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# **ONE MINUTE BRIEF**

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**NUMBER:** 2019-26    **DATE:** 11-25-19    **BY:** Devallis Rutledge    **TOPIC:** Vehicle Search for Documents

**MODIFIES 1MBs 2006-03, 2009-07, 2015-15 and 2018-21**

**ISSUE: May law enforcement officers routinely search a vehicle for license, registration and insurance documents upon a detained driver's failure to produce them?**

Upon an officer's demand at a lawful traffic stop, a driver must produce for examination a driver's license and proof of registration. VC §§ 12951(b), 4462(a). If a citation is being issued or a crash investigated, proof of insurance must also be produced. VC § 16028(b), (c).

In the combined cases of *In re Arturo D.* and *People v. Hinger* (2002) 27 Cal.4<sup>th</sup> 60, the California Supreme Court ruled that if requested documents were not produced by the driver, the officer could enter the vehicle and search for them, in places where they might reasonably be expected to be found, seizing any evidence that came into plain view in the process. A differently-constituted California Supreme Court has now **overruled *Arturo D.* and *Hinger*** (4-3) **as to searches for CDL or "identification"** (and likely, on the same rationale, as to searches for registration and insurance documents, as well, but see *Lopez, post*, fn. 2).

- Acting on two anonymous reports of erratic driving, an officer staked out the address of record of the reported plate number. The vehicle soon arrived and parked, and the driver, Maria Elena Lopez, got out. During a consensual encounter, the officer asked Lopez for her license. She said she had none, whereupon the officer detained her for VC § 12500, cuffing her after she resisted a control hold. Another officer entered Lopez's car to search for CDL or ID documents, and found methamphetamine in her purse. Her motion to suppress was ultimately reviewed by the California Supreme Court.

The four justices in the majority concluded that *Arturo D.*'s rationale had been undercut by the US Supreme Court's subsequent decision in *Arizona v. Gant* (which redefined the circumstances under which a vehicle could be searched *incident to arrest*—which was not the issue in *Lopez*). The majority also believed that since no other states had adopted *Arturo D.*'s holding, its legitimacy must be suspect. On reconsideration, the majority decided to abandon its prior holding:

*“For these reasons, we now hold that the Fourth Amendment does not contain an exception to the warrant requirement for searches to locate a driver’s **identification** following a traffic stop. To the extent it created such an exception, **In re Arturo D. is overruled and should no longer be followed.**”* *People v. Lopez* (2019) \_\_\_ Cal.5th \_\_\_, S 238627, slip opn. at 43. Read at: <https://www.courts.ca.gov/opinions/documents/S238627.PDF>

Acknowledging longstanding reliance on *Arturo D.*'s precedent, the court said: *“We recognize that law enforcement agencies have crafted policies in reliance on Arturo D., and our decision today will require them to adopt a different approach in scenarios like the one presented here.”* *Id.*, slip opn. at 42.

- As alternatives to the now-disallowed document search, the court suggested officers could pursue other exceptions, such as consent, exigent circumstances or “the automobile exception” based on probable cause. *“And finally, if no other path seems prudent or permissible, the officer can arrest the detainee and take him or her to be booked into jail for the traffic violation.”* *Id.*, slip opn. at 30, citing to VC § 40302, *Atwater v. Lago Vista* (2001) 532 US 318, 323, and *People v. McKay* (2002) 27 Cal.4th 601, 618. If the vehicle could then be lawfully removed or impounded, a standardized inventory could occur. See 1MB 2019-22.

- The *Lopez* decision once again illustrates the wisdom of the advice that in justifying searches and seizures, **police and prosecutors should not put all their eggs in one basket**, but should establish all available justifications the facts support. See 1MBs 2006-29, 2006-30 and 2016-14.

**BOTTOM LINE: Officers conducting traffic stops may no longer routinely search the vehicle for license or ID (and probably not for registration or proof of insurance) when the driver fails to produce them on demand.**

(Emphases added and citations omitted in quoted material.)

This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed.