic cases, but it would be unsafe for many Californians – especially the elderly and those with pre-existing conditions – to appear in court. Further, it is unknown whether further court closures and delays may take place due to COVID-19 and an associated diminished capacity of the courts. Even when courts reopen, 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, particularly 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 Judicial Council direct courts to immediately recall all Failure to Appear notifications. The courts need not alter the underlying status of any case or debt; they need only file a certificate with the DMV to clear the license holds. In addition, we request that courts not generate new Failure to Appear notifications during the state of emergency.

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. Access to a vehicle is also 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 With unemployment projected to reach levels not seen since the Great Depression – Governor Newsom stated that 1 million unemployment insurance claims were filed between March 13 and March 25 in California alone² – the ability to drive is more important than ever for low-income Californians hoping to obtain and keep employment. This is especially true for low-wage workers, people of color, and women, who are all more likely to have lost their jobs due to COVID-19.³

Finally, people of color are disproportionately impacted by Failure to Appear license suspensions given that they are disproportionately stopped and ticketed for driving-related offenses.⁴ Meanwhile, Black and Latinx Californians especially need the ability to drive given that they are

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

² <https://www.cnn.com/2020/03/25/jobless-claims-expected-to-spike-to-a-record-breaking-number-in-the-millions.html>.

³ <https://abcnews.go.com/Politics/report-job-loss-half-pay-cut-coronavirus-crisis/story?id=69811808>

⁴ *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>.

“more than twice as likely as Whites and Asians to be 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 direct courts to file certificates with the DMV immediately to recall all Failure to Appear notifications. Please confirm this action to Wade Askew at waskew@lsnc.net.

Thank you for your consideration. We are happy to further discuss this request further should you have any questions or concerns.

Sincerely,

Wade Askew, Managing Attorney, Legal Services of Northern California
Maya Ingram, Legislative Attorney, ACLU
Lisa Foster and Joanna Weiss, Co-Directors, Fines and Fees Justice Center
Lauren Zack, Attorney, Public Counsel
Stephen Bingham, National Lawyers Committee, SF Bay Area Legislative Reform Committee
Asher Waite-Jones, Staff Attorney/Clinical Supervisor, East Bay Community Law Center
Elisa Della-Piana, Legal Director, Lawyers’ Committee for Civil Rights

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 *See* 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/>.