

July 1, 2011

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Dawn McFarland
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed a proposed initiative (A.G. File No. 11-0012) that would (1) make changes to the application process for federal, state, and local public benefits, and (2) authorize various law enforcement activities related to the immigration status verification of certain individuals and their possible detainment.

Background

Federal, State, and Local Benefits. Under federal law, public benefits are generally defined to include grants, contracts, loans, professional licenses, or commercial licenses. The definition also includes any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefits, or any other similar benefits provided to an individual, household, or family with public funds.

Immigration Status and Program Eligibility. United States citizens and nationals (nationals are generally persons born in an outlying possession of the United States or who meet specified criteria) are typically eligible for all public benefits. Legal noncitizens, sometimes referred to as qualified aliens, are barred from receiving certain federal benefits and may be barred from receiving state and local benefits. Undocumented persons, also known as illegal aliens, are generally ineligible for public benefits with certain exceptions, such as emergency medical services.

Systematic Alien Verification for Entitlements (SAVE) Program. The SAVE Program operated by U.S. Citizenship and Immigration Services is an automated system designed to aid federal, state, and local agencies in verifying the immigration status of applicants for governmental benefits. The SAVE offers access to immigration status information contained in the U.S. Department of Homeland Security (DHS) databases.

Immigration Laws. Federal law (1) specifies the conditions under which foreign nationals may be admitted to and remain in the United States, (2) establishes a registration system to monitor their entry and movement in the country, and (3) requires U.S. DHS to respond to any inquiry from a government agency seeking to verify the citizenship status of an individual.

Federal government agencies are responsible for enforcing immigration laws. Under agreements with the federal government, however, state or local government agencies may assist the federal government in its enforcement of those laws. An agreement with the federal government defines the extent of the state or local government agencies' enforcement duties and activities. (Currently, four local law enforcement agencies in California have such agreements with the federal government.) Officers from the participating state and local law enforcement agencies are trained by the U.S. Immigration and Customs Enforcement (ICE) agency, which pays for some of the cost associated with the training. In addition, subject to the availability of funds, U.S. ICE also pays for most of the technology required to support state and local immigration investigations.

Verifying Legal Status. Currently, the United States has no universal national identity card, so verifying citizenship or legal immigration status can be complex, even for native-born citizens. Generally, several documents are needed for this purpose (for example, a U.S. birth certificate to establish the basis for citizenship and a driver's license with a photo to establish identity). However, many persons (especially children) do not have a driver's license or other official photo identification. Documenting citizenship for these persons may involve additional steps, such as verifying the identity of a child's parents.

Most legal immigrants have an identification card from the U.S. DHS to verify their status, such as a "green card" issued to immigrants who are granted permanent residence in our country. However, they are not required under federal law to have these documents in their possession at all times. The U.S. DHS has developed a computer system that state and local government agencies can use to verify immigration status, depending on the types of immigration documents provided.

California Work Opportunity and Responsibility to Kids (CalWORKs). The state's CalWORKs program provides cash assistance and welfare-to-work services to low-income families with children. A parent may be found to be ineligible for CalWORKs for various reasons. That could be because it was determined that the parent is undocumented, has failed to comply with certain program requirements, or had reached the four-year time limit allowed for benefits. In such cases, cash aid is nonetheless provided to their children. These are commonly known as child-only cases.

Restricted Scope Medi-Cal. In California, the federal Medicaid program is administered by the Department of Health Care Services as the California Medical Assistance Program (Medi-Cal). The Medi-Cal Program provides health care services mainly to qualified low-income persons, primarily consisting of families with children and the aged or disabled. Federal law establishes some minimum requirements for state Medicaid programs regarding the types of services offered and who is eligible to receive them. Illegal aliens are eligible for a restricted scope of Medi-Cal benefits such as emergency and birth delivery services.

Proposal

Some of the provisions of this initiative could be subject to challenge in the courts and found unconstitutional and thus may not go into effect. The description below assumes that these provisions would be upheld in the courts if there was such a court challenge.

Changes in Application Process for Public Benefits. This measure makes changes to the application process for public benefits. Specifically, persons fourteen years of age or older applying for public benefits would be required to execute an affidavit under penalty of perjury declaring themselves a U.S. citizen or qualified alien who was lawfully present in the country. Filing a

fraudulent affidavit would be a felony punishable by a term of five years in state prison or a fine of \$25,000.

Whenever an applicant stated that he or she was a qualified alien, state or local agencies would be required under this measure to verify this claim through SAVE or any equivalent program. Until such verification was made, an applicant would be presumed eligible for public benefits. Each state or local agency would be required to monitor SAVE for application errors and significant delays and report them to the California Department of Justice (state DOJ). If an agency accepted an application for public benefits for a person whose status as a qualified alien could not be confirmed, the agency would make a report including the person's identity to the state DOJ. The state DOJ would provide a monthly compilation of all such reports to U.S. DHS.

The proposed affidavit requirement applies to a wide variety of public benefits for which citizenship status effects eligibility. There are, however, specified exceptions, such as emergency medical care and soup kitchens, for which affidavits would not be required.

Changes in Application Process to Receive Certain Restricted Scope Medi-Cal Services. This measure would make changes to the application process for persons to receive restricted scope Medi-Cal services for birth delivery and related medical services. The applicants for such services would submit a fingerprint as part of their application. The state DOJ would determine a reasonable fee to cover the costs of processing the fingerprint.

