



December 5, 2012

Via U.S. Mail and Facsimile

Commissioner Joseph A. Farrow
California Highway Patrol
601 North 7th Street
Sacramento, CA 95811

Re: Vehicle Impoundments by the California Highway Patrol

Dear Commissioner Farrow:

We are writing to request your immediate attention to community concerns regarding what appears to be a systemic and unlawful targeting of Latinos in Caruthers, California for traffic stops and vehicle impoundments by California Highway Patrol ("CHP") officers. Based on detailed interviews and meetings with 50-100 community members, the American Civil Liberties Union of Northern California ("ACLU") and American Friends Service Committee ("AFSC") believe that CHP officers in Fresno County deliberately patrol near agricultural fields to stop farm workers driving home after work without reasonable suspicion of traffic infraction or crime, based on their ethnicity and national origin and in order to impound their vehicles. This practice, in addition to violating the equal protection guarantees of the U.S. and California Constitutions, systematically violates the California Vehicle Code, which prohibits peace officers from stopping cars for the purpose of investigating whether the driver is licensed. Moreover, by targeting low-income, vulnerable farmworkers for unnecessary 30-day vehicle impoundments that often cost more than the value of the vehicles themselves, CHP is devastating the local community, and therefore also the local economy. For these reasons, we ask that CHP immediately *investigate* the number and basis of stops associated with vehicle impoundments in Caruthers, California over the last two years and immediately *halt* vehicle impoundments in that town and the neighboring area pending the resolution of your investigation.

I. FACTUAL BACKGROUND.

Caruthers is an unincorporated area in Fresno County, home to about 2,500 people, and over 60% Latino.¹ Agriculture is a leading industry in the area, and many residents of Caruthers and the surrounding area are farm workers. The ACLU and AFSC have attended community meetings and obtained intakes from community members in Caruthers over the last several weeks. During one community meeting we attended, about twenty people responded that they or someone they knew had been pulled over by the CHP in or near Caruthers on their way home from working in the fields, not been told the reason for the stop (or been given an inaccurate or nonsensical reason), and had their cars impounded. Several community members shared specifics regarding the interactions with CHP officers that support the conclusion that these stops were made without reasonable suspicion of any traffic violation. Two people stated that they were told the reason for the stop was that they were driving without a license. One gentleman named Javier Perez shared that the reason a CHP officer gave for the stop—after Mr. Perez provided his license and proof of registration and insurance—was that he needed to tell the driver to “be careful” crossing Henderson Road.² Many others were given no reason for the stop.

Interviews and a review of tickets issued to community members revealed that minor technical violations (if any) have been the primary charges accompanying the Vehicle Code §12500 violations that led to the impoundment of vehicles. Typical charges included obstructed vision (for rosary beads hanging from a rearview mirror), license plate problems such as a “bent” license plate, and alleged seat belt violations. One young father had his car impounded twice this summer. The first time, he was pulled over for speeding. Then, two weeks after he retrieved his vehicle from a 30-day impound, he was pulled over for “obstructing traffic” because he was driving too slowly. In fact, he was driving very close to the speed limit (cautious after his recent speeding ticket) and there were few other cars on the road. He, his wife, and his two-week-old baby were left on the side of the road in 100 degree heat even after telling the officer they did not have a way to get home.³

In addition, it is apparent from the experiences of community members that the basis for impoundments cannot come within the “community caretaking” doctrine’s basis for seizure of vehicles. *See Miranda v. City of Cornelius*, 429 F.3d 858, 864 (9th Cir. 2005) (officers may impound vehicles that “jeopardize public safety and the efficient movement of vehicular traffic” under their “community caretaking” function, as long as doing so is reasonable under the Fourth Amendment). On the contrary, several community members report that CHP initiated a stop *after* they had parked their cars at home. *Cf. Miranda*, 429 F.3d at 866 (seizure of vehicle from

¹ See 2010 Census data, available at http://www.census.gov/geo/www/gazetteer/files/Gaz_places_national.txt.

² According to Mr. Perez, there was no construction or other apparent hazard in the vicinity and it was not yet dark out when the stop took place.

³ This young man was not comfortable being identified for this letter, but would be available to provide testimony in a hearing regarding his experience.

owner's driveway was not a reasonable application of the community caretaking doctrine). One family, who had already had two cars impounded in the previous year, suffered a third impound just two weeks ago. The mother of the family was parking in front of their home when a CHP officer signaled for to pull over. When she asked why she was pulled over, the officer said "Luz alta," which means "high lights." When she objected that she did not have high beams on, the officer alternatively said that she had been swerving and then that her child was improperly secured, even though the child was in an appropriate car seat for his age and weight. Even though the car was legally parked in front of her home, CHP ordered the tow and 30-day impound of her vehicle. When her husband tried to object to the impoundment of the vehicle, the officer threatened him with arrest.

Indeed, far from supporting community safety, CHP's impoundment practices affirmatively place community members at risk. Families and individuals have been left stranded miles from any resources. Vehicles have been uniformly impounded for a minimum of 30 days, very few people have received effective notice of any tow hearing, and many families have not been able to pay impound fees, resulting in the effective forfeiture of their property. Not having a car in the Central Valley of California makes it next to impossible to access work, child care, medical care, and school.

