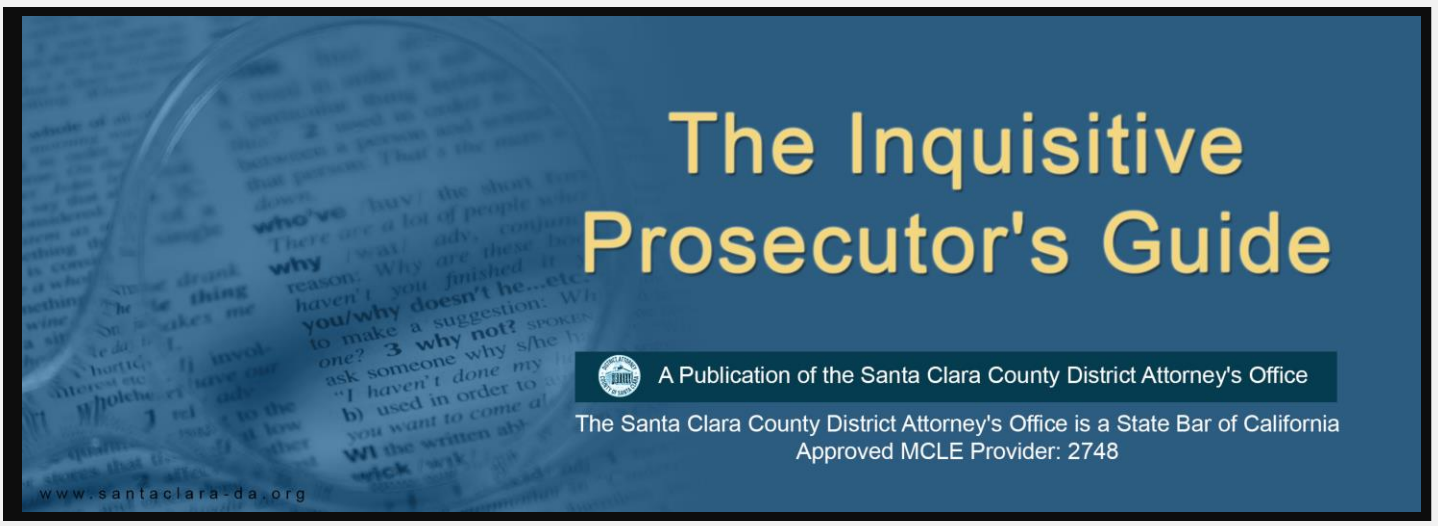


**May 28, 2020**

## 2020-IPG-43(*LOPEZ* TERMINATES *ARTURO D.* VEHICLE SEARCHES FOR PERSONAL ID)

In this edition of IPG, we address the California Supreme Court case of ***People* v. *Lopez*** (2019) 8 Cal.5th 353, which held that searches of vehicles stopped for a traffic infraction will generally violate the Fourth Amendment if based *solely* upon the driver's failure to provide a license or other identification upon request. This holding overruled an earlier decision of the California Supreme Court in ***In re Arturo D.*** (2002) 27 Cal.4th 60. We also discuss some of the potential questions that might arise in light of the holding and analysis in ***Lopez***, including:

Can an officer search a vehicle for the driver's *registration* if the driver does not produce registration documents?

Can a vehicle be searched "incident to arrest" or pursuant to the automobile exception for evidence of identification after a driver who has committed a traffic violation fails to provide identifying documentation?

Does a driver's failure to provide identification or registration permit a search of a vehicle for identification and documentation to determine if the vehicle is stolen?

Does the ruling in ***Lopez*** have any impact on searches of the person of an individual, or a wallet or purse found on the individual, who fails to provide identification?

This edition of IPG is accompanied by a podcast featuring Santa Clara County prosecutor, Jordan Kahler. The podcast will provide 60 minutes of MCLE general credit and covers *some* of the same topics discussed in the IPG. It may be accessed and downloaded for listening at**: http://sccdaipg.podbean.com/**

# Limited Searches of a Vehicle to Locate a Driver's Identification Following a Traffic Stop as Previously Approved in the Case of *In re Arturo D.* (2002) 27 Cal.4th 60 are No Longer Permissible. *People* v. *Lopez* (2019) 8 Cal.5th 353

## Facts and Procedural History

After receiving an anonymous report about a car being driven erratically and a second anonymous report that the driver of the car had been drinking all day, a police officer parked in front of the home of the registered driver of the car. When the defendant drove up in a car matching the description provided, she looked at the officer nervously, got out of her car, and walked away. (***Id***. at pp. 357-358.)

The officer then approached the defendant. Although the officer did not note any signs of intoxication, the officer wanted to identify the defendant and learn of her driving status. The officer asked the defendant if she had a driver's license. The defendant said that she did not. Without asking the defendant for her name or other identifying information, the officer detained the defendant by placing her in a control hold. When the defendant tried to pull away, the officer handcuffed her. (***Id***. at p. 358.)

The officer asked the defendant if she had any identification possibly within the vehicle. When the defendant responded, "there might be," a second officer on the scene opened the passenger door, retrieved a small purse from the passenger seat, and handed it to the first officer. The first officer then searched the purse and found a baggie containing methamphetamine in a side pocket. (***Id***. at p. 358.)

After the defendant was charged with misdemeanor violations of possessing methamphetamine and driving on a suspended license, she filed a motion to suppress evidence. The defendant argued she had been unlawfully detained, and that her purse had been unlawfully searched. (***Id***. at p. 358.)

Relying on the case of ***Arizona* v. *Gant*** (2009) 556 U.S. 332, a case involving the scope of permissible warrantless vehicle searches incident to a driver's arrest, the trial court held the search of the vehicle violated the Fourth Amendment. (***Id***. at pp. 358-359.)

***Editor's note:** The trial court also concluded the search could not be justified as a search for evidence of driving under the influence since "[t]he first anonymous tip was remote in time, the second was vague and conclusory, [the officer] observed nothing to indicate [the defendant] was under the influence, and the hearing testimony made clear the search was directed at finding identification." (***Id***. at p. 359, fn. 1.)

The Court of Appeal reversed the trial court. It held that the search was authorized under the ***In re Arturo D.*** (2002) 27 Cal.4th 60 "which allowed police to conduct warrantless vehicle searches for personal identification documents at traffic stops when the driver failed to provide a license or other personal identification upon request." (***Id***. at p. 359)

The California Supreme Court granted review "to consider the application and continuing validity of the ***Arturo D.*** rule in light of subsequent legal developments." (***Ibid***.)

1. The Fourth Amendment to the United States Constitution prohibits "unreasonable searches and seizures." (***Id***. at p. 359.)

   In general, a law enforcement officer is required to obtain a warrant before conducting a search. (***Id***. at p. 359.) "Whether a particular kind of search is exempt from the warrant requirement ordinarily depends on whether, under the relevant circumstances, ***law enforcement's need to search outweighs the invasion of individual privacy***." (***Ibid***, emphasis added by IPG.)

   ***Editor's note:** The court also stated: "Warrantless searches 'are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well-delineated exceptions.' (***Katz* v. *United States*** (1967) 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576, fns. omitted; accord, ***People* v. *Redd*** (2010) 48 Cal.4th 691, 719, 108 Cal.Rptr.3d 192, 229 P.3d 101 ['A warrantless search is presumed to be unreasonable'].)" (***Lopez*** at p. 359.) Defense counsel will sometimes point to the "per se" language quoted from ***Katz*** to argue that unless a warrantless search falls into an *already established* exception, it is unreasonable. This cannot be true since, if it were, no post-***Katz*** exception could ever be recognized by courts and post-***Katz*** exceptions to the general requirement that searches be conducted pursuant to a warrant *have been* recognized (including the exception created in ***Arizona* v. *Gant*** (2009) 556 U.S. 332.) The quote from ***Redd*** more accurately characterizes the rule: warrantless searches are *presumed* to be unreasonable. But a presumption can be overcome if the warrantless search is shown to be reasonable.

2. In ***In re Arturo D.*** (2002) 27 Cal.4th 60, the California Supreme Court had to decide whether searches following traffic stops in two consolidated cases were reasonable where the officers "had detained drivers for traffic infractions and the drivers could produce neither a driver's license nor the vehicle's registration in response to the officers' requests." (***Id***. at p. 360.)

"In one case, the officer entered the defendant's truck and reached under the driver's seat. The officer did not locate any relevant documents but did discover a box that later was found to contain methamphetamine. In the other case, the officer entered the defendant's car and looked first in the glove compartment and then under the front passenger seat, finding a wallet that contained a baggie of methamphetamine." (***Id***. at p. 360.)

The ***Arturo D.*** court "concluded that when a driver has been detained for a traffic infraction and fails to produce vehicle registration or personal identification documentation upon request, the Fourth Amendment 'permits limited warrantless searches of areas within a vehicle where such documentation reasonably may be expected to be found.'" (***Lopez*** at p. 360 quoting ***Arturo D.*** at p. 65.)

The ***Arturo D.*** court believed such a search was reasonable because the state's important interest in identifying drivers so they could be properly cited for traffic violations outweighed a driver's "reduced expectation of privacy while driving a vehicle on public thoroughfares." (***Lopez*** at p. 360 citing to ***Arturo D***. at p. 68.) The reasonableness of this limited search was also bolstered by the fact that a "considerably greater intrusion" would be justified under the search incident to arrest exception if the officer chose to arrest a driver who violated the Vehicle Code by failing to keep a license in their possession while driving. (***Lopez*** at p. 361.)

The exception recognized in ***Arturo D.*** did not "require officers to ask for oral identification before searching for physical documentation" or "require officers to allow persons detained outside the vehicle to reach into the vehicle to retrieve identification themselves—even where. . . officers did not testify to particularized safety concerns." (***Lopez*** at p. 363.) "***Arturo D.*** pointedly held it was not unreasonable for law enforcement to search the vehicle for personal identification instead of either asking for the driver's consent to search or arresting the driver if unsatisfied with the driver's identification . . ." (***Lopez*** at p. 363.)

3. The holding in ***Arturo D.*** permitting a warrantless search of a vehicle for *personal identification* after a driver fails to produce personal identification documents **is no longer valid**. (***Lopez*** at pp. 357, 381.)

> ***Editor's note:** The portion of ***Arturo D.*** permitting a warrantless search for *registration* documents remains good law for now: "The portion of ***Arturo D***. . . . upholding a search for registration documents is not at issue in this case." (***Id***. at p. 360, fn. 2.) **See** this IPG, at pp. 9-21 for a more expansive discussion of searches for registration and title documents.

4. The ***Lopez*** court* believed the reasoning of ***Arturo D.*** was undermined by "subsequent legal developments casting doubt on the validity of a categorical rule authorizing warrantless vehicle searches whenever a driver stopped for a traffic infraction fails to produce a license or other satisfactory identification documents upon request." (***Id***. at pp. 364, 380.)

> ***Editor's note:** Although we refer throughout to the "***Lopez*** court," the decision was rendered by a bare majority of four justices.

5. The legal development primarily relied upon by the ***Lopez*** court was the issuance of the United States Supreme Court decision in ***Arizona* v. *Gant*** (2009) 556 U.S. 332. ***Gant*** repudiated an earlier decision of the High Court in ***New York* v. *Belton*** (1981) 453 U.S. 454 that had permitted a search of a vehicle's passenger compartment "incident to arrests of recent occupants, regardless of whether the arrestee in any particular case was within reaching distance of the vehicle at the time of the search." (***Lopez*** at p. 365.)

   In ***Gant***, the High Court scaled back an officer's ability to search for weapons or destructible evidence in the passenger compartment of a vehicle contemporaneously with the arrest of an occupant by limiting such a search to circumstances where an arrestee is actually capable of reaching the area to be searched. The ***Gant*** court did authorize a further search of the vehicle but only for evidence "'relevant to the crime of arrest'." (***Lopez*** at p. 365 citing to ***Gant*** at p. 343 and fn. 4.) Under this new standard, the ***Gant*** court invalidated a search of a vehicle made pursuant to the arrest of the defendant for driving with a suspended license because "as in most cases involving arrests for traffic violations, there was no chance of finding relevant evidence inside the car." (***Lopez*** at p. 365 citing to ***Gant*** at p. 344.)

6. The ***Lopez*** court recognized that ***Gant*** was "not directly applicable here because it concerned a different exception to the Fourth Amendment's warrant requirement." (***Lopez*** at p. 364.) And further recognized that ***Gant*** neither "considered nor disapproved ***Arturo D***.'s rule authorizing prearrest searches for driver identification. (***Id***. at p. 366.) Nevertheless, the ***Lopez*** court believed the ***Gant*** court had essentially re-assessed how much weight "a person's privacy interest in their vehicle and in the personal belongings such as purses, briefcases, or other containers kept in the vehicle" should be given "when determining whether the government's interest in conducting the search outweighed the privacy interest invaded. (***Id.*** at p. 366.) And that a "re-appraisal of the proper balance" of these two interests was necessary to "ensure consistency with the larger body of Fourth Amendment law." (***Id***. at p. 367.)

The ***Lopez*** court viewed ***Gant*** as placing greater weight on protecting "a motorist's privacy interest in his vehicle" than the High Court had previously done - especially when the search "implicates the central concern underlying the Fourth Amendment—the concern about giving police officers unbridled discretion to rummage at will among a person's private effects." (***Lopez*** at p. 368 quoting ***Gant*** at p. 345.)

> ***Editor's note:** In response to the claim that since ***Gant*** did not overrule ***Arturo D.***, respect for precedent should preclude abandoning the exception recognized in ***Arturo D.***, the ***Lopez*** court stated that it was appropriate to reconsider earlier California Supreme Court opinions interpreting federal constitutional law even when a new High Court decision does not directly address (or overrule or supersede) the earlier opinion when "emergent [United States] Supreme Court case law calls into question" the prior opinion and "erode[s] the analytical foundations of the old rule or make[s] clear the rule is substantially out of step with the broader body of relevant federal law." (***Id***. at p. 367.)

7. The ***Lopez*** court implicitly recognized that ***Gant*** did not have much to say *directly* about the weight to be given the government interest used to justify the search in ***Arturo D***. since the government interest in ***Arturo D*** was the "need to ensure that a law enforcement officer has the information necessary to issue a citation and notice to appear for a traffic infraction—despite drivers' incentives to conceal that information, and notwithstanding safety concerns that might arise if officers were compelled to allow drivers to retrieve the relevant documents themselves" (***Lopez*** at p. 370), whereas the government interest implicated in ***Gant*** was the need to "protect[] arresting officers and safeguard[] any evidence of the offense of arrest that an arrestee might conceal or destroy . . ." (***Gant*** at p. 339). (**See *Lopez*** at p. 369 ["***Gant*** speaks most clearly to the *privacy* side of the balance . . .", emphasis added by IPG].)

However, the ***Lopez*** court believed ***Gant*** provided "important guidance about how to weigh the law enforcement interests on the other side of the scale." (***Id***. at p. 369.) To wit: ***Gant*** shows the exception to the warrant requirement must be closely tethered to the justification for the exception. (***Lopez*** at p. 369.)

One the reasons the ***Arturo D.*** court gave for justifying the exception was premised on the assumption that the government interest at stake could *only* be furthered by either allowing a search for identification (as authorized by ***Arturo D***.) or by making a full custodial arrest followed by a search incident to that arrest. The ***Arturo D.*** court concluded that since the latter option involved a much greater intrusion and burden on both the driver and the officer, it made sense (i.e., was reasonable) to permit the lesser intrusion of a limited search for identification. (***Lopez*** at p. 370.)

The ***Lopez*** court believed this was a false dichotomy: "experience and common sense suggest a range of options that are both less intrusive than a warrantless search and less burdensome than a full custodial arrest." (***Id***. at p. 370.) Because the ***Arturo D.*** court did not properly consider the other "adequate alternative avenues for obtaining the information needed by law enforcement" it placed greater weight on the government interest in searching a vehicle for identification than it should have. (***Ibid***.)