Eligibility Changes for Children in CalWORKs. This measure would impose a two-year time limit on cash benefits for children residing in households in which the parents are not eligible to receive CalWORKs benefits because they are undocumented. Once CalWORKs benefits were eliminated, some of these children would be eligible for aid through state- and county-supported Foster Care or county general assistance programs.

Verification of Immigration Status. Under current law, U.S. DHS can issue an immigration detainer for an individual in state or local custody. An immigration detainer is a request that a state or local law enforcement agency notify U.S. ICE so that it can take over custody before that individual is released. Although state and local law enforcement officials are required under federal law to send fingerprint information to the federal government for all individuals who are arrested that could be used by the federal government to determine an individual's immigration status, state and local law enforcement agencies are not required under current state law to verify the immigration status of individuals they arrest for crimes. Nor are state and local agencies generally required under state law to transfer individuals for whom detainers have been issued to federal authorities.

Under this measure, when a California state or local law enforcement official has lawfully stopped, detained, or arrested an individual, they would be authorized to request verification of the immigration status of the individual from the federal government whenever they determined that "reasonable suspicion" existed that the individual is unlawfully present in the United States. The measure further requires that an arresting agency, upon notification that an arrested individual is unlawfully present in the United States, immediately verify with U.S. DHS whether an immigration detainer should be issued for such an individual. A state or local law enforcement agency that had such an individual with a detainer in their custody would be prohibited from releasing them and would have to transfer them into federal custody, unless otherwise directed by a court.

Federal Agreements With State and Local Law Enforcement Officers. The measure requires the state DOJ to negotiate an agreement with U.S. DHS or the U.S. DOJ for designated law enforcement officers to perform certain functions of federal immigration officers within California, such as serving warrants of arrest for immigration violations or issuing immigration detainers. Under the measure, each state and local law enforcement agency would have to designate one or more peace officers who would receive training in these immigration enforcement duties. However, state and local law enforcement agencies would only be required to pay for the training to the extent that funds were appropriated for that purpose.

Policies Limiting Enforcement of Federal Immigration Law. The measure makes it illegal for state and local government agencies and officials to prohibit or restrict in any way (1) inquiries by peace officers into the citizenship or immigration status of persons, (2) further efforts by peace officers to verify their citizenship or immigration status, or (3) the enforcement of criminal provisions of federal alien registration laws. The measure allows any California citizen to file a lawsuit to prohibit the enactment or enforcement of laws, ordinances, regulations, or policies contrary to the above provisions.

Fiscal Effects

We have identified several potential major fiscal effects of this measure, which we describe below.

Administrative Costs Related to New Application Processes. If upheld in the courts, the provisions of this measure making changes to the application process for federal, state, and local public benefits could result in unknown significant *ongoing* costs to state and local governments. These costs would be incurred to (1) collect, process, and store affidavits; (2) verify the eligibility of certain persons applying for certain benefits using the SAVE Program; (3) monitor SAVE for application errors and significant delays and report application errors to the California DOJ; (4) report certain applicants for public benefits to the state DOJ; and (5) compile and forward reports to U.S. DHS. The measure would also result in unknown significant *one-time* costs for modifications to existing benefit application-processing systems in order to comply with the new requirement that applicants submit affidavits.

Reduction in Public Benefit Costs. The proposed two-year time limit on cash benefits for children residing with undocumented parents would likely result in state savings in the hundreds of millions annually in the CalWORKs program. These savings would be partially offset by increased state and county costs for children who shifted into state- and county-supported Foster Care or into county-run general assistance programs.

The provisions changing the processes for applying for public benefits could reduce state and local costs. Some persons who might otherwise apply for public benefits would likely decide not to do so because of the requirement that they execute an affidavit regarding their citizenship status. Likewise, some persons might decide not to apply to receive certain services under restricted scope Medi-Cal because of the requirement that they submit a fingerprint with their application. Also, some persons who would otherwise receive public benefits under the current application processes might not be approved under the new procedures required by this measure. The amount of savings from these provisions is unknown but is likely to be significant.

Increase in State and Local Criminal Justice System Costs. The measure could increase criminal justice costs in a variety of ways. For example, it could increase state and local costs to the extent that law enforcement officials verify the immigration status of individuals they have lawfully stopped, detained, or arrested, as well as detain arrested individuals prior to transferring them to federal custody. These increased costs are difficult to estimate, but could easily amount to the tens of millions of dollars annually, depending on future actions by state and local officials. It is also possible that state and local governments would redirect resources away from other activities to accommodate additional workload resulting from the measure.

In addition, the measure could result in state and local costs in the millions of dollars to provide immigration-related training to designated law enforcement officials pursuant to a required agreement between the state DOJ and U.S. DHS or U.S. DOJ. However, as specified in the measure, such costs would be incurred only to the extent funds are appropriated for that purpose.

Summary of Fiscal Effects. This measure, if upheld in the courts, would have the following fiscal effects on state and local governments:

- Unknown significant one-time and ongoing costs to state and local governments due to changes in the application process for public benefits, as well as unknown but likely significant savings from decreased use of public benefits.
- State savings in the hundreds of millions annually from imposing a two-year time limit on CalWORKs benefits for children of undocumented persons, partially offset by state and county costs for children who shifted to Foster Care or county general assistance programs.
- Increased costs to the state and local criminal justice system, potentially exceeding tens of millions of dollars annually, for training of peace officers, verifying the immigration status of individuals who are arrested, and detaining some of these persons until their transfer to federal custody.

Sincerely,

Mac Taylor
Legislative Analyst

Ana J. Matosantos
Director of Finance