

The Constitutionality of Impounding Vehicles of Unlicensed Drivers

By Jim Curry and Erin Fox

There has been a recent flurry of public debate and litigation revolving around California Vehicle Code Section 14602.6, which authorizes law enforcement officials to impound a vehicle and hold it for 30 days when driven by someone without a valid driver's license. Some civil rights groups claim it is unconstitutional in its impact on undocumented immigrants. Police and city officials defend the statutes on the grounds of the "community caretaking doctrine," and on the grounds that failure to tow and

impound may lead to liability on the part of the governmental entity conducting the traffic stop. Some California governmental entities have questioned whether the statutory scheme is constitutional, and some have chosen not to enforce it. On Feb. 8, the 9th U.S. Circuit Court of Appeals upheld a 2008 ruling by California's Central District Court that the statutory scheme is constitutional, supporting "the California Legislature's determination that such a temporary forfeiture is warranted to protect Californians from the harm caused by unlicensed drivers." *Salazar v. City of Maywood, et al.* (Case No. 08-56604) on appeal from *Salazar v. Schwarzenegger* (Case No. CV07-01854).

The *Salazar* plaintiffs, 21 vehicle owners, filed their original class action complaint on March 31, 2007 against several municipalities (including the city and county of Los Angeles) and various state officials, arguing that their constitutional due process rights were violated when their vehicles were seized and held for a presumptive 30-day period under Vehicle Code Section 14602.6, and that the practice of impounding the vehicles of unlicensed drivers unfairly impacts undocumented immigrants. Notably, none of the plaintiff vehicle owners were driving their vehicles at the time of impoundment; instead, they had all knowingly loaned their vehicles to unlicensed drivers who were then pulled over by law enforcement officials for traffic violations.

District Court Judge S. James Otero denied class certification and ruled against the *Salazar* plaintiffs on summary judgment. Affirming, the 9th Circuit held: "Section 14602.6 applies only in very limited circumstances. The statute authorizes impoundment of vehicles for up to thirty days when an individual is found to be driving with a suspended or revoked license or without ever having been issued a driver's license. [California Vehicle Code Section] 14602.6(a)(1). This limited application accords with the California legislature's determination that such a temporary forfeiture is warranted to protect Californians from the harm caused by unlicensed drivers — a determination we have no basis to reject. [California Vehicle Code Section] 14607.4."

Also factoring into the decision was the fact that "[t]he statute also provides for notice and an opportunity to be heard. Owners of impounded vehicles have 'the opportunity for a storage hearing...in accordance with Section 22852' in which the vehicle owner may



contest the impoundment or present mitigating circumstances necessitating an early return of the vehicle." The court remanded the state claims after affirming dismissal of the federal claims.

Earlier, in 2005, the 9th Circuit had considered a constitutional challenge arising from a similar Oregon impoundment statute. See

California Vehicle Code Section 14602.6 authorizes law enforcement officials to impound a vehicle and hold it for 30 days when driven by someone without a valid driver's license.

Miranda v. Cornelius, 429 F.3d 858 (9th Cir. 2005). *Miranda* involved a single plaintiff whose vehicle was impounded from the owner's driveway after an officer observed the owner teaching his unlicensed wife how to drive. Under those circumstances, the court found that the impoundment was an unreasonable seizure that violated the "community caretaking doctrine" because the vehicle was parked in the owner's driveway at the time of impoundment and, therefore, not impeding traffic or posing a public safety hazard.