Among the alternative means of obtaining identifying information from the driver mentioned by the ***Lopez*** court:

(i) the officer can ask the driver for identifying information – which can then be checked against various records available to law enforcement; "[s]imilarly, the detainee's size and physical appearance, such as height, weight, eye color, and hair color, may be subject to verification against such records" (***id***. at p. 370);

(ii) "[t]he officer may . . . seek the driver's consent to search the vehicle for identification" (***id***. at p. 371);

(iii) the exigent circumstances exception may allow a vehicle search if entry is necessary to "prevent the imminent destruction of evidence in individual cases, to pursue a fleeing suspect, and to assist persons who are seriously injured or are threatened with imminent injury" (***id***. at p. 372); and

(iv) if circumstances provide a basis for believing the driver has given false identification information – a criminal offense - an officer may search a vehicle under the automobile exception if the officer has probable cause to believe that evidence of this crime will be found inside and "evidence of identification may well supply evidence of the crime of lying about one's identity" or, alternatively, "some out-of-state courts have upheld vehicle searches for identification under the search incident to arrest exception, which authorizes searching an arrestee's vehicle for evidence relevant to his or her crime when an officer has reason "'to believe evidence relevant to the crime of arrest might be found in the vehicle.'"" (***id***. at p. 372).

The ***Lopez*** court concluded: "If, as ***Gant*** instructs, a substantial intrusion on personal privacy must be adequately justified by genuine need, the availability of so many alternative means for achieving law enforcement ends tends to undermine the notion that the intrusion is reasonable." (***Id***. at p. 374 [albeit also acknowledging the "Fourth Amendment does not . . . require law enforcement to employ the least intrusive means of achieving its objectives"].)

8. After reconsideration of the respective weight to be given to the intrusion on the driver's privacy interest in relation to the government interest in conducting the search, and taking into account that no other state or federal jurisdiction other than California recognizes warrantless searches solely for driver's identification following a traffic stop, the ***Lopez*** court was convinced that **such searches do "not constitute an independent, categorical exception to the Fourth Amendment's warrant requirement.**" (***Id***. at p. 357 [and finding to **the extent *Arturo D*. held otherwise, it should no longer be followed**].)

9. Accordingly, the ***Lopez*** court held searching the defendant's vehicle for her personal identification before she was arrested was unreasonable and violated the Fourth Amendment. (***Id***. at pp. 376, 381.)

> ***Editor's note:** There did not appear to be any other exception accepted by the ***Lopez*** court that would have permitted a search in the instant case other than exception identified in ***Arturo D*.** No party on appeal contested the trial court's conclusion that there was insufficient suspicion to search the vehicle for evidence of the defendant having driven while under the influence of alcohol. (***Lopez*** at p. 359, fn. 1.) Nor did the parties on appeal challenge the trial court's conclusion that since the defendant "was handcuffed at the rear of her car when the search took place and could not reach any weapons inside the car" and there was no "likelihood a search of the car would produce evidence of [the defendant']s driving without a license in her possession," the search could not justified under the ***Gant*** exception. (***Lopez*** at p. 359.)

10. However, the ***Lopez*** court remanded the case to the lower court of appeal to consider whether, assuming the warrantless search of the vehicle violated the Fourth Amendment, the "trial court should nevertheless have denied [the defendant's] motion to suppress the fruits of the search because the officer acted in good faith based on the existing state of the law." (***Id***. at p. 381.)

> ***Editor's note:** For a discussion of why any pre-***Lopez*** searches made in reliance on ***Arturo D***. should not result in any suppression, **see** this IPG memo, at pp. 49-50).

# Questions an Inquisitive Prosecutor Might Have After Reading *People* v. *Lopez* (2019) 8 Cal.5th 353

## 1. Can an officer search a vehicle for the driver's *registration* if the driver does not produce registration documents?

Although ***Arturo D***. authorized warrantless searches of vehicles for either vehicle registration or personal identification (***Lopez*** at p. 360), the ***Lopez*** court made it clear that it was **only** overruling the decision in ***Arturo D.*** insofar as it would have permitted a search for the *personal identification* of a driver stopped for a traffic violation who failed to produce identification. It did **not** overrule ***Arturo D.*** insofar as ***Arturo D.*** permitted searches for vehicle registration when the driver fails to present a vehicle registration: "The portion of ***Arturo D.,*** *supra*, 27 Cal.4th 60, 115 Cal.Rptr.2d 581, 38 P.3d 433, upholding a search for registration documents is not at issue in this case." (***Lopez*** at p. 360, fn. 2.) Rather, the ***Lopez*** majority appeared to follow the lead of the concurring and dissenting opinion in ***Arturo D.*** of Justice Werdegar who stated: "whether an officer also may undertake some type of vehicle search when the driver stopped for a traffic infraction is unable to present a valid driver's license (Veh. Code, § 12951, subd. (b)) or proof of registration as required by state law (§ 4462, subd. (a)) *are two different matters subject to different analyses and rules*." (***Id***. at p. 88 [and concurring with majority insofar as it "authorizes warrantless searches of 'traditional repositories' for proof of a driver's vehicle registration" but not with the notion the area under the driver's seat could be searched and not with "the majority's holding that an officer constitutionally can search a vehicle for a driver's license"].)

The circumstances under which a vehicle may **still** be searched for *registration* documents is discussed below at pp. 12-17 of this IPG.

### A. Responding to defense counsel's argument that a search of vehicle for registration documents absent probable cause to believe the vehicle is stolen is unreasonable.

Do not be surprised if defense counsel seeks to extend the reasoning of ***Arturo D.*** to prohibit searches for vehicle registration when no evidence of registration is provided by the driver. The argument will likely be premised on the rationale that a search for registration is no less intrusive than a search for personal identification and the intrusion on the driver's privacy is not justified by the government interest furthered by the intrusion unless there is probable cause to believe the car may be stolen.

Expect defense counsel to point out that some of the same reasoning the ***Lopez*** court gave for prohibiting vehicle searches attendant to a traffic stop solely for *personal identification* can also provide grounds for disallowing searches for registration, i.e., that such searches implicate a "central concern underlying the Fourth Amendment" in not allowing officers "unbridled discretion to rummage at will among a person's private effects" (***Lopez*** at p. 366) and that these searches were "indistinguishable in effect from the kind of search disapproved in [***Iowa* v.*] Knowles***" (***Lopez*** at p. 369; **see also *Lopez*** at p. 375.) The defense may claim allowing a search of the places for registration in areas where registration might reasonably be stored (as is still permitted by ***Arturo D.***), in practice, carries the same risk of the exception being used for general rummaging through the vehicle and personal items like a wallet or purse since a vehicle registration is likely to be found in the same places as personal identification.

Moreover, the defense may note that the ***Lopez*** court believed a search of a vehicle for evidence of the crime of driving without a license (either Vehicle Code section 12500 or 12591) could not be justified as a search incident to arrest pursuant to ***Arizona* v. *Gant*** (2009) 556 U.S. 332 (which permits searches of vehicles when a recent occupant is arrested for a crime and there is reasonable cause to believe evidence of the crime will be found in the vehicle) because "no reason appears to think evidence of that crime would be found in the car." (***Lopez*** at p. 376, fn. 15.) The defense may argue that just like "[a] license is not something police need to search for as evidence of driving without a license" because "at most, it might provide a defense to the charge" (***ibid***), neither do the police need to search for evidence of *registration* when the only crime defendant is suspected of having committed is driving without registration in violation of Vehicle Code 4000(a) since evidence of registration would only provide a defense to the charge.

Accordingly, the defense may contend the concerns identified, and rationale used, in ***Lopez*** should be extended to prohibit searches for registration – at least absent evidence the vehicle is stolen. (**See *Lopez*** at p. 377, fn. 16 [noting certain cases which authorized searches of vehicles for evidence of registration/ownership "have not been free from controversy" and noting that "according to LaFave, '[s]earch of the car should be permitted only when the failure to produce the registration and the other relevant circumstances establish probable cause that the car is stolen." (***Ibid.***)

The prosecution response should be seven-fold.

First, as noted above, the ***Lopez*** court specifically did not address searches for registration. Thus, trial courts remain bound by the holding in ***Arturo D.*** that searches for vehicle registration are permitted when no registration is provided. (***Lopez*** at p. 360, fn. 2; **see also *People* v. *Turner*** (1994) 8 Cal.4th 137, 182 [authorizing search for registration papers to determine ownership]; ***People* v. *Webster*** (1991) 54 Cal.3d 411, 430 [same]; this IPG at p. 9.)

Second, even if a court decides that ***Arturo D.*** was also wrong in allowing searches for vehicle registration, an officer's reliance on the valid portion of ***Arturo D.*** would prohibit exclusion. (**See** this IPG section at pp. 49-50.)

Third, while both aspects of ***Arturo D.*** (the search for personal identification and the search for registration) were premised, in part, on the reduced expectation of privacy in a vehicle, the government interest in searching for personal identification is ***different than*** the government interest in searching for registration. The former interest is the "need to ensure that a law enforcement officer has the information necessary to issue a citation and notice to appear for a traffic infraction" (***Lopez*** at p. 370), whereas the latter interest is "the need to ensure highway and public safety" (***State* v. *Terry*** (2018) 232 N.J. 218, 238–239 [179 A.3d 378, 390–391], cert. denied (2018) 139 S.Ct. 96 [202 L.Ed.2d 61]; **see also *In re Arturo D.*** (2002) 27 Cal.4th 60, 88 (concurring opinion of J. Werdegar [drawing distinction between searches of vehicles for identification and searches for registration and finding the latter is permissible if registration is not provided – albeit only insofar as the search is confined to "traditional repositories" or otherwise reasonable places to look for a registration document].)

Fourth, unlike searches of a vehicle (and of items inside the vehicle) for personal identification (which the ***Lopez*** court concluded was approved *solely* by the California Supreme Court in ***Arturo D***.), *many* courts have recognized it is reasonable to search for registration documents in vehicles when a driver stopped for a traffic infraction does not provide those documents. In fact, the majority of courts to weigh in on the issue allow for a limited search for registration when the defendant is unable to provide it. (**See *State* v. *Terry*** (2018) 232 N.J. 218, 242 [collecting cases]; **but see *State* v. *Branham*** (Ariz. App. 1997) 952 P.2d 332, 333.)

Fifth, while a valid license is not evidence of the crime of driving without being licensed (Veh. Code, § 12500) or driving without physically possessing a license (Veh. Code, § 12951), a valid registration card showing an *expiration date* that has passed *is* evidence of the crime of driving with an expired registration. (Veh. Code, § 4000(a)).

Sixth, a search limited to areas where registration documents are usually kept may be less intrusive than a search limited to areas where driver's license or other identifying documents are kept. Thus, the invasion of privacy may not be as egregious when searching for registration. (**But see** this IPG at pp. 44-49 [discussing whether officers may search wallets or purses for evidence of registration].)

Seventh, notwithstanding the reference in ***Lopez*** suggesting legal commentator LaFave thinks searches for registration and ownership should be limited to circumstances where there is probable cause to believe the car is stolen, here is what is also stated in LaFave's treatise on Search and Seizure in a *different* section:

> The better view is that if the driver has been given an opportunity to produce proof of registration but he is unable to do so, and even if he asserts that there is no such proof inside the car, the officer is not required to accept such an assertion at face value, at least when his "previous conduct would ... cast doubt upon his veracity"; at that point, the officer may look for registration papers "on the dashboard, sun visor and steering column" and, if not found in those places or seen in plain view, in "the glove compartment," all "places where it may reasonably be found." This is significant in that a search for this purpose may at least sometimes be more intrusive than would likely be permitted in an ordinary inventory of the contents." (3 W. LaFave, Search and Seizure: A Treatise on the Fourth Amendment, § 7.4(d), p. 870 (5th ed. 2012).)

Indeed, even the portion of the LaFave treatise referenced by the ***Lopez*** court was more aspirational than definitional, considering that immediately after the referenced quotation, the LaFave treatise implicitly recognized that such searches have been approved when the search is preceded by an unsuccessful request for the registration:

> "***In any event***, as stated in ***United States* v. *Lopez***, 474 F.Supp. 943 (C.D.Cal.1979): "The interest is not so compelling as to justify an unrestricted search of the vehicle for the registration. Balancing the intrusion and the interest ***compels a reasonable attempt to procure the registration before an unconsented entry can be sanctioned***. While the facts and circumstances will dictate what is reasonable, at a minimum, an inquiry should be made by the officers as to the whereabouts of the registration prior to the entry." To the same effect is ***Jackson* v. *Superior Court of Kern County***, 74 Cal.App.3d 361, 142 Cal.Rptr. 299 (1977)." (5 W. LaFave, Search and Seizure: A Treatise on the Fourth Amendment, § 10.8(a), fn.33 (5th ed. 2012), emphasis added by IPG.)

## B. Under what circumstances can a vehicle be searched for ownership or registration documents?

As noted above, ***Lopez*** did not address the validity of searching for registration or ownership documents as authorized in ***Arturo D.*** (***Lopez*** at p. 360, fn. 2.) This portion of the IPG is

included to describe the circumstances that will permit officers to conduct a search of a vehicle for **registration or ownership** documents as **still validly** authorized under ***Arturo D.*** and other case law.

Under ***Arturo D.***, "when a driver who has been detained for citation for a Vehicle Code infraction fails to produce vehicle registration . . . upon the request of the citing officer, the officer may conduct a warrantless search for [registration and title] . . . of areas within a vehicle where such documentation reasonably may be expected to be found." (***Id***. at p. 65 [bracketed information added by IPG].)

Such a warrantless search is considered reasonable under the Fourth Amendment because the governmental interest in regulating vehicle use and ensuring proper registration of vehicles (as embodied in various vehicle code sections) that is furthered by a limited intrusion into the areas of a vehicle where registration might reasonably be kept after a driver is detained for a traffic violation but fails to produce proof of registration/ownership outweighs the individual's privacy interest that is impinged upon in those circumstances. (**See *In re Arturo D.*** (2002) 27 Cal.4th 60, 71 [and cases cited therein], 76, fn. 16 [and cases cited therein], 84, fn. 22; ***People* v. *Webster*** (1991) 54 Cal.3d 411, 430; **see also *People* v. *Lopez*** (2019) 8 Cal.5th 353, 360 [noting that "***Arturo D.*** relied heavily on various California and out-of-state cases upholding warrantless searches of vehicles for the purpose of locating the ***vehicle registration***" but "did not identify any prior cases . . . that had concluded the need to locate a driver's license or other form of personal identification could alone justify a warrantless search."], emphasis added by IPG; see also Veh. Code, §§ 2804 and 2805 [respectively allowing inspection of registration card and title or registration of vehicles in certain circumstances].)

### 1. What areas of a vehicle are considered areas where registration or title papers may reasonably be located?

In ***Arturo D.,*** the court made it clear that while a search for registration or title would include a search of the visor, glove compartment, and "traditional repositories of auto registrations", such a search was not limited to those areas. (***Id***. at p. 78.) Rather, "limited searches for required regulatory documentation are permissible in those locations where such documentation reasonably may be expected to be found . . ." (***Id***. at p. 79 [and noting that LaFave identified places the registration would reasonably be found as "the dashboard, sun visor and steering column" and, if not found in those places or seen in plain view, in "the glove compartment"].)*

***Editor's note:** Although registration is no longer typically attached to the steering column or the outside of the sun visor, these were considered "traditional" locations where registration papers might be found because early (but not current) registration laws required that drivers display the registration in a location visible from the outside of the car, which typically meant that the registration certificate would be attached to the steering column or to the outside of the sun visor. (**See e.g.**, ***People* v. *Cacioppo*** (1968) 264 Cal.App.2d 392, 396 [citing former Vehicle Code, § 4454 and noting public display on steering column].)

