

## Center for Human Rights and Constitutional Law

256 South Occidental Boulevard  
Los Angeles, CA 90057  
Telephone: (213) 388-8693  
Facsimile: (213) 386-9484  
www.centerforhumanrights.org

### Memorandum re California Drivers License Litigation

To: California LSPs, CBOs.

Fm: Peter Schey, Center for Human Rights and Constitutional Law

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QLSP immigrant clients and clients and members of CBOs are restricted in their ability to obtain CA drivers licenses even when they have petitions pending to legalize their immigration status and are therefore not security risks if issued drivers licenses because they are already "known to the Government." LSPs and CBOs have questioned this restriction because of the significant adverse effect that it has on their clients' and members' ability to meet appointments, attend hearings, access the courts, get to jobs, transport their children, etc.

Having thoroughly researched this issue, we believe that a class action case against the California Department of Motor Vehicles challenging the California regulations that restrict the issuance of California drivers licenses to persons who have some type of legal status or employment authorization issued by the United States Immigration and Citizenship Service (USCIS) is viable, has a reasonable chance of success, and would if successful significantly improve the ability of LSPs and CBOs to effectively represent their clients and would also have a major positive impact on LSP's clients and CBO's clients and members.

The California regulations, found at 13 Cal. Code of Regulations § 15.00, appear to violate the California statute, Cal. Veh. Code § 12801.5, *because the statute requires only that an applicant's presence in the United States be "authorized under federal law," whereas the regulation imposes a more restrictive standard: i.e., that the DHS has affirmatively granted the applicant a specific legal status or at minimum issued the person employment authorization.*

In essence, we may argue that an immigrant's presence is "authorized under federal law" when *their presence is known to the federal Government and they are not subject to immediate removal. For example, because (1) they have applied for a visa or other benefit to USCIS and the federal government has opted to not place them in deportation proceedings or order their removal, or (2) they are in removal proceedings applying for relief from removal and their presence is authorized under federal law at least until the entry of a final non-appealable order of removal.*

**Plaintiffs may include low-income undocumented immigrants living in CA who (1) have not previously driven without a license, (2) have no criminal history, (3) have a visa application pending (or appeal from a denial) and preferably is 245i eligible, OR is in removal proceedings applying for relief, and (4) and have no current work permit.**

Clients can be listed as John Doe plaintiffs if they prefer. There will be no cost to the plaintiffs.

Please feel free to call or email us to discuss further or to review your clients' cases:  
Peter Schey 213 388-8693 x 304 [pschey@centerforhumanrights.org](mailto:pschey@centerforhumanrights.org)  
Carlos Holguin 213-388-8693 x. 309 [crholguin@centerforumanrights.org](mailto:crholguin@centerforumanrights.org)