The *Salazar* plaintiffs relied heavily on *Miranda*, asserting that the California law enforcement officials responsible for their impoundments had likewise violated the community caretaking doctrine because, instead of seizing plaintiffs' vehicles, they could have allowed the vehicles to remain parked at the location of the traffic stop or waited for a licensed driver to arrive on the scene and remove the vehicle. The defendants argued that the unique facts and circumstances of the *Miranda* case are clearly distinguishable and inapplicable to the *Salazar* impoundments. First,

unlike *Miranda*, where the licensed vehicle owner was in the passenger seat and the vehicle was parked in the owner's driveway at the time of the traffic stop, all of the *Salazar* vehicles were stopped on public streets or highways and, in each case, no owner-authorized, licensed driver was immediately available to retrieve the vehicle. The *Miranda* court in fact noted that "impoundment is proper to prevent the immediate and continued unlawful operation of the vehicle or to remove a vehicle left in a public location where it creates a hazard," and that an officer acting within the scope of his or her community caretaking function is not required to consider "the existence of alternative less intrusive means" when the vehicle must in fact be moved to avoid the creation of a hazard or the continued unlawful operation of the vehicle.

Further, unlike the Oregon vehicle statutes at issue in *Miranda*, under California law, the imposition of a 30-day impoundment is an administrative punishment for the violation of a criminal statute, which makes it misdemeanor offense to drive without a license. As the *Salazar* court acknowledged in its decision, that administrative punishment was put into place by the legislature to deter continued illegal use of the vehicle (regardless of whether the initial offense was committed by an unlicensed vehicle owner or by another unlicensed driver to whom the owner knowingly loaned his or her vehicle). See California Vehicle Code Section 14607.4(f) ("it is necessary and appropriate to take additional steps to prevent unlicensed drivers from driving, including the civil forfeiture of vehicles used by unlicensed drivers"). California's implementation of a fixed and reasonable presumptive 30 day-term of impoundment as a mechanism of punishment and deterrence is consistent with the U.S. Supreme Court's decision in *Bennis v. Michigan*, 516 U.S. 442,452 (1996) (forfeiture also serves a

deterrent purpose as it prevents continued illegal use of the property and imposes an economic penalty).

In contrast to the limited constitutional analysis in *Miranda*, the *Salazar* decision supports constitutionality of 30-day impoundments under Section 14602.6 by taking into consideration the California Legislature's explicit findings regarding the danger posed to the public by unlicensed drivers and the need to deter such future conduct, as well as California statutes that make it a crime to drive without a license or to allow someone else to do so, and which impose a punishment for violations of those statutes. Compare *Alviso v. Sonoma County Sheriff's Dept.*, 186 Cal. App. 4th 198 (2010) (finding that 30-day impoundment of a vehicle driven on a revoked or suspended license violated the owner's constitutional rights); *United States v. Caseres* (9th Cir. 2008) 533 F. 3d 1064 (rejecting proposition that impounding an unlicensed driver's car to prevent its continued unlawful operation is itself sufficient to establish constitutional reasonableness of seizure).

Another segment of the public

debate has been that the failure to impound vehicles could result in municipal liability — a possibility supported by case law from California and other jurisdictions. See *Johnson v. Casetta*, 197 Cal. App. 2d 272 (1961) (in suit brought by parents for personal injuries and wrongful death of minor son resulting from automobile accident, holding that liability could be imposed upon automobile seller for selling vehicle to inexperienced, incompetent driver if seller had actual or constructive knowledge of driver's incompetency); *Norris v. City of Montgomery*, 821 So. 2d 149 (2001) (rejecting the city's discretionary-function immunity defense and reversing summary judgment for the city on statutory negligence claim, in action by injured survivors and estate of deceased minor, after collision with unlicensed driver with previous DUI conviction, where police officer had stopped driver earlier that day but elected not to impound vehicle pursuant to state statute mandating impoundment); *Childress v. City of Oakland*, 1998 WL 1746806 (\$5,780 verdict for plaintiff vehicle owner against the city of Oakland for a police officer's decision upon arresting plaintiff to release his vehicle to his spouse rather than impounding the vehicle; plaintiff claimed that his vehicle was never returned to him and the officers had unlawfully disposed of his property).

While the public debate about the statutory scheme will no doubt continue, the 9th Circuit has now taken the first step in support of California's 30-day impoundment policy.

The authors assisted defendants in the preparation of the briefing in the Salazar case.



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