Of course, if contraband or evidence of a crime falls within the plain view of the officer during the search, the contraband or evidence may be seized even if it is not itself within the area where registration or title would reasonably be located. (**See *In re Arturo D.*** (2002) 27 Cal.4th 60, 70 ["The observation and seizure of evidence in plain view from a position where the officer has a right to be is not constitutionally prohibited."]; ***People* v. *Webster*** (1991) 54 Cal.3d 411, 431 [same].)

**Underneath the driver's or passenger's seat?**

In ***Arturo D.***, the California Supreme Court addressed two different cases (one involving defendant Arturo D. and the other involving defendant named Hinger) where searches of vehicles were made for identification and registration documents.

In the first case, defendant Arturo D. was stopped for speeding. He admitted he lacked a valid driver's license and that the truck was not his, but provided no documentary evidence as to his identity, proof of insurance, or vehicle registration. The officer entered the truck and felt blindly with his hands under the driver's seat for documentation relating to the driver and the vehicle. Not finding such documents, the officer repositioned himself behind the driver's seat, bent down, and looked under the seat, ultimately finding drug paraphernalia and drugs. (***Id.*** at p. 65.)

The ***Arturo D.*** majority agreed with the Attorney General's view that officers "reasonably may expect to find a wallet, or identification, ***or registration documents***, under a driver's seat. (***Id.*** at p. 80.) In so finding, the majority observed that "some persons who are stopped for traffic violations may not wish to provide an officer with valid documentation showing the driver's true name or identity, ***or showing the name of the vehicle's owner***" and that "[s]ome drivers who wish to avoid disclosing such documentation to the police may keep the ***documents*** under the driver's seat and yet disclaim their existence." (***Id.*** at p. 79, emphasis added by IPG.) Most of the discussion in this regard focused on the fact that drivers will often put their *wallets* underneath the front seat. (***Id.*** at p. 80.) However, the majority ultimately

concluded that "in the circumstances of this case, the area ***under [the defendant's] seat*** was a location where ***registration*** or identification documentation reasonably might be expected to be found." (***Id***. at p. 81, emphasis added.)

The ***Arturo D.*** court rejected the claim that the officer "exceeded the permissible scope of a proper limited search for such documents because he searched an area that the driver could not easily reach and conducted the search from behind the driver's seat." (***Id***. at p. 81.)

In the second case decided in ***Arturo D***., the court upheld a search underneath the *front passenger seat* where an officer made a traffic stop of the defendant (Hinger) who identified himself; but said he did not have his driver's license with him, that he had no documentation concerning the car he was driving, and explained either that he only recently had purchased the vehicle, or that he was in the process of purchasing it. (***Id***. at pp. 66-67.) At some point during the stop, the officer noticed the defendant open the glove compartment of the vehicle. Defendant Hinger said he might have a wallet in the car, suggesting it could be in the glove compartment. The officer then entered the car and found none of the sought-after documents or wallet in the glove compartment nor under the front seat. The officer walked back to the passenger side of the car and looked under the passenger seat (apparently doing so from the vantage point of the front of the seat). The officer then saw and seized a wallet, which he opened. The wallet contained a baggie of methamphetamine. (***Id***. at pp. 66-67.) ***The Arturo D.*** court reasoned looking underneath the passenger seat was proper since the officer reasonably might have thought that when Hinger opened the glove compartment, Hinger had managed to place the wallet under the front passenger seat. (***Id***. at p. 86.)

**Trunk or compartment in rear passenger area?**

In ***In re Arturo D.*** (2002) 27 Cal.4th 60, the court noted that "the trunk of a car is ***not*** a location where required documentation reasonably would be expected to be found, absent specific information known to the officer indicating the trunk as a location where such documents reasonably may be expected to be found-e.g., as when a driver has told an officer that his registration or license is inside a jacket located in the trunk." (***Id***. at p. 86. fn. 25, emphasis added.)

A "rear interior compartment" with a bolted panel is also not an area where registration would be reasonably likely to be found. (**See *State* v. *Acosta*** (Ct.App.1990) 801 P.2d 489, 493 [cited in ***In re Arturo D.*** (2002) 27 Cal.4th 60 at p. 76, fn. 16].)

**A wallet or purse located inside the vehicle?**

As discussed in this IPG at pp. 14-15, the ***Arturo D.*** court upheld a search of a wallet found underneath the passenger seat of a vehicle, where the defendant did not provide a license or registration, and the defendant said he might have a wallet in the car.

Expect *the defense* to argue that searches of a wallet or purse located in the vehicle for registration are not permitted even though ***Arturo D***. approved of such a search because in ***Arturo D***., the primary justification for searching the wallet was to locate defendant Hinger's identification and not his registration. And since the California Supreme Court in ***Lopez*** held officers cannot search for identification in a car just because a defendant did not provide identification, ***Arturo D***. no longer provides valid authority for searching through a wallet or purse located in a vehicle.

This flaw in this defense argument is that it assumes that a wallet or purse is not a location where *registration* "reasonably may be expected to be found." (***Arturo D.*** at p. 65.) While the court in ***Arturo D.*** did indicate the search of the wallet was justified because the officer "needed to learn the true identity of the person to be cited" (***id***. at p. 87), the defense assumption is dubious. This is because it is not unusual for individuals to keep their registration documents in their wallets or purses. (**See *People* v. *Gonzalez*** (unreported) 2004 WL 504364, at *1 ["In the officer's experience drivers sometimes keep vehicle registration in 'their personal effects,' including wallets, purses, briefcases or backpacks due to fear of car burglary or simply for personal preference."]; ***Noriega* v. *Biter*** (unreported) 2013 WL 3733443, at p. *21 [wallet contained registration]; ***People* v. *Mays*** (unreported) 2008 WL 192648, at *1 [same].) Moreover, the ***Arturo D.*** court also indicated that wallets not only contain identification but other kinds of "documentation" – a likely reference to registration. (**See *Arturo D.*** at p. 87 [noting wallets "often contain a driver's license or other identification or *documentation*"], emphasis added)

No post-***Lopez*** case has yet to address the question of whether a wallet or purse located in a vehicle can be searched for registration documents when not provided by the driver.

**2. Before an officer can search a vehicle for registration based solely on failure to provide proof of registration or title, must the officer ask/demand the driver to provide it?**

Even before ***Lopez*** issued, the California Supreme Court had held that "in the context of a ***normal traffic*** stop an officer has no authority to search peremptorily for required documentation, but instead may conduct a search for such documentation ***only when*** the driver fails to produce it after first having been directed to do so." (***In re Arturo D***. (2002) 27 Cal.4th 60, 74, emphasis added.) This remains the law.

**3. When an officer asks or demands proof of registration and title, and the driver does not provide it but indicates it might be in the vehicle somewhere, must the officer allow the driver to retrieve it, or can officers, for safety purposes, insist upon retrieving it themselves from the vehicle?**

On some occasions, a driver may not immediately provide the registration papers when requested to do so but will claim the documents are, or may be, located somewhere in the vehicle, like the glove compartment. In that circumstance, an officer probably has the discretion to enter the vehicle to check the glove compartment for the registration themself instead of allowing the driver to do so out of officer safety concerns. The rationale for allowing the officer to enter the vehicle is the same rationale for allowing an officer to do so when the document sought is identification. (**See** this IPG memo, at pp. 42-44 for a more in-depth explanation of this rationale.)

But even if, in light of ***Lopez***, this rationale no longer applies when it comes to entry for purposes of retrieving *identification*, it should remain valid when a defendant indicates the *registration or title* documents are located somewhere in the vehicle and the officer believes it is safer for the officer to retrieve it than to allow the driver to rummage around for it. (**See *People* v. *Webster*** (1991) 54 Cal.3d 411, 431 [holding officer was entitled to inspect vehicle for registration documents before deciding whether to release or impound the vehicle and it was reasonable for the officer to remove the occupants (all of whom disclaimed ownership) and personally find the documentation himself for his own safety under the circumstances].)

## 4. Can a search of a vehicle for registration and title in order to determine whether the vehicle is stolen be justified based on *Vehicle Code section 2804 or 2805 even without probable cause* to believe the vehicle is stolen?

As discussed, infra, in this IPG at pp. 34-36, a warrantless search of a vehicle for evidence of ownership and registration may occur if the officer has probable cause to believe these items would be evidence the vehicle is stolen. However, a search conducted pursuant to Vehicle Code sections 2804 or 2805 for the purpose of determining whether a vehicle is stolen may be authorized under a *different theoretical* basis (and possibly upon a lesser showing of suspicion) than a search for evidence of based on probable cause to believe a vehicle is stolen.

Vehicle Code section 2804 states: "A member of the California Highway Patrol upon reasonable belief that any vehicle is being operated in violation of any provisions of this code or is in such unsafe condition as to endanger any person, may require the driver of the vehicle to stop and ***submit to an inspection of the vehicle,*** *and its equipment, license plates****, and registration card***." (Emphasis added by IPG.)

Vehicle Code section 2805 states: "(a) For the purpose of locating stolen vehicles, (1) any member of the California Highway Patrol, or (2) a member of a city police department, a member of a county sheriff's office, or a district attorney investigator, whose primary responsibility is to conduct vehicle theft investigations*, **may inspect any vehicle of a type required to be registered under this code***, or any identifiable vehicle component thereof, on a highway or in any public garage, repair shop, terminal, parking lot, new or used car lot, automobile dismantler's lot, vehicle shredding facility, vehicle leasing or rental lot, vehicle equipment rental yard, vehicle salvage pool, or other similar establishment, or any agricultural or construction work location where work is being actively performed, ***and may inspect the title or registration of vehicles, in order to establish the rightful ownership or possession of the vehicle or identifiable vehicle component***." (Emphasis added by IPG.)

The basis for allowing a *warrantless* search (i.e., inspection) of vehicles for the purpose of determining whether the vehicle is stolen or who is the rightful owner of the vehicle pursuant to sections 2804 or 2805 may not *necessarily* depend on the existence of probable cause to believe the vehicle is stolen. Rather, *some* searches made pursuant to section 2804 or 2805 may properly be characterized as falling under the "special needs" exception to the ordinary

warrant requirement for searches. This exception applies "when 'special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable.'" (***Skinner* v. *Railway Labor Executives' Ass'n*** (1989) 489 U.S. 602, 619.) "[A]dministrative inspections of pervasively regulated industries" is a type of special needs exception. (**See *New York* v. *Burger*** (1987) 482 U.S. 691, 699-708 [upholding search for stolen vehicle parts pursuant to statute allowing warrantless searches of vehicle dismantling businesses without probable cause].)

"Section 2805 is a regulatory scheme providing for warrantless administrative searches." (***People* v. *Potter*** (2005) 128 Cal.App.4th 611, 619.) In ***Potter***, the appellate court stated: "Section 2805 permits warrantless administrative inspections only '[f]or the purpose of locating stolen vehicles.' (§ 2805, subd. (a).) It lists the specific type of vehicle-related businesses that may be inspected." (***Id***. at p. 620.) Such inspections fall under the "limited exception to the Fourth Amendment warrant requirement for inspections of 'pervasively regulated businesses.'" (***People* v. *Doty*** (1985) 165 Cal.App.3d 1060, 1066 citing to ***Lewis* v. *McMasters*** (9th Cir. 1981) 663 F.2d 954, 955; **see also *People* v. *Calvert*** (1993) 18 Cal.App.4th 1820, 1831-1836.)

However, the scope of section 2805 encompasses more than searches of vehicle-related businesses. The purpose of Vehicle Code section 2805 is ***also*** to enforce the registration laws. (**See *Jackson* v. *Superior Court*** (1977) 74 Cal.App.3d 361, 367; ***United States* v. *Lopez*** (C.D. Cal. 1979) 474 F.Supp. 943, 948.) This is made clear by looking at the original language of the statute when it went into effect in 1959: "A member of the California Highway Patrol may inspect any vehicle of a type required to be registered under this code on a highway or in any public garage, repair shop, parking lot, used car lot, or other similar establishment, for the purpose of locating stolen vehicles ***or*** *investigating the title and registration thereof*." (Stats.1959, c. 3, p. 1552, § 2805, emphasis added; **see also *People* v. *Brown*** (1970) 4 Cal.App.3d 382, 387; ***People* v. *Hunter*** (1969) 1 Cal.App.3d 461, 464.)

Whether *all* searches conducted pursuant to section 2804 or 2805 will be justified under the "special needs" exception is unknown. "Vehicle Code section 2805 has been construed as authorizing warrantless searches for a car's title and registration if the inspection is 'made under reasonable circumstances, within constitutional limitations.'" (***People* v. *Lindsey*** (1986) 182 Cal.App.3d 772, 777, fn. 5 [citing to ***People* v. *Burnett*** (1980) 107 Cal.App.3d 795, 800 and ***Jackson* v. *Superior Court*** (1977) 74 Cal.App.3d 361, 367].) "The validity of

official conduct under the statute depends upon the unique facts of each case." (***People* v. *Lindsey*** (1986) 182 Cal.App.3d 772, 777, fn. 5.) Certainly, searches of vehicles located at a repair shop more clearly fall under this exception than searches of a vehicle made on a highway in conjunction with a traffic stop. (**See *New York* v. *Burger*** (1987) 482 U.S. 691, 699-708.) But assuming the circumstances surrounding the search of a vehicle for registration and title are those covered by Vehicle Code section 2804 or 2805*, the search might be valid *regardless of whether there is probable cause to believe the vehicle is stolen*.

***Editor's note:** The language in the current version of section 2805(a) ("*any* member of the California Highway Patrol, *or* (2) *a* member of a city police department . . .") leaves some ambiguity regarding whether the language limiting law enforcement officers to those "whose primary responsibility is to conduct vehicle theft investigations" applies to CHP officers. In ***Potter***, the court stated "[o]nly law enforcement officers 'whose primary responsibility is to conduct vehicle theft investigations' may make the inspections." (***Id***. at p. 620.) And at least one appellate court has implicitly interpreted that limiting language as applying to CHP officers. (**See *People* v. *Roman*** (1991) 227 Cal.App.3d 674, 678.) However, in ***People* v. *Webster*** (1991) 54 Cal.3d 411, the California Supreme Court implicitly interpreted the "primary responsibility" language as *not* qualifying which CHP officers can rely on section 2805. (***Id***. at p. 430, fn. 5.) And the legislative history of the statute strongly suggests that the limitation does not apply to CHP officers since no such limitation on CHP officers existed before the statute was amended in 1979 to add the language allowing "a member of a city police department, a member of a county sheriff's office, or a district attorney investigator, whose primary responsibility is to conduct vehicle theft investigations." Interestingly, even before the 1979 amendment, section 2805 "had been construed to allow ***any*** peace officer—not only members of the CHP—to conduct limited and appropriate searches for registration documents in vehicles stopped or found stopped on roadways and highways. (***In re Arturo D.*** (2002) 27 Cal.4th 60, 70, fn. 5, emphasis added.) "The legislative history of the 1979 amendment suggests that it was designed not to alter that construction or impair that authority, but merely to expand the scope of the statute to provide police officers and deputy sheriffs, assigned to investigate auto thefts, the authority to examine motor vehicles located in garages, repair shops, and automobile dismantlers' lots, etc." (***Ibid***.) "[T]here is no evidence that the Legislature intended by its 1979 amendment to withhold from police officers or sheriffs (as contrasted with CHP officers) statutory authority under section 2805 to conduct appropriate limited searches for registration documents in vehicles stopped or found on public roads." (***Ibid***.)

