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November 21, 2008

To: Police Departments and City Officials

**RE: ILLEGALITY OF IMPOUNDMENT OF CARS BY POLICE
WHERE THERE IS NO PUBLIC SAFETY, FREE FLOW OF TRAFFIC,
OR OTHER REASONABLE JUSTIFICATION FOR DOING SO.**

Dear Sir/Madam:

It is illegal for local police to impound a car, including the vehicle driven by an unlicensed driver, if said impoundment is not pursuant to the police's caretaking or other legitimate function. I am alerting you to this principle, adopted by the federal Ninth Circuit Court of Appeals in order to prevent the distress resulting from such an impoundment both to the driver, and to the Police Department, the police officer or officers involved, and the City. The Police Department, the police officer or officers involved, and the City would incur significant financial liability when they are involved in such an illegal impoundment.

The impoundment of a vehicle is a seizure within the meaning of the Fourth Amendment to the Constitution.¹ The Fourth Amendment protects people from "unreasonable seizures."² Therefore, the police are authorized to perform reasonable seizures. In addition to reasonable seizures, the police are also authorized to confiscate cars in order to serve their community caretaking function.³ As community caretakers the police can seize and remove vehicles that impede traffic or threaten public safety and convenience.⁴ If the impoundment of the car is not pursuant to the police's caretaking function then that conduct will most likely be deemed unconstitutional.

Federal Court of Appeals Decision in *Miranda v. City of Cornelius*:

In *Miranda*, the Federal Court of Appeals for the 9th Circuit concluded that the impoundment of the car parked in Miranda's driveway did not serve the caretaker purpose and was unconstitutional.⁵ In the case, Ms. Miranda drove a

¹*Miranda v. City of Cornelius*, 429 F.3d 858, 862 (C.A.9 (Or.),2005) citing *Soldal v. Cook County*, 506 U.S. 56, 61, 113 S.Ct. 538, 121 L.Ed.2d 450 (1992).

²USCA CONST Amend. IV-Search and Seizure.

³*South Dakota v. Opperman*, 428 U.S. 364, 369, 96 S.Ct. 3092, 3097 (U.S.S.D.,1976).

⁴*Id.*

⁵*Miranda v. City of Cornelius*, 429 F.3d 858, 860 (C.A.9 (Or.),2005).

car without a driver's license with her husband, who had a valid driver's license, as her passenger.⁶ After Ms. Miranda parked the car in the driveway in front of her home, she was approached by a police officer who then cited her for operating a vehicle without a license.⁷ He then had the car impounded.⁸ It is worth noting that the officer's actions were pursuant to the city's ordinance.⁹

The *Miranda* court stated that a determination of whether "impoundment is warranted under the community caretaking doctrine depends on the location of the vehicle and the police officers' duty to prevent it from creating a hazard to other drivers or being a target for vandalism or theft."¹⁰ The court added that one must also consider whether *the driver* is able to remove the car from a public location without continuing its illegal operation.¹¹ The court emphasized that the need to deter a driver's unlawful conduct is by itself insufficient to justify a tow under the "caretaker" rationale.¹²

After analyzing the facts, the court then concluded that Mirandas' car was not creating any impediment to traffic or threatening public safety because it was parked in the owners' home driveway and Mr. Miranda had a valid driver's license.¹³

California State Court of Appeals decision in *People v. Williams*

In *Williams*, the California Court of Appeals for the 2nd District, concluded that the impoundment of the car after it was legally parked in front of the driver's residence was unconstitutional and served no community caretaking purpose.¹⁴ In this case, Mr. Williams was approached by the officer after he parked the car in front of his residence some distance away from the curb.¹⁵ Mr. Williams had a valid driver's license but was taken into custody because there was an outstanding arrest warrant for him.¹⁶ The police officer later admitted that the car could have been locked and left where Mr. Williams parked it.¹⁷ The police department did not have a written policy addressing when a car should be impounded.¹⁸

The court concluded that the impoundment did not serve the community caretaking purpose because the car was legally parked in front of the driver's residence.¹⁹ It stated that the probability that the car would be stolen, broken into, or vandalized was no greater than if the police officer had not stopped and arrested Mr. Williams.²⁰ The court also pointed out that the car was not blocking a driveway or crosswalk and did not pose a hazard or impediment to other

⁶Id.

⁷Id. at 861.

⁸Id.

⁹Id.

¹⁰Id. at 864.

¹¹Id. at 865.

¹² Id. at 866.

¹³Id.

¹⁴*People v. Williams*, 145 Cal.App.4th 756, 760, 52 Cal.Rptr.3d 162, 165 (Cal.App. 2 Dist.,2006).

¹⁵Id. at 164.

¹⁶ Id.

¹⁷ Id. at 165.

¹⁸Id.

¹⁹Id. at 167.

²⁰Id.

traffic.²¹ Additionally, Mr. Williams had a valid driver's license and the car was properly registered and thus the impoundment was not necessary to prevent the car's immediate and continued unlawful operation.²²

The impoundment of a vehicle is an illegal if it does not serve some valid purpose.²³ One valid purpose is to serve the police's "community caretaking function." As community caretakers, the police can seize and remove vehicles that impede traffic or threaten public safety and convenience. However, if the impoundment of the car is not pursuant to the police's caretaking function then that conduct will be deemed unconstitutional and therefore illegal.

Thank you for your attention to this matter.

Sincerely,

Mark Silverman
Attorney of Law
Immigrant Legal Resource Center

²¹Id.

²²Id.

²³*Miranda v. City of Cornelius*, 429 F.3d 858, 862 (C.A.9 (Or.),2005) citing *Soldal v. Cook County*, 506 U.S. 56, 61, 113 S.Ct. 538, 121 L.Ed.2d 450 (1992).