II. LEGAL ANALYSIS.

A. CHP's Pattern and Practice of Traffic Stops Violates Equal Protection and the California Vehicle Code.

Accounts from community members in Caruthers strongly suggest that CHP officers are systematically targeting Latinos for traffic stops in order to identify unlicensed drivers. Some of the factors that support this conclusion are: the small size of the town; the lack of reasonable, safety-related reasons for the traffic stops; the prevalence of vehicle impoundments; and reports that multiple CHP patrol cars patrol this small town and environs at the end of the work day. AFSC and ACLU have concerns about several aspects of these practices. As to the stops themselves (separate from the impoundment of vehicles), stopping people based on a suspicion that they are unlicensed violates California Vehicle Code § 12801.5(e). Using race or ethnicity to target suspected unlicensed drivers violates equal protection under both the U.S. and California Constitutions.

When the California legislature limited issuance of driver's license to people who could submit proof of authorized presence in the United States, it also explicitly protected drivers from being stopped based on suspicion of driving without a license:

Notwithstanding Section 40300 [concerning authority for warrantless arrests] or any other provision of law, a peace officer may not detain or arrest a person solely

on the belief that the person is an unlicensed driver, unless the officer has reasonable cause to believe the person driving is under the age of 16 years.

Cal.Veh.Code § 12801.5(d). Based on community member reports, there is frequently no reason given for the stop. Mr. Perez's account, that the CHP officer told him that he stopped the car in order to caution Mr. Perez about driving safely across Henderson Road is a good example of what must have been a pretext to check to see if the driver was unlicensed. Similarly incredible were the CHP officer's justification for stopping a mother as she parked in front of her home. It varied three times—from high beams, to alleged swerving, to a (nonexistent) problem with her child's safety seat—as she challenged each assertion. The devotion of regular CHP patrol cars to this small town resulting in such a large number of vehicle impoundments based on pretextual stops supports the inference that the *purpose* of the stops is to check for drivers' licenses.

This pattern also strongly supports the inference that stops are made based on drivers' Latino ethnicity. If CHP officers are purposefully targeting drivers to check their licenses, and many of these drivers are Latino, it is also likely that officers are using Latino race as a proxy for undocumented status (and therefore lack of access to a driver's license under current California law) for the officers. The lack of legitimate reasons for the stops also supports of inference of race-based action. *See United States v. Ortiz-Hernandez*, 276 F. Supp. 2d 1113, 1117 (D. Or. 2003) (the stop, arrest, and search of a defendant who had done nothing incriminating were based at least in part on his race and thus were unlawful, even though direct evidence, such as discriminatory remarks, was absent from the record) and *Lacy v. Villeneuve*, 2005 WL 3116004, *4 (W.D. Wash. Nov. 21, 2005) (jury could conclude that race was a motivating factor in officer's decision to stop African American plaintiff, to arrest her, or to prolong her arrest based on officer's assumption that particles discovered in plaintiff's vehicle were crack cocaine, which is disproportionately associated with African Americans). Targeting drivers based on their Latino appearance violates the equal protection guarantee found in both the Fourteenth Amendment to the U.S. Constitution and Article I, § 7 of the California Constitution.

B. CHP's Pattern and Practice of Vehicle Impoundments Raises Serious Statutory, Constitutional, and Policy Concerns.

In addition to our concerns about improper stops targeting Latinos for the purpose of checking to see if they are licensed drivers, we believe CHP's pattern and practice of impounding vehicles in Caruthers raises serious legal and policy concerns.

1. Statutory Limits on Impoundment of Vehicles.

The California Vehicle Code has two provisions authorizing confiscation of vehicles from persons driving without a license. Vehicle Code § 22651(p) allows peace officers to "remove a vehicle" upon issuance of a notice to appear for violations related to driving without a

license or on a suspended or revoked license and permits the vehicle's registered owner to reclaim the vehicle upon presentation of his or her (or his or her agent's) valid driver's license and proof of current vehicle registration. Vehicle Code § 14602.6(a)(1) provides:

Whenever a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked . . . or driving a vehicle without ever having been issued a driver's license, the peace officer may either immediately arrest that person and cause the removal and seizure of that vehicle or, if the vehicle is involved in a traffic collision, cause the removal and seizure of the vehicle without the necessity of arresting the person in accordance with Chapter 10 (commencing with Section 22650) of Division 11. A vehicle so impounded shall be impounded for 30 days.