For example, in ***People* v. *Webster*** (1991) 54 Cal.3d 411, an officer detained a vehicle with five occupants for a moving traffic violation. While that detention continued, the officer learned the driver (the defendant) was subject to arrest on an outstanding warrant. All the passengers disclaimed ownership and said they were hitchhikers. The officer then entered the vehicle and searched the glove compartment and visor for registration papers. While inside, the officer saw and retrieved a wallet lying in the middle of the front seat. After all the occupants denied ownership of the wallet, the officer opened it up and learned it belonged to

the victim of an earlier robbery. (***Id***. at p. 429.) In the California Supreme Court, the defendant claimed the "search" of the vehicle, leading to discovery of the wallet, was invalid because the officer had "neither a warrant, nor probable cause, nor justification based on exigent circumstances." (***Id***. at p. 430.) In rejecting defendant's claim, the court cited to Vehicle Code section 2805(a) for the proposition a CHP officer, among others, "was entitled to inspect a registrable vehicle and its title in order to determine ownership." (***Ibid***.) The court stated this statute (as well as the statutes requiring the production of license and registration), authorized "an officer to enter a stopped vehicle and conduct an immediate warrantless search for the required documents." (***Ibid***.) Under these circumstances, the court found the officer's "action, assuming it amounted to a 'search,' was constitutionally reasonable even absent a warrant or probable cause. (***Id***. at p. 431; **see also *People* v. *Lopez*** (2019) 8 Cal.5th 353, 360; ***In re Arturo D.*** (2002) 27 Cal.4th 60, 86 ["section 2805 is to be read consistently with applicable constitutional limitations, and, so construed, it is not invalid but simply operates to grant specific statutory authority for certain kinds of vehicle searches and, in conjunction with the case law applying the statute, to reduce a driver's expectation of privacy with regard to such limited searches."].)

Like any "special needs" search, however, the search must be conducted within the scope of the statute and must not *solely* be a pretext to search for evidence of a crime. In "special-needs and administrative-search cases", "'actual motivations' do matter." (***United States* v. *Orozco*** (9th Cir. 2017) 858 F.3d 1204, 1210; **see also *United States* v. *Knights*** (2001) 534 U.S. 112, 122; ***People* v. *Chandler*** (unreported) 2007 WL 1723697, at *5–6 [finding section 2805 did not justify search because facts demonstrated the object of the search was not registration documents].) This does not mean, however, that officers with a proper justification for carrying out a Vehicle Code section 2805 inspection, cannot *also* subjectively hope to find evidence of other crimes. (***People* v. *Calvert*** (1993) 18 Cal.App.4th 1820, 1831; see also ***United States* v. *Orozco*** (9th Cir. 2017) 858 F.3d 1204, 1213 ["We emphasize that the presence of a criminal investigatory motive, by itself, does not render an administrative stop pretextual."].)

## 3. Can a vehicle be searched for evidence of identification if the driver has committed a traffic violation, but the driver is only going to be *cited* for the violation and not taken into custody?

In general, an officer may **not** search a vehicle if the driver is only going to be cited for a traffic infraction. "[T]he United States Supreme Court had previously held that the Fourth

Amendment does not permit law enforcement to search the vehicle of a person who has been cited, but not arrested, for a traffic violation. (***Lopez*** at p. 361 citing to ***Knowles* v. *Iowa*** (1998) 525 U.S. 113.)

In ***Knowles* v. *Iowa*** (1998) 525 U.S. 113, the High Court "invalidated a vehicle search after the driver had been ticketed for speeding, a search conducted under what the court termed a putative "'search incident to citation'" exception to the Fourth Amendment's warrant requirement." (***Lopez*** at p. 361 citing to ***Knowles*** at p. 115.) "***Knowles*** dismissed the state's argument that 'a "search incident to citation' is justified because a suspect who is subject to a routine traffic stop may attempt to hide or destroy evidence related to his identity (e.g., a driver's license or vehicle registration).""" (***Lopez*** at p. 361 citing to ***Knowles*** at p. 118.)

Thus, if a person is simply going to be ***cited*** for a traffic violation, an officer may **not** search for the vehicle ***for evidence of identification*** under the ***search incident to arrest*** exception. "The interests justifying search are present whenever an officer makes an arrest. A search enables officers to safeguard evidence, and, most critically, to ensure their safety during 'the extended exposure which follows the taking of a suspect into custody and transporting him to the police station.'" (***Virginia* v. *Moore*** (2008) 553 U.S. 164, 177.) But "[o]fficers issuing citations do not face the same danger, and . . . therefore . . . they do not have the same authority to search." (***Ibid***.) Accordingly, "[o]nce it [is] clear that an arrest [is] not going to take place, the justification for a search incident to arrest [is] no longer operative." (***People* v. *Macabeo*** (2016) 1 Cal.5th 1206, 1219; **accord *In re D.W.*** (2017) 13 Cal.App.5th 1249, 1252-1253.)*

> ***Editor's note:** In ***Arizona* v. *Gant*** (2009) 556 U.S. 332, the High Court held the search of a vehicle incident to a recent occupant's *arrest* is constitutional "(1) if the arrestee is within reaching distance of the vehicle during the search, or (2) if the police have reason to believe that the vehicle contains 'evidence relevant to the crime of arrest.'" (***Davis* v. *United States*** (2011) 564 U.S. 229, 234-235 citing to ***Gant*** at p. 343; **see also *People* v. *Johnson*** (2018) 21 Cal.App.5th 1026, 1033; ***People* v. *Evans*** (2011) 200 Cal.App.4th 735, 745; ***People* v. *Nottoli*** (2011) 199 Cal.App.4th 531, 549.) The ***Gant*** court overruled its earlier holdings allowing searches of the passenger compartment as a matter of course when a recent occupant of a vehicle was arrested. However, it did *not* overrule those holdings insofar as they required that the arrest contemplated at the time of the vehicle search be a ***custodial*** arrest. (**See *Thornton* v. *United States*** (2004) 541 U.S. 615, 620 ["when a policeman has made a lawful *custodial* arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile."]; ***New York* v. *Belton*** (1981) 453 U.S. 454, 460 [same], emphasis added by IPG.)

***Lopez*** makes it clear that an officer may no longer search a vehicle for evidence of identification under the ***Arturo D.*** exception if the driver is only going to be cited for driving

without a valid license (Veh. Code, § 12500(a)), for driving without physically possessing a copy of a driver's license (Veh. Code, § 12500(a)) or for driving on a suspended license (Veh. Code, § 14601). "[T]he desire to obtain a driver's identification following a traffic stop does not constitute an independent, categorical exception to the Fourth Amendment's warrant requirement." (***Lopez*** at p. 357.)

***Editor's note regarding "citations" versus "arrests":** Although courts often draw a distinction between "citations" and "arrests" when talking about whether a search may be conducted incident to an arrest, "when the officer determines there is probable cause to believe that an offense has been committed and begins the process of citing the violator to appear in court (Veh. Code, ss 40500—40504), an 'arrest' takes place at least in the technical sense: 'The detention which results (during the citation process) is ordinarily brief, and the conditions of restraint are minimal. Nevertheless the violator is, during the period immediately preceding his execution of the promise to appear, under arrest. (Citations.) Some courts have been reluctant to use the term 'arrest' to describe the status of the traffic violator on the public street waiting for the officer to write out the citation (citations). The Vehicle Code, however, refers to the person awaiting citation as 'the arrested person.'" (***People* v. *Superior Court*** (1972) 7 Cal.3d 186, 200.) This type of "arrest" for a minor Vehicle Code violation is considered a "noncustodial" arrest and must "be distinguished in some respects from arrest under other circumstances. Ordinarily, the word 'arrest' implies a sequence of events that begins with physical custody and at least a minimal body search, and concludes with booking and incarceration or release on bail. However, where a minor Vehicle Code violation is involved, the arrest is complete when, after an investigatory stop, 'the officer determines there is probable cause to believe that an offense has been committed and begins the process of citing the violator to appear in court.' (Citation omitted.) This species of arrest does not inevitably result in physical custody and its concomitant, a search." (***People* v. *Monroe*** (1993) 12 Cal.App.4th 1174, 1183, fn.5; **accord *Henry* v. *County of Shasta*** (9th Cir. 1997) 132 F.3d 512, 522.)

However, while a search of the vehicle cannot be conducted in conjunction with a traffic citation for many (or even most) traffic offenses, including driving without a license (**see *Gant*** at p. 343 [noting that even when an occupant is arrested for a traffic violation, there will be no reasonable basis to believe the vehicle contains relevant evidence in many cases] and ***Lopez*** at p. 376, fn. 15), an officer ***is*** "entitled to demand the driver's license and registration" (***People* v. *Saunders*** (2006) 38 Cal.4th 1129, 1137 [citing to Veh.Code, §§ 4462(a) and 12951(b)]; **accord *People* v. *McGaughran*** (1979) 25 Cal.3d 577, 584).

And, while citing a driver for a failure to provide a license (or for any traffic violation for that matter), an officer may detain the driver "for a reasonable period to determine whether to issue a traffic citation and to conduct the "'ordinary inquiries incident to [the traffic] stop,'" which generally include verifying the driver's identity" as well as making a determination "whether there are outstanding warrants against the driver" and "conducting a criminal history check".

(***Lopez*** at p. 363 and fn. 5 [citing to ***Rodriguez* v. *United States*** (2015) 135 S.Ct. 1609, 1615 and ***United States* v. *Sharpe*** (1985) 470 U.S. 675, 683–686].) This period includes "certain other steps customarily taken as matters of good police practice [that] are not less intimately related to the citation process: for example, the officer will usually discuss the violation with the motorist and listen to any explanation the latter may wish to offer; and if the vehicles of either are exposed to danger, the officer may require the driver to proceed to a safer location before the investigation continues. [Citations.] [¶] Each of the foregoing steps, of course, requires a certain amount of time to accomplish." (***People* v. *Tully*** (2012) 54 Cal.4th 952, 981; ***People* v. *McGaughran*** (1979) 25 Cal.3d 577, 584, [bracketed information added by IPG].) Moreover, "[i]f the officer reasonably believes the vehicle is in a dangerously unsafe condition, he may in addition submit it to appropriate 'inspection' and 'tests.'" (***People* v. *McGaughran*** (1979) 25 Cal.3d 577, 584 [citing to Veh. Code §§ 2804 and 2806].) During this time associated with issuing the citation, probable cause may develop to believe the driver has committed *another* crime, including the crime of lying to a police officer. If so, officers may be able to search the vehicle based on probable cause to believe evidence of the *other* crime will be found in the vehicle (**see** this IPG at pp. 32-33), or make a custodial arrest for the other crime and conduct a search of the vehicle incident to the arrest based on reasonable cause to believe evidence of that other crime will be found in the vehicle (**see** this IPG at pp. 29-32.) In addition, regardless of whether the person is taken into custody or there is probable cause to believe evidence of the crime will be found, if the vehicle is properly going to be impounded, an inventory search of the vehicle may be permissible. (**See** this IPG at pp. 36-40.)

## 4. Can a vehicle be searched for evidence *of identification* if there is going to be a *custodial* arrest of the driver *for driving without a license or without being licensed, no satisfactory identification* has been provided, and the search for identification is conducted *incident to that custodial arrest*?

The issue of whether a search for identification is permissible if there is going to be a custodial arrest for a traffic violation arises because, under limited circumstances, an officer may make a ***custodial*** arrest of someone stopped for a mere traffic violation, including for driving without being licensed (Veh. Code, § 12500), or for driving without a license (Veh. Code, § 12951).

"For certain enumerated nonfelony offenses, the officer has the *discretion* to take the offender to 'the nearest or most accessible' magistrate with jurisdiction over the offense or to issue a citation and, upon the offender's signature of a promise to appear, release the offender. (§§

40303, 40304.)* For the remaining offenses (except driving under the influence), the officer must follow the cite-and-release procedure, *unless* the offender fails to present a driver's license or other satisfactory evidence of identity for examination, refuses to give a written promise to appear in court, or demands an immediate appearance before a magistrate, in which case the officer must take the offender to the magistrate. (§ 40302[.])." (***People* v. *McKay*** (2002) 27 Cal.4th 601, 619–620, emphasis added by IPG.)

***Editor's note:** The types of Vehicle Code violations for which an officer has the *option* of issuing a citation that gives 10 days' notice to appear to the offender or of taking the offender "without unnecessary delay before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made" (Veh. Code, § 40303(a)) are listed in subdivision (b) of section 40303. Among the 20 or so kinds of offenses listed in subdivision (b), are violations of Vehicle Code sections "14601, 14601.1, 14601.2, or 14601.5 relating to driving while the privilege to operate a motor vehicle is suspended or revoked." (Veh. Code, § 40303(b)(10).)

Even the majority in ***Lopez*** acknowledged that if satisfactory identification is not presented, an "officer can arrest the detainee and take him or her to be booked into jail for the traffic violation." (***Id***. at pp. 373–374 [citing to Veh. Code, § 40302; ***Atwater* v. *Lago Vista*** (2001) 532 U.S. 318, 323; ***Knowles* v. *Iowa*** (1998) 525 U.S. 113, 118; and ***People* v. *McKay*** (2002) 27 Cal.4th 601, 620-625.)

***Editor's note:** The acknowledgement in ***Lopez*** arose in the course of discussing "adequate alternative avenues for obtaining the information needed by law enforcement" short of a vehicle search when a driver does not have identification. (***Id***. at pp. 370, 373-374.) In that discussion, the ***Lopez*** majority stated the arrest and booking is an alternative means of ensuring the person is identified "if no other path seems prudent or permissible . . .". (***Id***. at p. 373.) This was a turn of phrase. The language should not be taken out of context to suggest that an arrest pursuant to section 40302 is *only* available if no other means for identifying the defendant is deemed "prudent or permissible." Neither section 40302 nor the Constitution imposes such a limitation.

Such a custodial arrest for a traffic violation does not offend the Fourth Amendment. Indeed, even a *statutorily* unauthorized custodial arrest supported by probable cause will not violate the Fourth Amendment. (**See also *Atwater* v. *City of Lago Vista*** (2001) 532 U.S. 318, 354 ["If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender."].) Thus, an otherwise proper search incident to a *statutorily* impermissible, but *constitutionally* permissible, custodial arrest will not result in the suppression of evidence seized pursuant to that search. (**See *People* v. *McKay*** (2002) 27 Cal.4th 601, 605 [Proposition 8 "eliminate[d] a judicially created remedy for violations of the

search and seizure provisions of the federal or state Constitutions, through the exclusion of evidence so obtained, except to the extent that exclusion remains federally compelled."].)

***Arizona* v. *Gant*** (2009) 556 U.S. 332

To best explain why a vehicle cannot be searched for evidence of identification even if there is going to be a *custodial* arrest of the driver for driving without a license or without being licensed, and even when the driver has not provided satisfactory identification, it is helpful to understand the scope of a search of a vehicle incident to custodial arrest exception to the warrant requirement *in general* as described in ***Arizona* v. *Gant*** (2009) 556 U.S. 332. As described in ***Gant***, a search of a vehicle incident to custodial arrest is limited to circumstances where the police to have "reason to believe" that the vehicle contains "'evidence relevant to the crime of arrest" or where the arrestee is "within reaching distance of the passenger compartment at the time of the search". (***Id***. at p. 351.)

***Gant*** suggested that for when someone is arrested for a traffic violation, it would not generally be reasonable to believe that the vehicle driven by the violator would contain relevant evidence of the offense: "In many cases, *as when a recent occupant is arrested for a traffic violation*, there will be no reasonable basis to believe the vehicle contains relevant evidence." (***Id***. at p. 343, emphasis added by IPG; **see also** this IPG at p. 29.) To illustrate when there would ***not*** be a basis for believing a vehicle contained relevant evidence of the crime for which the driver was arrested, the High Court in ***Gant*** cited to two of its earlier decisions involving an arrest for driving without a seatbelt fastened, failing to secure children in seatbelts, driving without a license, and failing to provide proof of insurance (***Atwater* v. *Lago Vista*** (2001) 532 U.S. 318, 324) and an arrest for speeding (***Knowles* v. *Iowa*** (1998) 525 U.S. 113, 118). (***Gant*** at p. 344.) In contrast, to illustrate when there ***would*** be a reasonable basis to believe the vehicle contains relevant evidence, the ***Gant*** court cited to two of its earlier decisions involving, respectively, an arrest for possessing marijuana (***New York* v. *Belton*** (1981) 453 U.S. 454) and an arrest for possessing marijuana and cocaine (***Thornton* v. *United States*** (2004) 541 U.S. 615). (***Gant*** at p. 344.)

