

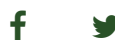
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LITIGATION, NEW TO CLEARINGHOUSE

Hernandez v. Calif. Department of Motor Vehicles et al.

Driver's License Suspension |

December 7, 2020



Background: Mr. Hernandez lives with his wife and two children. He has not had a stable job since 2013 when his small business was forced to close its doors. In 2013, he was issued a traffic ticket for failing to update the address on his driver's license and not having valid registration. He attempted twice to resolve the ticket but court staff had told him it was not in the system. The base fine was approximately \$500—additional fees and civil assessments for failing to appear and pay the ticket made the total amount accrue to more than \$900. He was only able to pay \$200; \$700, which he could not afford to pay, remained outstanding. When he went to the DMV to renew his license, he was informed that he could not renew his



license because his license had been suspended for failing to appear and failing to pay the traffic ticket. He was never informed of his right to an ability to pay determination. Mr. Hernandez was one of many people who lived this experience.



The Alameda County Court informed the California Department of Motor Vehicles when people failed to pay their traffic debt, which resulted in the suspension of their driver's licenses. The Department of Motor Vehicles (DMV) is authorized pursuant to Section 13365(a) of the Vehicle Code to suspend a driver's license upon a violation of Section 40508, referred to as the Misdemeanor Statute, which makes it a misdemeanor for a traffic offender to willfully violate a promise to appear in court. The DMV suspends driver's licenses upon notification of a failure to appear, even without notification of a violation of the Misdemeanor Statute. The plaintiffs filed a complaint alleging that their rights to equal protection and due process were violated because their licenses were suspended without any inquiry into whether their ability to pay — i.e., whether their nonpayment was willful.

Discussion: The parties dispute whether section 13365(a) requires the DMV to receive notification of a violation of the Misdemeanor Statute before it suspends a license for failing to appear. The court concludes that notification of the misdemeanor statute is required before the DMV suspends a license pursuant to 13365(a) as required in the plain language of the statute.

A violation of the misdemeanor statute requires a violation of a written promise to appear and a willful violation of the promise to appear. The court concludes that notification pursuant to the notification statute is authorized upon a violation of a written promise to appear or an order to appear in court, but an order to appear in court is not equivalent to a written promise to appear. Further, the misdemeanor statute authorizes notification when a person has violated a promise or order to appear with no requirement that the violation is willful.

The trial court in its ruling relied on language in the DMV manual regarding electronic notifications. This court opines that



the DMV's manual does not support the trial court's finding and the manual is only for electronically transmitted notifications, not paper notifications. Paper notification includes language that the person has violated a written promise to appear or an order to appear in court, and is thus not limited to violations of the misdemeanor statute. The court concludes that the DMV must receive express notice of a violation of the misdemeanor statute to suspend a license pursuant to section 13365(a).

The court finds that the legislature did not intend violation to mean a conviction or formal charge, and that a violation will be readily apparent to a trial court by his presence in court at the promised date and time. With respect to whether a failure to appear was willful, failure to appear without explanation is presumptively without sufficient excuse. Depending on the nature of the explanation and other irrelevant information, a court may determine whether the failure to appear was willful.

Holding: The judgement was reversed and the case remanded to the trial court to grant the petition for writ of mandate and provide the DMV with instructions on what it must do to comply with the writ.

After the Court of Appeal issued its decision, the parties settled and the trial court entered an order incorporating the terms of their settlement agreement. The key terms of the settlement agreement are:

1. the DMV is prohibited from imposing or maintaining any driver's license suspension that is based in whole or in part on a failure to appear notification that does not contain a notification of a violation of the Misdemeanor Statute;
2. the DMV shall use its best efforts to, within 60 days but no later than 100 days, lift all existing suspensions that are based in whole or in part on a failure-to-appear notification that does not contain a notification of a violation of the Misdemeanor Statute;
3. the DMV shall provide notice to any driver whose suspension has been lifted, informing the driver that the suspension



is lifted and that there is no requirement to pay a reinstatement fee;

4. no future suspension will be imposed based in whole or in part on a failure-to-appear notification that does not contain a notification of a violation of the Misdemeanor Statute; and



5. the DMV shall file a declaration certifying compliance with the terms of the settlement and shall pay \$812,500 for distribution to Plaintiffs' counsel to cover any and all attorneys' fees and costs related to the matter.

You can read the full opinion [here](#).

Docket Number: A156062

Date of Decision: June 2, 2020

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