The California Attorney General recently reviewed the relationship between these two statutes to provide guidance on whether a law enforcement agency may, by policy, impound vehicles for *less* than 30 days when impoundment takes place based on the driver's failure to ever have gotten a license. *See* Op. Atty Gen 12-301 (May 3, 2012) at *5-*6 (holding that both § 14602.6(a)(1) and § 22651(p) grant discretion to impound vehicles but do not *require* impoundment). In holding that policies to impound for less than 30 days are permitted, the Attorney General noted that the 30-day impoundment period authorized by § 22651(p) only applies where one of the two conditions specified in the statute—*i.e.* arresting the driver for the license-related violation or the occurrence of a traffic collision—occurs. Community members in Caruthers were *not* arrested for offenses related to driving without a license. Indeed, they could not be so arrested under § 12801.5(e) which prohibits arrests solely based on driving without a license.⁴ Under the circumstances experienced by community members in Caruthers, the CHP's application of a mandatory 30-day impoundment period violated (and unless stopped, will continue to violate) state law.⁵

2. The Fourth Amendment Limits Even Statutory Authority for Impounding Vehicles.

Even if CHP's impoundment practices in Caruthers complied with the applicable statute, ["t]here are situations in which impounding a vehicle under a facially valid state statute may nevertheless result in an unreasonable seizure in violation of the Fourth Amendment" (and corresponding protections under Article I, § 13 of the California Constitution). *Ops. Atty. Gen 12-301* at n. 10. In *Miranda v. City of Cornelius*, the U.S. Court of Appeals for the Ninth Circuit

⁴ Such arrests would be allowed in the other situations contemplated by § 14602.6(a)(1), such as where the driver had a *suspended* or *revoked* license due to previous violations or where the person was subject to arrest for some conduct other than driving without a license.

⁵ In addition, many community members we interviewed reported that they were not provided notice of their rights to a tow hearing as required by § 14602.6(a)(2).

held that a police department's towing of a vehicle from the registered owner's driveway was an unreasonable seizure under Fourth Amendment even though it was authorized by a local ordinance and state law. *Miranda*, 429 F.3d 858, 861, 866 (9th Cir. 2005). The court held that while the "community caretaking doctrine" can allow seizure of a vehicle for safety reasons, the validity of the seizure depends on the safety risks posed by allowing the vehicle to remain legally parked. In that case, where the car was parked in the registered owner's driveway, it was held to be an unreasonable seizure, in violation of the Fourth Amendment. Similarly, in Caruthers, community members report not only that their cars could have been safely left on the side of the road to be picked up later by a licensed driver, but also that on multiple occasions, CHP officers followed drivers to their homes and impounded vehicles after they were already parked.

3. Thirty-Day Impoundment Is Unduly Burdensome and Unnecessary.

We believe CHP has a policy of imposing 30-day impoundments for all vehicles found to be driven by an unlicensed driver.⁶ We urge you to change this policy because of the terrible impact it has on community members who are unable to obtain drivers' licenses. Many jurisdictions in California have adopted limited impoundment policies to allow drivers to legally park vehicles, to call a licensed driver to pick a vehicle, or to have vehicles towed and stored for less than 30 days when drivers are found to be unlicensed. 30-day impoundments are properly reserved for persons driving on suspended or revoked licenses, rather than those who cannot obtain licenses based on inability to produce proof of lawful presence.

III. REQUEST FOR INVESTIGATION AND MORATORIUM ON 30-DAY IMPOUNDMENT OF VEHICLES.

Community reports of CHP impoundment practices in and around Caruthers, California strongly suggest ongoing and intentional racial profiling and California Vehicle Code violations. They also point to waste and, potentially, fraud. As you may know, the former Attorney General (now Governor) Jerry Brown investigated the cities of Maywood and Bell for excessive vehicle impoundments and related improper financial gain. Maywood was found to have had a policy of "stopping drivers without probable cause and impounding their vehicles" in violation of law.⁷ AFSC and the ACLU share Caruthers community members' concerns that CHP policy and

⁶ Researching CHP impound policy recently led to a webpage entitled "Why Was My Car Impounded," however, at the time of this writing, we were unable to access the policy. We hope this means the CHP has already undertaken to review its mandatory 30-day impound policy.

⁷ See "Brown Directs Maywood to Reform its Police Department after Investigation Uncovers Gross Misconduct," April 28, 2009, available at <https://oag.ca.gov/news/press-releases/brown-directs-maywood-reform-its-police-department-after-investigation-uncovers>.

practice in and around Caruthers systematically violates residents' rights under the Vehicle Code and state and federal constitutions, with serious impact. We ask that you:

- Immediately launch an investigation into CHP vehicle impoundments in and around Caruthers, California that includes:
 - An audit of impoundments over the last two years in Fresno County to review dates, times, locations of stops, stated reason for stops, offenses cited, and race of driver, as well as tow and impoundment fines, whether and how often cars were retrieved or forfeited, and how profits from forfeited vehicles were applied.
 - A review of tow company agreements and tow company profits in the Caruthers area.
- Immediately stop 30-day impounds for any driver who is not charged with driving on a suspended or revoked license (as opposed to simply driving without a license) pending the outcome of your investigation.
- Agree to a meeting with representatives from AFSC, the ACLU, and the local community to discuss these concerns.

Thank you for your attention to this important issue, and please do not hesitate to contact us if you have any questions.

Sincerely,



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Myrna Martinez Nateras
Program Director
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cc: Governor Jerry Brown
Attorney General Kamala Harris
Henry T. Perea, Assemblymember, 31st District
Tom Berryhill, Senator, 14th District
Senator Michael J. Rubio, Senator, 16th District
John Pérez, Speaker of the Assembly
Darrell Steinberg, Senate President pro Tempore