However, ***Gant*** did not "otherwise elaborate on the circumstances under which it would be reasonable to believe offense-related evidence might be found in the arrestee's vehicle, thereby leaving some ambiguity in regard to the precise parameters of the newly-created exception. (See 3 LaFave, Search and Seizure (4th ed. 2010–2011 supp.) § 7.1(d), pp. 124–125.)" (***People* v. *Evans*** (2011) 200 Cal.App.4th 735, 746.)

For example, ***Gant*** left open the question of what quantum of suspicion is necessary to render it "reasonable to believe the vehicle contains evidence of the offense of arrest . . .". (***Gant*** at p. 351.) Although it is likely the requisite showing is "a *lesser* quantum of suspicion than the suspicion necessary to justify the search pursuant to the "automobile exception" to the warrant requirement, which requires *probable cause* to believe that the vehicle contains evidence of criminal activity. (**See *United States* v. *Edwards*** (7th Cir. 2014) 769 F.3d 509, 514 ["The Court in ***Gant*** did not elaborate on the precise relationship between the 'reasonable to believe' standard and probable cause, but the Court's choice of phrasing suggests that the former may be a less demanding standard."]; ***People* v. *Evans*** (2011) 200 Cal.App.4th 735, 749, 751 [considering that the automobile exception requires probable cause, "a requirement of probable cause in this context would render the entire second prong of the ***Gant*** search-incident-to-arrest exception superfluous. . . . Reasonable suspicion, not probable cause, is required."]; **see also** this IPG at pp. 32-33 [discussing the "automobile exception"].)

***Gant*** also left open the question of whether courts should look solely at the offense upon which the arrest is based *in the abstract* or should look at the unique factual circumstances of the stop in deciding whether there is reason to believe relevant evidence will be located inside the vehicle. "Some courts have concluded or implied that whether it is reasonable to believe offense-related evidence might be found in a vehicle is determined solely by reference to the nature of the offense of arrest, rather than by reference to the particularized facts of the case. Others have required some level of particularized suspicion, based at least in part on the facts of the specific case." (***People* v. *Evans*** (2011) 200 Cal.App.4th 735, 746–747.)*

> ***Editor's note:** The ***Evans*** court implied that in the context of arrests for minor traffic offenses, the crime should be viewed in the abstract and characterized ***Gant*** as holding such offenses "would not provide an evidentiary basis for a search" as a matter of course. (***People* v. *Evans*** (2011) 200 Cal.App.4th 735, 746.) This may be an overbroad interpretation as it is clear as day that relevant evidence of certain minor traffic offenses will be located within a vehicle. For example, an overly large air freshener "that obstructs or reduces the driver's clear view through the windshield or side windows" is obviously evidence of a Vehicle Code section 26708(a)(2) violation. (**See *People* v. *Colbert*** (2007) 157 Cal.App.4th 1068, 1072.)

At least three California courts have stated or indicated that whether the evidence that might be found will be considered "relevant" is dictated solely by reference to the nature of the offense of arrest, rather than by specific facts of the case. (**See *People* v. *Nottoli*** (2011) 199 Cal.App.4th 531, 553-554 ["***Gant*** indicated that the nature of the crime of arrest was determinative…" and "nothing in ***Gant*** suggests that the Supreme Court was adopting a fact-intensive test similar to the reasonable suspicion standard established by ***Terry* v. *Ohio***

(1968) 392 U.S. 1"]; ***People* v. *Osborne*** (2009) 175 Cal.App.4th 1052, 1065 [illegal possession of a firearm, like possession of drugs, is an offense that would provide officers with a reasonable belief evidence related to the crime of gun possession, such as more ammunition or a holster, might be found in defendant's car]; and ***People* v. *Quick*** (2016) 5 Cal.App.5th 1006, 1012 [agreeing with ***Nottoli*** and stating "In accordance with ***Gant***, 'the focus of the inquiry is entirely upon the nature of the offense of arrest, rather than the particular facts of the case" – albeit incorrectly citing to ***People* v. *Evans*** (2011) 200 Cal.App.4th 735 as *standing for* this proposition].)

On the other hand, in ***People* v. *Evans*** (2011) 200 Cal.App.4th 735, the court concluded that the standard requires looking at both the crime in the abstract *and* the specific facts of the case in deciding whether a search of a vehicle incident to arrest under ***Gant*** is permissible. The ***Evans*** court held a "reasonable belief to search for evidence of the offense of arrest exists when the nature of the offense, *considered in conjunction with the particular facts of the case*, gives rise to a degree of suspicion commensurate with that sufficient for limited intrusions such as investigatory stops." (***Id***. at p. 751, emphasis added.)

Lastly, the ***Gant*** Court did not *expressly* state that the scope of the search for "relevant evidence" was limited to the passenger compartment as it was under ***Belton***. Although "[t]his limitation [was] impliedly continued by ***Gant***." (***People* v. *Nottoli*** (2011) 199 Cal.App.4th 531, 557; **see also *People* v. *Osborne*** (2009) 175 Cal.App.4th 1052, 1064; ***Gant*** at p. 344 [in certain cases, "the offense of arrest will supply a basis for searching the passenger compartment of an arrestee's vehicle and any containers therein"].)

**This is what *Lopez* said about searches for identification when there is a custodial arrest for a traffic offense and the driver does not have satisfactory identification:**

In light of the holding in ***Arizona* v. *Gant*** (2009) 556 U.S. 332, the ***Lopez*** majority rejected the argument that a search for evidence of the crime of unlicensed driving in the case before it would have been permissible - *even if* the search of the defendant in ***Lopez*** *had* been incident to a custodial arrest. The ***Lopez*** majority reasoned that ***Gant*** requires that the police have reason to believe that the vehicle contains "evidence relevant to the crime of arrest" (***id***. at p. 343) and "no reason appear[ed] to think evidence of that crime would be found in the car" driven by the defendant. (***Lopez*** at pp. 375-376.) The ***Lopez*** majority stated: "A license is not something police need to search for as evidence of driving without a license; at most, it might provide a defense to the charge." (***Id***. at p. 376, fn. 15.)

Under the same rationale, a search incident to a custodial arrest made on the basis that the driver had a *suspended* license (e.g., in California, a violation of Vehicle Code sections 14601 et seq. which prohibit driving on suspended or revoked license) would not be permissible. In fact, in ***Arizona* v. *Gant*** (2009) 556 U.S. 332 itself, the High Court held that an officer had no "evidentiary basis" to conduct a search of the vehicle incident to an arrest for driving on a *suspended* license. (***Id***. at p. 344; **see also *People* v. *Nottoli*** (2011) 199 Cal.App.4th 531, 541 [unreasonable to believe evidence of *expired* license offense would be found in the car].)

Indeed, identification will not be considered "relevant" evidence of *most* traffic violations. As noted in ***Gant***: "In many cases, *as when a recent occupant is arrested for a traffic violation*, there will be no reasonable basis to believe the vehicle contains relevant evidence." (***Id***. at p. 343, emphasis added by IPG; **see also** this IPG at p. 26.) "Ordinarily, a driver's license or other identification will supply no evidence of a traffic violation." (***Lopez*** at p. 372; **cf.**, ***Knowles* v. *Iowa*** (1998) 525 U.S. 113, 118 [rejecting argument that searches incident to a *non*custodial routine traffic stop should be permitted because a drive may "attempt to hide or destroy evidence related to his identity (e.g., a driver's license or vehicle registration)"].)

Moreover, though ***Lopez*** did not discuss the question, even if an officer came across identification in plain view when conducting a search of the vehicle pursuant to the *alternative* basis for searching a vehicle incident to arrest under ***Gant*** (i.e., while the arrestee was within reaching distance of the vehicle), the identification could not be seized if the arrest was for driving without a license or without being licensed (or, for that matter, if the arrest was for a typical minor traffic violation). This is because, as explained above, evidence of identification is not "relevant" evidence of a crime and if "the incriminating character of an object in plain view is not immediately apparent, the plain view doctrine cannot justify its seizure." (***People* v. *Bradford*** (1997) 15 Cal.4th 1229, 1295.)

## 5. Can a vehicle be searched for evidence *of identification* if there is going to be a *custodial arrest* of the driver for a crime involving *lying to an officer*?

While identification, in general, is not relevant evidence of most traffic violations, including violations for driving without a license or without being licensed, this does not mean that identification can *never* be relevant evidence. A search for identification may be permitted if, during a traffic stop, probable cause develops to arrest a driver for a crime for which a driver's license or other identification *would* be relevant evidence. One such circumstance is when,

during the course of a traffic stop, the officer develops probable cause to believe the driver is lying about his identity in a way that violates one or more statutes and the officer plans to make a custodial arrest for that violation.

In ***Lopez***, the majority observed that identification *can* constitute relevant evidence of a crime involving lying about one's identity. (***Id***. at p. 372 [and identifying such crimes as those described in Penal Code section 148.9 and Vehicle Code sections 31 and 40000.5].) Following that observation, the ***Lopez*** majority noted that "some out-of-state courts have upheld vehicle searches for identification under the search incident to arrest exception, which authorizes searching an arrestee's vehicle for evidence relevant to his or her crime when an officer has reason "'to believe evidence relevant to the crime of arrest might be found in the vehicle.'"" (***Id***. at p. 372 citing to ***Gant*** at p. 343.) Among the out-of-state cases cited was ***Armstead* v. *Com.*** (2010) 56 Va.App. 569, 577 [695 S.E.2d 561], a case where "the court explained that the officer had probable cause to believe the driver was lying about his identity based on computer checks, notified the driver he was under arrest, and therefore could search the vehicle for evidence of the crime of providing false identity information." (***Lopez*** at p. 373; **see also *Deemer* v. *State*** (Alaska Ct.App. 2010) 244 P.3d 69, 75 and ***State* v. *Gordon*** (1991) 110 Or.App. 242, 245–246.)

The dissenting opinion agreed with the majority on this point: "In some cases, the officer's questioning of the driver about his or her identity may demonstrate that the driver has lied to the officer in violation of Vehicle Code section 31 (giving false information to a peace officer), Penal Code section 148.9 (giving false identity to a peace officer), and perhaps in violation of Penal Code section 530.5 (false personation). The officer may then arrest the driver and search the vehicle for evidence of those violations, including evidence of correct identity." (***Lopez*** (Dis. opn. of Chin, J at p. 385, fn. 4 [citing to ***Arizona* v. *Gant*** (2009) 556 U.S. 332, 343–344]; **see also *United States* v. *Leiva*** (N.D. Iowa, Feb. 4, 2020, No. 19-CR-79-CJW-MAR) 2020 WL 556400, at pp. *14–16 [collecting *additional* cases holding searches of vehicles for identification incident to an arrest for providing false identity to an officer are permissible].) Such a search incident to arrest should be permissible regardless of the fact law enforcement officers already possess evidence that the defendant has provided false information. "[O]fficers need not desist when they possess some evidence of an offense; they may continue to search until they have uncovered all the evidence that is within their lawful authority to obtain." (***United States* v. *Leiva*** (N.D. Iowa, Feb. 4, 2020, No. 19-CR-79-CJW-MAR) 2020 WL 556400 at p. *15.)

***Editor's note:** The officer conducting a search for identification when the driver is going to be arrested for the crime of lying to a police officer should be able to search the *entire* passenger compartment and containers therein for the evidence. (**See** this IPG at p. 28.) The search would *not* be limited to just the areas within a vehicle where such documentation reasonably may be expected to be found."

***Editor's note:** The "automobile exception" to the warrant requirement provides an *alternative* basis allowing for a search of vehicle for identification when an officer has probable cause to believe evidence of one of the crimes involving lying to an officer would be found in the vehicle of the person suspected of the crime. That exception is discussed in this IPG at p. 34.)

## A. Can the search of a vehicle for evidence of identification take place *before* the driver or occupant is formally arrested for a crime involving lying to the police?

Ordinarily, "[a]n officer with probable cause to arrest can search incident to the arrest before making the arrest." (***In re Lennies H***. (2005) 126 Cal.App.4th 1232, 1239 [citing to ***Rawlings* v. *Kentucky*** (1980) 448 U.S. 98, 111]; ***People* v. *Limon*** (1993) 17 Cal.App.4th 524, 538 [same].) "The fact that a defendant is not formally arrested until after the search does not invalidate the search if probable cause to arrest existed prior to the search and the search was substantially contemporaneous with the arrest." (***In re Lennies H.*** (2005) 126 Cal.App.4th 1232, 1239–1240 [citing to ***Rawlings* v. *Kentucky*** (1980) 448 U.S. 98, 111]; **see also *United States* v. *Smith*** (9th Cir. 2004) 389 F.3d 944, 951 [noting the "requirement that the search and the arrest be roughly contemporaneous is not strictly temporal in nature" and that the "relevant distinction turns not upon the moment of arrest versus the moment of the search but upon whether the arrest and search are so separated in time or by intervening acts that the latter cannot be said to have been incident to the former"].) The rule that once probable cause to make a custodial arrest arises, an officer can conduct a search incident to the arrest regardless of whether a formal arrest has been made has been applied to searches of vehicle under the exception described in ***Gant***. (**See *People* v. *Osborne*** (2009) 175 Cal.App.4th 1052, 1065 and fn. 10.)

However, the ***Lopez*** majority declined to express any view as to whether a search of a vehicle pursuant to ***Gant***'s "evidence relevant to the crime of arrest" exception could "come before, or only after, the arrest." (***Lopez*** at p. 373, fn. 9.) Right after this language, the ***Lopez*** court "cf'd" the case of ***People* v. *Macabeo*** (2016) 1 Cal.5th 1206 at pp. 1216–1219.)

In ***People* v. *Macabeo*** (2016) 1 Cal.5th 1206, the court acknowledged that the High Court case of ***Rawlings* v. *Kentucky*** (1980) 448 U.S. 98 stands for the proposition that "[w]hen a custodial arrest is made, and that arrest is supported by independent probable cause, a search incident to that custodial arrest may be permitted, even though the formalities of the arrest follow the search." (***Macabeo*** at p. 1218.) However, the ***Macabeo*** court went on to state "that ***Rawlings*** does *not* stand for the broad proposition that probable cause to arrest will always justify a search incident as long as an arrest follows." (***Macabeo*** at p. 1218, emphasis in original.) If an officer originally has probable cause to arrest but then decides an arrest is not going to take place (presumably before searching) and later arrests the defendant after finding some evidence during the search, the search may not be viewed as valid. (**See *Macabeo*** at pp. 1218-1219 ["Once it was clear that an arrest was not going to take place, the justification for a search incident to arrest was no longer operative.".)

Thus, if an officer has probable cause to believe a driver is lying about his or her identity, the search incident to arrest exception of ***Gant*** should allow for a search of a vehicle before formal arrest but not if the officer has decided before searching that he or she is not going to take the driver into custody regardless of whatever evidence turns up during the search.

***Editor's note:** Not to beat a dead horse, but as discussed in the previous editor's note, under the "automobile exception" to the warrant requirement, when an officer has probable cause to believe evidence of one of the crimes involving lying to an officer would be found in the vehicle of the person suspected of the crime, a search for evidence of identification in the vehicle would be permissible *even if* no custodial arrest was *intended or made*. (**See** this IPG, immediately below.)

## 6. Can a vehicle be searched for evidence of identification if an officer has probable cause to believe the identification will provide evidence of a crime under the "*automobile exception*" to the warrant requirement?

"Under the automobile exception to the warrant requirement, an officer may search a vehicle if the officer has probable cause to believe that evidence of a crime will be found inside." (***Lopez*** at p. 372, citing to ***United States* v. *Ross*** (1982) 456 U.S. 798, 799.)

"The automobile exception and the "evidence relevant to the crime of arrest" [of ***Arizona* v. *Gant*** (2009) 556 U.S. 332] exception overlap to some degree, but the former applies ***independent of any arrest***." (***People* v. *Lopez*** (2019) 8 Cal.5th 353, 373 [bracketed information and italics added by IPG].) "These two exceptions are interrelated, but not

identical. The suspicion required for a vehicle search incident to arrest under ***Gant*** is keyed to the offense of arrest; the automobile exception is not tied to an arrest." (***United States* v. *Edwards*** (7th Cir. 2014) 769 F.3d 509, 514.)

Thus, if an officer has probable cause to believe a driver's license or other identification will be found in a vehicle and that those items will, under the specific circumstances, be evidence of a crime, the officer may search the *entire* vehicle for identification *regardless of whether an arrest is intended or takes place*.

### A. A search for identification may be permissible if the officer has probable cause to believe a driver is lying about his or her identity.

One example of when a search for identification in a vehicle would be permissible is when there is probable cause to believe the driver has committed a crime involving lying to police, e.g., a violation of Vehicle Code section 31, Penal Code section 148.9, or Penal Code section 530.5.

In ***Lopez***, after observing that "[o]rdinarily, a driver's license or other identification will supply no evidence of a traffic violation", the majority of the court recognized that "[i]n circumstances where an officer believes he or she has been given false identification information, other exceptions may come into play" and a search for identification may be proper. (***Id***. at p. 372.) Specifically, the ***Lopez*** majority stated: "lying to a police officer about one's identity is a criminal offense punishable by imprisonment in county jail. (Pen. Code, § 148.9; Veh. Code, §§ 31, 40000.5.)" (***Lopez*** at p. 372.) "[I]dentification may well supply evidence of the crime of lying about one's identity [citation omitted], and an officer may search a vehicle upon probable cause to believe evidence of such lying will be found therein [citation omitted]." (***Ibid***.)

The ***Lopez*** court identified several out-of-state decisions supporting this position, including the case of ***Armstead* v. *Com.*** (2010) 56 Va.App. 569, 577 [695 S.E.2d 561], a case where "the court explained that the officer had probable cause to believe the driver was lying about his identity based on computer checks, notified the driver he was under arrest, and therefore could search the vehicle for evidence of the crime of providing false identity information." (***Lopez*** at p. 373.) This search would not be limited to the areas where it was reasonable to keep the identification or to the passenger compartment. It could include any area of the vehicle which could potentially contain the item. (**See** this IPG, *supra*, at p. 33.)

## 7. Can a vehicle be searched for evidence *of identification* pursuant to the "automobile exception" if the officer has probable cause to believe the vehicle is stolen?

If probable cause to believe the vehicle may be stolen develops during a traffic stop, then, under the automobile exception(**see** this IPG at pp. 32-33), an officer would be justified in searching "*every* part of the vehicle and its contents that may conceal the object of the search." (***People* v. *Waxler*** (2014) 224 Cal.App.4th 712, 719; ***People* v. *Superior Court (Nasmeh)*** (2007) 151 Cal.App.4th 85, 100-101, emphasis added.) The *object* of a search when there is probable cause to believe a vehicle is stolen would not only be registration documents (**see** this IPG at pp. 9-12), but also, inter alia, documents such as a driver's license or other documents identifying the true owner since it is reasonable to believe there will be indicia of ownership of the true owner contained within the vehicle. (**See e.g., *United States* v. *Edwards*** (7th Cir. 2014) 769 F.3d 509, 516 ["evidence of a vehicle's ownership is always relevant to the crime of driving a vehicle without the owner's consent, and ownership documents are often kept within a car"]; ***United States* v. *Kissell*** (D. Kan. 2019) 2019 WL 6492650, at *4 [same]; ***State* v. *Hicks*** (Fla. Dist. Ct. App. 1991) 579 So.2d 836, 837–838 [citing to ***Maldonado* v. *State*** (Tex.Cr.App.1975) 528 S.W.2d 234, 241 for the proposition that where there is probable cause to believe a vehicle is stolen, "a search of the glove compartment, floorboards, and rear areas might, for example, turn up some document or item bearing the true owner's name."]; **cf.**, ***Lopez*** at p. 377, fn. 16 [noting that "according to LaFave, a '[s]earch of the car should be permitted only when the failure to produce the registration and *the other relevant circumstances establish probable cause that the car is stolen*'."", emphasis added by IPG.].)

> ***Editor's note:** A search of (at least) the passenger compartment of the vehicle for documents such as a driver's license or other documents identifying the true owner should also be permissible when a defendant is *arrested* for driving a stolen vehicle, since such documents would be "evidence relevant to the crime of arrest" (***Arizona* v. *Gant*** (2009) 556 U.S. 332, 351). (**See** this IPG at p. 26.)

### A. Is there probable cause to believe a vehicle is stolen based solely on the failure of the driver to provide satisfactory evidence of identification and registration?

In ***People* v. *Superior Court (Simon)*** (1972) 7 Cal.3d 186, the California Supreme Court held "mere failure of a motorist to have his driver's license in his immediate possession is a

circumstance of such generally innocent connotation that it cannot reasonably transform the coincident lack of a registration card into grounds to believe the motorist guilty of grand theft." (***Id***. at p. 195.) However, the Court stated that other observable circumstances may "invest the lack of a registration card with guilty significance" and listed several other circumstances which, if present, could provide the necessary probable cause to believe a vehicle is stolen. (***Id***. at pp. 196-197.)

For example, "when an officer stops a vehicle with missing or improperly attached license plates and in addition learns the motorist is unable to produce the registration card, he may reasonably entertain the belief that the vehicle is stolen." (***Id***. at p. 196.) "Other observable circumstances relied on in the cases to invest the lack of a registration card with guilty significance are, for example, the motorist's evasive driving and failure to stop promptly when the officer signals him to do so (***Myles***), and reports of criminal activity in progress in the neighborhood (***Jones***)." (***Simon*** at p. 196; **see also *People* v. *Williams*** (1971) 17 Cal.App.3d 275, 278 ["What constitutes reasonable cause to suspect auto theft varies, but absence of registration, inability to furnish satisfactory proof of ownership, and unsatisfactory explanation for possession of the vehicle may suffice."]; ***People* v. *Martin*** (1972) 23 Cal.App.3d 444, 447 [where driver stopped for an illegible license plate was unable to produce a driver's license and stated that he did not know where the registration certificate was located, since the automobile was owned by another person, officers were "reasonably justified in searching the automobile for the registration certificate so they could (1) issue a citation to the actual owner, and (2) *determine whether the vehicle was stolen*." (emphasis added)]; ***People* v. *Odegard*** (1962) 203 Cal.App.2d 427, 431 [probable cause to believe vehicle stolen based partially attached out-of-state license plate, driver's failure to produce driver's license and driver's providing a registration card for the vehicle in someone else's name].)

In addition, the lack of a registration card gives "the officer reasonable grounds to inquire further into the matter, i.e., to ask the motorist for an explanation of its absence" and "answers by the motorist which are inconsistent, conflicting, or palpably false . . . may reasonably be taken to indicate consciousness of guilt [and] constitute, accordingly, a further suspicious circumstance sufficient to support a belief that the vehicle is stolen." (***Simon*** at p. 197.)

Courts in other jurisdictions have also recognized that failure to produce proof of ownership is *a factor* that can be used to *help establish* probable cause to believe a vehicle is stolen. (***United States* v. *Santana-Garcia*** (10th Cir. 2001) 264 F.3d 1188, 1193 ["a defendant's

lack of a valid registration, license, bill of sale, or some other indicia of proof to lawfully operate and possess the vehicle in question, thus giving rise to objectively *reasonable suspicion* that the vehicle may be stolen", emphasis added]; ***United States* v. *Fernandez*** (10th Cir. 1994) 18 F.3d 874, 879 [same and collecting cases]; ***State* v. *Branham*** (Ariz. Ct. App. 1997) 952 P.2d 332, 336 ["other facts, in combination with the failure to provide registration, may provide probable cause to believe that a car is stolen, or is involved in some other criminal activity"]; ***People* v. *Rodriguez*** (Colo. 1997) 945 P.2d 1351, 1361 ["Insufficient proof of registration for a vehicle may provide *reasonable suspicion* to believe that the car may be stolen", emphasis added].)

## 8. Can a vehicle be searched pursuant to the impound and inventory search exception if the driver has no satisfactory identification?

The holding in ***Lopez*** **should not impact** whether a vehicle can be searched pursuant to the exception to the warrant requirement allowing officers to conduct inventory searches of impounded vehicles. And there will be *some* situations where officers who would otherwise have conducted a limited search for identification papers under ***Arturo D.*** (but can no longer do so under ***Lopez***) will still, as a practical result, be able to locate those same documents when conducting a warrantless inventory search. For example, one circumstance allowing for an inventory search of a vehicle that might commonly crop up during a stop of a vehicle driven by a person without identification is when the driver is going to be taken into custody for not having satisfactory identification or the driver's license has been suspended and the vehicle cannot safely be left at the location where the vehicle was stopped. (See ***In re Arturo D.*** (2002) 27 Cal.4th 60, 76 [noting that when a driver is arrested, "in many instances the vehicle also would be impounded and would be subject to an inventory search"].)

Under the inventory search exception, a vehicle that is going to be *lawfully* impounded may be searched for the purpose of inventorying the items in the vehicle. (***South Dakota* v. *Opperman*** (1976) 428 U.S. 364, 373.) Inventory searches are a "well-defined exception to the warrant requirement of the Fourth Amendment." (***Colorado* v. *Bertine*** (1987) 479 U.S. 367, 371.) "When a vehicle is lawfully impounded, an inventory search pursuant to an established, standardized procedure does not violate the Fourth Amendment." (***People* v. *Quick*** (2016) 5 Cal.App.5th 1006, 1011 [citing cases].)

Whether an inventory search is valid depends on whether the initial decision to impound the vehicle was reasonable. (***People* v. *Torres*** (2010) 188 Cal.App.4th 775, 786; ***People v.***

***Williams*** (2006) 145 Cal.App.4th 756, 761.) For the decision to impound to be reasonable, courts will consider whether there is statutory authority for the impound. (**See *People* v. *Torres*** (2010) 188 Cal.App.4th 775, 786; ***People* v. *Williams*** (2006) 145 Cal.App.4th 756, 761.)

Subdivision (h) of Vehicle Code section 22651 provides statutory authority for an impound "[i]f an officer arrests a person driving or in control of a vehicle for an alleged offense and the officer is, by this code or other law, required or permitted to take, and does take, the person into custody" or "[i]f an officer serves a notice of an order of suspension or revocation pursuant to Section 13388 or 13389." (Veh. Code, § 22651(h)(1)&(2); **see also *United States* v. *Caseres*** (9th Cir. 2008) 533 F.3d 1064, 1074; ***People* v. *Green*** (1996) 46 Cal.App.4th 367, 373–375 [upholding inventory search of automobile properly impounded upon the defendant's arrest for driving without driver's license].)

And there is specific statutory authority to tow a vehicle, regardless whether the driver is arrested, when the solo driver has violated one of the Vehicle Code sections prohibiting unlicensed driving. (**See** Veh. Code, § section 22651(p) [allowing impoundment when a "peace officer issues the driver of a vehicle a notice to appear for a violation of Section 12500, 14601, 14601.1, or 14601.2 and there is no passenger in the vehicle who has a valid driver's license and authorization to operate the vehicle"]; Veh. Code, § 14602.6(a)(1) [authorizing the arrest of a person and impoundment of a vehicle when, "a peace officer determines that a person was driving a vehicle while his or her driving privilege was suspended or revoked, driving a vehicle while his or her driving privilege is restricted pursuant to Section 13352 or 23575 and the vehicle is not equipped with a functioning, certified interlock device, or driving a vehicle without ever having been issued a driver's license"].) In addition, there is more general statutory authority to tow a vehicle when it "is found upon a highway or public or private property and a peace officer has probable cause to believe that the vehicle was used as the means of committing a public offense" at least when the offense is a misdemeanor and possibly when the offense is an infraction. (**See** Veh. Code, § 22655.5(a); ***People* v. *Auer*** (1991) 1 Cal.App.4th 1664, 1668.)

However, to satisfy the Fourth Amendment, the impound must **also** be found to serve a community caretaking purpose. (***People* v. *Williams*** (2006) 145 Cal.App.4th 756, 762-763; ***United States* v. *Caseres*** (9th Cir. 2008) 533 F.3d 1064, 1074–1075.) "[I]mpounding serves a community caretaking function when a vehicle is parked illegally, blocks traffic or

passage, or stands at risk of theft or vandalism." (***People* v. *Lee*** (2019) 40 Cal.App.5th 853, 867; **accord *People* v. *Williams*** (2006) 145 Cal.App.4th 756, 761 [and noting purpose is met if vehicle creates a hazard]; ***United States* v. *Caseres*** (9th Cir. 2008) 533 F.3d 1064, 1075 [same]; ***Miranda* v. *City of Cornelius*** (9th Cir. 2005) 429 F.3d 858, 864 [same].) These community caretaking functions are embodied in Vehicle Code section 22651, subdivisions (a), (b), (d), (e), and (f). "Also relevant to the caretaking inquiry is whether someone other than the defendant could remove the car to a safe location." (***People* v. *Lee*** (2019) 40 Cal.App.5th 853, 867 citing to ***People* v. *Torres*** (2010) 188 Cal.App.4th 775, 790.)

The mere fact the driver is being arrested does not *necessarily* mean impounding the vehicle serves a community caretaking function *if* the vehicle can be safely left where it was stopped. (**See *People* v. *Williams*** (2006) 145 Cal.App.4th 756, 762-763; ***United States* v. *Duguay*** (7th Cir. 1996) 93 F.3d 346, 353.)

Preventing further unlawful driving *may* constitute a community caretaking purpose. (**See e.g.**, ***People* v. *Williams*** (2006) 145 Cal.App.4th 756, 763 [noting that since the defendant "had a valid driver's license and the car was properly registered, it was not necessary to impound it to prevent immediate and continued unlawful operation" in finding impoundment *improper*]; ***People* v. *Benites*** (1992) 9 Cal.App.4th 309, 326 [noting officer's decision to impound the vehicle was reasonable because, inter alia, there was a possibility the defendant (who was unlicensed) would simply drive off once the officer left the scene]; ***People* v. *Auer*** (1991) 1 Cal.App.4th 1664, 1668 [describing as legitimate the purpose of preventing an offender without a valid license "from reoffending when the officer has completed the citation process and departed"].) Albeit several cases have strongly indicated this purpose does *not* qualify as a community caretaking function. (**See e.g., *People* v. *Torres*** (2010) 188 Cal.App.4th 775, 792 ["Federal cases underscore the impounding of a vehicle driven by an unlicensed driver must be supported by some community caretaking function *other than* temporarily depriving the driver of the use of the vehicle" emphasis added by IPG]; ***United* v. *Caseres*** (9th Cir. 2008) 533 F.3d 1064, 1075 [expressing skepticism that "impounding an unlicensed driver's car to prevent its continued unlawful operation is itself a sufficient community caretaking function" but noting that "even if preventing future unlawful operation were a sufficient community caretaking function in and of itself, it would obviously not apply to cases . . . where the unlicensed driver was taken into custody"]; ***Miranda* v. *City of Cornelius*** (9th Cir.2005) 429 F.3d 858, 866 [noting the rationale of impounding vehicles merely to deter future illegal activity "is incompatible with the principles of the community caretaking

doctrine"]; ***People* v. *Quick*** (Colo. 2018) 417 P.3d 811, 813 ["seizing a vehicle to prevent the driver from continuing to drive with a suspended license does not fall within the specific community caretaking exception"]; **but see *United States* v. *Kendall*** (D. Colo. 2019) 2019 WL 529524, at *7–8 [impoundment proper where registered owner could not be located].)

"An officer may exercise discretion in deciding when to impound an automobile "'so long as that discretion is exercised according to standard criteria and on the basis of something other than suspicion of evidence of criminal activity.…" [Citation.]'" (***People* v. *Green*** (1996) 46 Cal.App.4th 367, 372–373 citing to ***People* v. *Benites*** (1992) 9 Cal.App.4th 309, 324.) Statutes authorizing impounding under various circumstances (e.g., Vehicle Code section 22651) may constitute a standardized policy guiding officers' discretion. (**See *People* v. *Torres*** (2010) 188 Cal.App.4th 775, 787; ***People* v. *Shafrir* (**2010) 183 Cal.App.4th 1238, 1248; ***People* v. *Green*** (1996) 46 Cal.App.4th 367, 373.)

Officers also may be given discretion in deciding whether and how to conduct an inventory search but that discretion must be guided by "standardized criteria" (***Colorado* v. *Bertine*** (1987) 479 U.S. 367, 371) or "established routine" (***Illinois* v. *Lafayette*** (1983) 462 U.S. 640, 648). Inventory searches of impounded vehicles will be deemed reasonable "where the process is aimed at securing or protecting the car and its contents" but unreasonable "when used as a ruse to conduct an investigatory search." (***People* v. *Steeley*** (1989) 210 Cal.App.3d 887, 891–892 citing to ***Colorado* v. *Bertine*** (1987) 479 U.S. 367, 371-372; **accord *People* v. *Lee*** (2019) 40 Cal.App.5th 853, 867.) The inventory search must "be based on some standard other than suspected criminal activity." (***People* v. *Needham*** (2000) 79 Cal.App.4th 260, 266 citing to ***Florida* v. *Wells*** (1990) 495 U.S. 1, 4, 110.)

However, the fact an officer who conducts an inventory search for a proper purpose has mixed motives should not invalidate the search. An inventory search is invalid only if it is undertaken for the "*sole* purpose of investigation." (***Colorado* v. *Bertine*** (1987) 479 U.S. 367, 372 (emphasis added by IPG.) As discussed in ***United States* v. *Johnson*** (9th Cir. 2018) 889 F.3d 1120, "the mere 'presence of a criminal investigatory motive' or a 'dual motive—one valid, and one impermissible—' does not render an administrative stop or search invalid; instead, we ask whether the challenged search or seizure 'would … have occurred in the absence of an impermissible reason.'" (***Id***. at p. 1126; **see also *United States* v. *Bowhay*** (9th Cir. 1993) 992 F.2d 229, 231 [explaining that "dual motives" in inventory-search context are permissible]; ***United States* v. *Lopez*** (2d Cir. 2008) 547 F.3d 364, 372 ["a police expectation that the

search will reveal criminal evidence" does not render the search unreasonable if the search is conducted under standardized procedures]; ***United States* v. *Judge*** (5th Cir. 1989) 864 F.2d 1144, 1147 ["While there are undoubtedly mixed motives in the vast majority of inventory searches, the constitution does not require and our human limitations do not allow us to peer into a police officer's 'heart of hearts.'"]; ***United States* v. *Maestas*** (D.N.M. 2019) 416 F.Supp.3d 1278, 1287 [citing to ***United States* v. *Cecala*** (10th Cir. 2000) 203 F.3d 836, at *2 for the proposition that "[w]hile mixed motives or suspicions undoubtedly exist in many inventory searches, such motives or suspicions alone will not invalidate an otherwise proper inventory search."]; California Criminal Investigation (2019) at p. 511, fn. 1774 [listing many cases to same effect].)

"The standardized procedure or established routine authorizing the inventory search need not be written." (***People* v. *Needham*** (2000) 79 Cal.App.4th 260, 266 citing to ***People* v. *Steeley*** (1989) 210 Cal.App.3d 887, 889; **see also *People* v. *Williams*** (1999) 20 Cal.4th 119, 127 [if search procedure is routine or standardized, policy need not be written].) And the inventory search of an impounded vehicle may precede the actual towing of a vehicle from the scene. (**See *Colorado* v. *Bertine*** (1987) 479 U.S. 367, 368-369 [upholding inventory search where officer inventoried contents of the vehicle and opened closed containers *before* tow truck arrived]; **see also *People* v. *Needham*** (2000) 79 Cal.App.4th 260, 264; ***People* v. *Steeley*** (1989) 210 Cal.App.3d 887, 891; ***People* v. *Burch*** (1986) 188 Cal.App.3d 172, 175.)

## 9. Does the holding in *Lopez* impact whether an officer can search a vehicle for the VIN (vehicle identification number)?

In ***New York* v. *Class*** (1986) 475 U.S. 106, two officers stopped a driver for traffic infractions. "The driver emerged from his car, closed the vehicle's door, and produced registration and insurance documents, but no license. One of the officers then opened the defendant's car door in order to look for the vehicle identification number (VIN), which was located on the doorjamb of cars made before 1969. Not seeing a VIN at that location, the officer decided to look for one in the other spot where a VIN regularly is found in more recently manufactured vehicles, on the top of the dashboard-an area normally visible from outside a vehicle. The officer reached inside the car to remove some papers covering that area of the dashboard, and in doing so he noticed the handle of a gun beneath the driver's seat. The gun was seized, and the defendant was arrested for possession of the weapon." (***In re Arturo D.*** (2002) 27 Cal.4th 60, 71 citing to ***Class*** at p. 108.)

Although all members of the High Court agreed that the entry was a search, that the search was not supported by probable cause to believe that the car was stolen or contained contraband, and that the search could not be justified under the automobile exception or any other exception to the Fourth Amendment's warrant requirement, the majority nevertheless upheld the entry – finding it to be reasonable under a balancing test that considered "the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion". (***Class*** at p 118; **see also *In re Arturo D.*** (2002) 27 Cal.4th 60, 72; ***People* v. *Davitt*** (1976) 56 Cal.App.3d 845, 848 [opening of car for the purpose of seeing the VIN which officer knew to be on the door jamb is a minimal intrusion that may be justified on grounds falling short of probable cause].)

The ***Class*** majority came to its conclusion in light of: "(i) the importance of the VIN system in tracking stolen vehicles and in promoting highway safety . . ., (ii) the generally decreased expectation of privacy that drivers have with regard to automobiles, the VIN in particular, and the pervasive regulatory scheme that surrounds the use of vehicles on public roads . . ., (iii) officer safety concerns . . . , and (iv) the limited nature of the search undertaken. (***Arturo D.*** at p. 72 citing to ***Class*** at pp. 111-112, 113-114, 116, and 118-119.)

Although the ***Arturo D***. court discussed ***Class*** and found its analysis and conclusion consistent with its own ultimate holding (***Arturo D.*** at p. 73), and the ***Lopez*** majority overruled ***Arturo D.*** insofar as ***Arturo D.*** allowed searches to locate a driver's identification following a traffic stop, the ***Lopez*** decision **should have no impact** on the ability of officers to search a vehicle for a VIN number as described in ***Class***. This is because the ***Lopez*** court believed the search for a VIN number in ***Class*** was authorized based on a *lesser* expectation of privacy than the expectation of privacy in the areas searchable pursuant to ***Arturo D***. (**See *Lopez*** at p. 367 ["***Arturo D.*** found reassurance in the high court's reasoning in ***Class***, which held that an officer did not act unreasonably in shifting papers on a dashboard to read the car's VIN, *without ever acknowledging the very different privacy implications* of permitting officers to look through drivers' wallets and purses for their personal identification."].) (Emphasis added by IPG.)]; **see also *People* v. *Lindsey*** (1986) 182 Cal.App.3d 772 [VIN plate in plain view, along with information obtained from reliable informant, furnished probable cause to believe automobile was stolen and thus search for secondary identification numbers on vehicle was permissible under the Fourth Amendment].)

## 10. Does *Lopez* impact whether an officer can enter a vehicle when the officer asks or demands proof of identification and the driver does not provide it, *but states it is in the vehicle somewhere* (such as the glove compartment)? That is, must the officer allow the driver to retrieve it, or can the officer, for safety purposes, insist upon retrieving it themself from the vehicle?

In ***In re Arturo D.*** (2002) 27 Cal.4th 60, the court upheld an officer's entry into a vehicle to search a glove compartment for identification on grounds that when a driver claims not to have identification or registration, an officer may, as a matter of course, search the vehicle of areas in the vehicle where such items might be found. (***Id***. at p. 65.) The exception recognized in ***Arturo D.*** did not "require officers to ask for oral identification before searching for physical documentation" or "require officers to allow persons detained outside the vehicle to reach into the vehicle to retrieve identification themselves—even where. . . *officers did not testify to particularized safety concerns*." (***Lopez*** at p. 363 citing to ***Arturo D.*** at pp. 83-85, emphasis added.) The ***Lopez*** court overruled ***Arturo D.*** but did not discuss a potential alternative basis for allowing the search that occurred in case of the second defendant (Hinger) discussed in ***Arturo D.***

In the case of defendant Hinger (consolidated with the case of Arturo D. and discussed within ***Arturo D.***) the defendant initially denied having any identification or documentation concerning the car he was driving but later indicated his wallet might be in the glove compartment. The ***Arturo D.*** court upheld the search of the glove compartment of defendant Hinger's vehicle under the same basic rationale court it upheld the search of Arturo D's vehicle. However, in a footnote, the ***Arturo D.*** court postulated an alternative theory for upholding the search, stating: "it appears that the officer's search may have been permissible for reasons *independent of the analysis* we set out above. As noted previously, after [the officer] informed defendant Hinger that the officer would search the car for documentation, defendant told him that defendant's wallet might be in the glove compartment. Having been advised that a wallet might be in that location (*and hence might contain requisite documentation*), [the officer] *was entitled to protect his own safety by retrieving that item himself*, rather than permitting defendant to further rummage about in the glove compartment." (***Id***. at p. 87, fn. 28, emphasis added by IPG.)

In articulating this potential alternative theory, the ***Arturo D.*** court cited to two earlier appellate court decisions that both stood for the principle that "where the safety of the officer or the public is not endangered thereby, a driver may himself retrieve and present his license for examination by an investigating officer" but "[i]f officer safety warrants, . . . the officer may control the movements of the vehicle's occupants and retrieve the license himself." (***People* v. *Hart*** (1999) 74 Cal.App.4th 479, 489 quoting and paraphrasing from ***People* v. *Faddler*** (1982) 132 Cal.App.3d 607, 609-611 and citing to ***People* v. *Webster*** (1991) 54 Cal.3d 411, 431.)

Although the ***Lopez*** case ruled the first theory relied upon by ***Arturo D.*** was no longer valid, it did not expressly discuss whether officers would be entitled to conduct a search for identification if the defendant claimed identification *was present* but an officer chose to retrieve the item for themself instead of allowing the driver to so do *out of genuine officer safety concerns*. The ***Lopez*** court did not directly address this question even though the defendant in ***Lopez*** (like defendant Hinger in ***Arturo D.***) initially denied having a driver's license but then later indicated (after she was handcuffed) that there "might be" identification in the vehicle. (***Id***. at p. 358.)

Expect the defense to argue that the holding in ***Lopez*** should be interpreted to prevent officers from entering a designated area in the vehicle to retrieve the item for themselves even when the defendant states the items exist and specifies where it is and *even if* the officer has safety concerns about letting the driver retrieve it. The defense will claim that the ***Lopez*** court rejected the theory underlying the search in ***Arturo D.*** even though it recognized that ***Arturo D.*** was based, in part, on the fear that if officers were compelled to allow drivers to retrieve the relevant documents themselves, safety concerns would arise. (***Lopez*** at p. 370.) In other words, the defense will argue for a rule that the police cannot enter the vehicle to retrieve a license or identification during a typical traffic stop regardless of whether the driver states he or she has identification; if the officer wants to see the identification, the officer must allow the *driver* to retrieve it.

The prosecution response to this argument (aside from the fact that ***Lopez*** did not really address this issue) should be to point out that the ***Lopez*** court implicitly recognized that if an officer can articulate safety concerns, an officer can retrieve the items from the area where the driver claims the items are located. (**See *Lopez*** at p. 364 [noting that ***Arturo D.*** would not require police to allow drivers to retrieve their identification themselves if identification were

not provided "even where, *as here*, officers did *not* testify to particularized safety concerns."], emphasis added by IPG.)

Moreover, allowing the officer to retrieve the documents when safety concerns are present is consistent with the recognition in ***Arizona* v. *Gant*** (2009) 556 U.S. 332 (the case primarily relied upon by the ***Lopez*** court to overturn ***Arturo D.***'s holding regarding searches for identification) that even if no arrest is made, officers can "search the car if they reasonably believe 'the suspect is dangerous and … may gain immediate control of weapons.'" (***Gant*** at p. 352 citing to ***Michigan* v. *Long*** (1983)463 U.S. 1032, 1049.)

## 11. Does the ruling in *Lopez* prevent searches of persons, wallets or purses found on individuals who fail to provide identification?

If a driver detained for a traffic violation does not provide identification, can an officer search the driver's *person* for a wallet or purse in order to locate the driver's license or other identification when no custodial arrest is going to be made? Neither the California nor the United States Supreme Court has "specifically decided the issue of whether a limited search of a person for identification following a detention is constitutional" and that there appears to be a split among the lower courts. (***People* v. *Garcia*** (2006) 145 Cal.App.4th 782, 787; ***State* v. *Hollins*** (Minn. Ct. App. 2010) 789 N.W.2d 244, 249 ["Courts in other jurisdictions vary on whether the police may search a person for identification."].)

That issue was touched upon but not decided in ***People* v. *Lopez*** (2019) 8 Cal.5th 353, which involved a search of a purse located *inside a vehicle*. There is, however, language in ***Lopez*** which certainly suggests that mere failure to provide identification *by itself* would not justify seizing or searching a *person* for identification when no custodial arrest is going to be made – *at least when it comes to traffic stops where the person has not lied or attempted to conceal their identity*. Specifically, as *indirect* support for its conclusion that a warrantless search of a *vehicle* for identification when no identification is provided is unlawful, the ***Lopez*** court pointed out that there was only "limited authority allowing a warrantless search of a ***person*** solely for evidence of his or her identity" while noting many decisions from other states "have not sanctioned similar searches." (***Id***. at p. 379, emphasis in original)

***Editor's note:** The sole case cited by the ***Lopez*** court as authority for allowing such a search was ***State* v. *Flynn*** (Wis. 1979) 285 N.W.2d 710] [officer justified in removing and examining wallet of suspect who refuses to identify himself].) And the ***Lopez*** court noted ***Flynn*** could be distinguished from searches for identification during a traffic stop because "the case-specific rationales the Wisconsin Supreme Court offered for approving such a search in ***Flynn***—a burglary suspect stopped in the wee hours who repeatedly refused to give his name and whom the officer had no other means of identifying—have limited relevance in the context of a garden-variety traffic stop." (***Lopez*** at p. 379.)
The decisions cited by ***Lopez*** from other states finding no right to search a person for identification absent a custodial arrest were: "***People* v. *Williams*** (1975) 63 Mich.App. 398, 400–404, [234 N.W.2d 541] [officer can request identification, but seizure of wallet to examine suspect's driver's license violates 4th Amend.]; ***State* v. *Varnado*** (Minn. 1998) 582 N.W.2d 886 [warrantless frisk of driver after she failed to produce a license not within any exception to the warrant requirement]; ***State* v. *Webber* (**1997) 141 N.H. 817, 820, [694 A.2d 970] [refusing to create an " 'identification search' exception" to the warrant requirement under the state Constitution]; ***State* v. *Scheer***, ***supra***, 781 P.2d at p. 860 [search of driver who fails to present license in order to find license unlawful]; ***Baldwin* v. *State*** (Tex.Crim.App. 2009) 278 S.W.3d 367, 372 [during investigative detention, officer may ask for identification but may not "search a defendant's person to obtain or confirm his identity"]; ***Jones* v. *Com***. (2010) 279 Va. 665, 672, [691 S.E.2d 801] [seizure of driver's wallet to examine for identification, even after the driver denies having any, violates 4th Amend.]." (***Lopez*** at p. 379.) The ***Lopez*** court also cited to "4 LaFave, Search and Seizure, supra, § 9.6(g), p. 944 [expressing "considerable doubt" about Wisconsin's rule and noting the absence of other authority nationally that would support it]; see id. at pp. 943–945." (***Lopez*** at p. 379; **see also *State* v. *Aucoin*** (La. Ct. App. 1992) 613 So.2d 206, 209 [improper to open defendant's wallet to locate identification where officer "did not intend to effect a full custody arrest of the defendant; instead, she intended to issue a misdemeanor summons."]; ***State* v. *Biegel*** (Wash. Ct. App. 1990) 787 P.2d 577, 578-579 [officer's removal of narcotics suspect's wallet to obtain identification, sans probable cause, when suspect refused to identify himself to officer was a search beyond scope of permissible *Terry* stop of suspect]; **but see *State* v. *Wilcox*** (N.J. Super. Ct. App. Div. 1981) 435 A.2d 569, 571 [allowing search of wallet on defendant for identification – albeit only after the defendant falsely identified himself during detention].)

Moreover, considering one of the rationales given in ***Lopez*** for overruling ***Arturo D.*** was that ***Arturo D.***'s rule encouraged officers to "focus in particular on *purses, wallets*, briefcases, and other similar personal effects where identification is typically carried but the *intrusion into privacy is also at its apex*" (***Lopez*** at p. 369), it is likely that the court in ***Lopez*** (if confronted directly with the question) would find purses and wallets located on the person would be entitled to as much protection from a search for identification based solely on grounds the individual failed to provide identification as would a vehicle. (**See also *In re Arturo D.*** (2002) 27 Cal.4th 60, 90 (conc. & dis. opn. of Werdegar, J) [noting that rule adopted by majority, allowing a search for identification would "sanction a patdown search of a male driver, or a search of a female driver's purse, to search for his or her wallet and, finding a wallet in either place, would further authorize the officer to open and inspect its contents" and stating "this is not the law"].)

There are three California appellate cases that consider the question of whether officers can seize and search the wallet of a detained individual who fails to provide identification and is not going to be taken into custody: ***People* v. *Long*** (1987) 189 Cal.App.3d 77; ***People* v. *Loudermilk*** (1987) 195 Cal.App.3d 996; and ***People* v. *Garcia*** (2006) 145 Cal.App.4th 782.

In ***People* v. *Long*** (1987) 189 Cal.App.3d 77, a defendant, who appeared to be under the influence of drugs, was lawfully detained and asked for identification. He said he had none although the officer could see that the defendant had a wallet in his back pocket. The officer then directed defendant to look through his wallet. The defendant did so by turning his back to the officer but shielded the interior of the wallet from the officer's view. The officer grabbed defendant's arm and saw bindles of what looked like methamphetamine and identification papers. The officer then asked/told the defendant to hand over the wallet. (***Id***. at pp. 81-82.) On appeal, the defendant claimed the officer's conduct violated the Fourth Amendment. The ***Long*** court recognized that there existed a reasonable expectation of privacy in the contents of one's wallet but still found "it was reasonable for the officer to require that defendant produce identification from his wallet." (***Id***. at p. 86.) The court stated that "[e]ven assuming a further intrusion was involved when the officer then viewed the contents of the wallet, . . . this limited observation [was] a necessary and reasonable measure to prevent either the destruction of evidence, or injury from a concealed weapon." (***Id***. at p. 88.) Moreover, the court held "[t]he law enforcement need to confirm identity *also* justified the officer's examination of the wallet's contents in defendant's hands. (***Id***. at p. 89.)

In ***People* v. *Loudermilk*** (1987) 195 Cal.App.3d 996, deputy sheriffs stopped the defendant based on the defendant matching the appearance of a suspect in an assault. One deputy asked defendant to produce identification. The defendant responded that he did not have any. The deputy then patsearched the defendant for weapons but found none. However, the deputy felt a wallet in defendant's rear pocket. The officer removed the wallet and began searching for identification. This ultimately led to defendant's confession to the assault. (***Id***. at p. 1000.) The appellate court concluded the deputy was justified in taking the wallet from defendant's pocket to identify him because the "seizure of defendant's wallet for purposes of identification was within the scope of the investigative detention." (***Id***. at p. 1001.) The court observed that the deputy "sought merely to learn defendant's identity. As such, the papers observed by the officers while searching for identification were lawfully seized and defendant's spontaneous confession was not the fruit of any illegal search." (***Id***. at p. 1002.) The ***Loudermilk*** court reasoned that a suspect who is detained (i.e., not yet arrested) "may not lie to the officer with

impunity about his identity if there is a quick and minimally intrusive method of resolving the doubt. It is commonplace in our society for traffic officers to require motorists to remove their driver's license from their wallets when stopped by the officer. To require defendant in this case to display his driver's license or other proof of identification is a minor intrusion which is strictly limited to the sole justification of the detention." (***Id***. at p. 1002.)

The ***Loudermilk*** court did issue the caveat that its holding should not be interpreted as meaning a "suspect may be detained and *searched* merely because he either refused to identify himself or refused to produce proof of identification." (***Id***. at p. 1004, emphasis added by IPG.) Rather, the court stated: its holding was "limited to the unique facts of this case, where defendant lied to the officer and himself created the confusion as to his own identity." (***Ibid***; **see also *Lopez*** at p. 379, fn. 18 [highlighting this language].) As an *alternate* independent ground, the court held that the search of the wallet was justified as being incident to a lawful arrest." (***Loudermilk*** at p. 1004.)

In ***People* v. *Garcia*** (2006) 145 Cal.App.4th 782, the court noted the caveat in ***Loudermilk***, when it held a patsearch of a defendant detained for a Vehicle Code violation could not be justified where the defendant stated he had no identification but did not provide a false name and birth date. (***Id***. at pp. 786-788.) The ***Garcia*** court observed the patsearch in the case before was done solely for purposes of locating identification *without probable cause* and found both ***Long*** and ***Loudermilk*** to be factually distinguishable. (***Id***. at pp. 787-788.) The ***Garcia*** court stated neither case stood for the proposition that "an officer is permitted to perform a pat down search for identification." (***Id***. at p. 786.)

The ***Garcia*** court was aware of a split in the case law (the Attorney General cited two pairs of cases going both ways), but was unequivocal in finding an officer could not, as a matter of course, frisk a detained person solely to locate identification without probable cause to do so. (***Id***. at p. 788.)

**Bottom line**: It is probably fair to say that the most accurate assessment of the current state of the law in California regarding whether the seizure and search of a wallet or purse from a detained individual's person in order to locate identification is reasonable under the Fourth Amendment turns ***on whether the officer has probable cause to believe it contains evidence of a crime and/or there is an attempt by the person to conceal or lie about their identity***. (**See *People* v. *Fannon*** (unreported) 2016 WL 1179092, at *8 [seizure of wallet from backpocket of defendant during traffic stop improper where there was

no evidence defendant attempted to frustrate officer's effort to identify him or was uncooperative in any way]; ***People* v. *Choto*** (unreported) 2015 WL 5031755, at p. *9 [checking defendant's identification in his wallet during a lawful ***Terry*** stop and frisk permissible where "officer reasonably believes that the suspect is not being candid about his or her identity"]; ***People* v. *Medina*** (unreported) 2009 WL 4068603, at *5 [officer's retrieval of wallet from defendant's person during detention was proper where defendant provided a false name and birth date, claimed he had no identification, and failed to comply when asked to perform a field sobriety test, and when asked to produce his wallet]; ***People* v. *McWoodson*** (unreported) 2010 WL 5312196, at *7 [officers could not search defendant detained based on odor of marijuana for identification absent probable cause].) Presumably, the same analysis would apply to a purse being carried by a detainee. And this conclusion is further supported by ***Lopez***.

Significantly, the ***Lopez*** court *did not disagree* with the decision in ***People* v. *Loudermilk*** (1987) 195 Cal.App.3d 996. Rather, the ***Lopez*** court distinguished ***Loudermilk*** in a way completely consistent with the bottom line described above: "The Court of Appeal decision in ***People* v. *Loudermilk*** (1987) 195 Cal.App.3d 996, 241 Cal.Rptr. 208 also does not suggest general authority to search for identification. The court approved an officer examining a wallet found in a patdown for weapons, but *only because the suspect first "lied to the officer and himself created the confusion as to his own identity" by falsely stating he had no identification*." (***Lopez*** at p. 379, fn. 18 citing to ***Loudermilk*** at p. 1004.)

In addition, the holding in ***Lopez*** regarding searches of vehicles for identification is largely consistent with the current state of the law regarding searches of detained individuals for identification since the ***Lopez*** decision generally precludes the search unless there is reason to believe that the identification would be relevant evidence of a crime involving lying about one's identity. (**See *People* v. *Lopez*** (2019) 8 Cal.5th 353, 372 ["identification may well supply evidence of the crime of lying about one's identity . . . and an officer may search a vehicle upon probable cause to believe evidence of such lying will be found therein"]; this IPG, at pp. 29-33.)

***Editor's note:** When the officer is going to make a ***custodial** *arrest* of the defendant, a wallet or purse found on the person of the defendant should be seizable and searchable incident to arrest. (**See *Davis* v. *United States*** (2011) 564 U.S. 229, 232 [citing to ***Chimel* v. *California*** (1969) 395 U.S. 752, 763 for the proposition that "a police officer who makes a lawful arrest may conduct a warrantless search of the arrestee's person"]; ***People* v. *Diaz*** (2011) 51 Cal.4th 84, 94 (abrogated on other grounds by ***Riley* v. *California*** (2014) 573 U.S. 373) ["courts commonly hold that delayed warrantless searches of wallets found on arrestees' persons are valid searches incident to arrest. (See, e.g., ***United States* v. *Passaro*** (9th Cir.1980) 624 F.2d 938, 943–944.)"]; ***In re Humberto O.*** (2000) 80 Cal.App.4th 237, 243 [the "'search incident to arrest' rule has been interpreted to include a woman's purse as a normal extension of the person subject to search as an item 'customarily carried by an arrested person ... [and] within the area of her immediate control.'"]; ***People* v. *Ingham*** (1992) 5 Cal.App.4th 326, 330 [same]; ***People* v. *Loudermilk*** (1987) 195 Cal.App.3d 996, 1004 [search of the wallet for identification justified as being incident to a lawful arrest]; ***People* v. *Harris*** (1980) 105 Cal.App.3d 204, 213 ["It is well established principle deeply ingrained in our criminal law that an arrested person and his belongings may be searched without a warrant both as incident to the arrest . . . and/or as incident to the booking procedure"]; ***Stephens* v. *State*** (Alaska Ct. App. 1985) 698 P.2d 664, 665 ["under the United States Constitution the police already have authority to conduct a full search of an arrestee incident to an arrest. Under the federal constitution there is therefore no need to discuss a search for identification since a search for identification is subsumed under the general authority to search.].)

## 12. If a search of a vehicle was properly conducted in reliance on the decision in *Arturo D.* and the search took place before *Lopez* issued, should the evidence seized pursuant to that search be suppressed?

"[S]earches conducted in objectively reasonable reliance on binding appellate precedent are not subject to the [Fourth Amendment] exclusionary rule." (***Davis* v. *United States*** (2011) 564 U.S. 229, 232.) Since ***Arturo D.*** was binding appellate precedent until November 15, 2019, it follows that evidence obtained during searches for identification made in reliance on ***Arturo D.*** should not be suppressed.

In ***Lopez***, the Attorney General made the argument that the officer acted in good faith reliance on ***Arturo D***. However, the defense argued the argument was forfeited and the ***Lopez*** court ultimately declined to consider the issue "[b]ecause the Court of Appeal did not have occasion to consider the issue . . ." (***Lopez*** at p 381.) Instead, without expressing any views on the issue, the ***Lopez*** court remanded the case back to the Court of Appeal to issue a new opinion consistent with the holding of the California Supreme Court. (***Ibid***.) On remand, in an unpublished opinion, the Court of Appeal in ***Lopez*** decided the issue was forfeited. (***People* v. *Lopez*** [unreported] 2020 WL 913780, at pp. *4-5.)

However, another appellate court did confront the issue directly in the unpublished case of ***People* v. *Reyes*** [unreported] 2020 WL 414502. The ***Reyes*** court upheld the denial of a motion to suppress evidence where the officer searched a vehicle (and found cocaine in the console) after the defendant admitted that he was not the registered owner of the vehicle but indicated that the registration papers were in the car. (***Id***. at p. *2.) The ***Reyes*** court did not do a lot of analysis or seek to distinguish searches for registration papers from searches for identification documents (**see** this IPG, at pp. 9-12). It simply held that exclusion of the cocaine was inappropriate because the officer had "acted in good faith based on binding state appellate precedent . . ." (***Reyes*** at p. *2 [citing to ***Davis* v. *United States*** (2011) 564 U.S. 229, 232; ***People* v. *Macabeo*** (2016) 1 Cal.5th 1206, 1221 [good faith warrantless search of cell phone]; ***People* v. *Sandee*** (2017) 15 Cal.App.5th 294, 301, fn. 4 [same; warrantless search of cell phone based on search conditions in defendant's probation order]; ***People* v. *Jimenez*** (2015) 242 Cal.App.4th 1337, 1365 [blood draw of intoxicated motorist conducted in objectively reasonable reliance on then-binding precedent]; and ***People* v. *Youn*** (2014) 229 Cal.App.4th 571, 579 [warrantless blood test proper based on earlier High Court precedent].)

**OUR NEXT EDITION OF IPG WILL COVER ONE OR MORE OF THE FOLLOWING:**

**A NEW CASE FROM THE CALIFORNIA SUPREME COURT ON WHEN A DEFENDANT MAY PROPERLY BE DENIED BAIL AND THE APPROPRIATE STANDARD OF REVIEW WHEN BAIL IS DENIED FOR GRANT OR DENIAL OF BAIL (*IN RE WHITE* [S248125]) PLUS A NEW COURT OF APPEAL CASE ON HOW TO INTERPRET EMERGENCY RULE 4 (*AYALA V. SUPERIOR COURT* (2020) 48 Cal.App.5th 387);**

**A NEW CASE FROM THE CALIFORNIA SUPREME COURT ON WHETHER IT IS MISCONDUCT FOR A PROSECUTOR TO ARGUE THAT A TESTIFYING OFFICER SHOULD BE BELIEVED BECAUSE THE OFFICER WOULD NOT PUT HIS CAREER ON THE LINE OR AT RISK OR SUBJECT HIMSELF TO POSSIBLE PROSECUTION FOR PERJURY (*RODRIGUEZ* [S251706]); OR**

**THE CONTINUING IMPACT OF SB 1437 ON PRIOR MURDER CONVICTIONS AND CURRENT PROSECUTIONS OF MURDERS UNDER A FELONY MURDER, NATURAL AND PROBABLE CONSEQUENCE, OR PROVOCATIVE ACT MURDER THEORY.**

Suggestions for future topics to be covered by the Inquisitive Prosecutor's Guide, as well as any other comments or criticisms, should be directed to Jeff Rubin at (408) 792-1065.