

1837 Highland Ave.  
National City

Herman: here is the stuff I  
promised you - sorry I didn't get  
it to you yesterday - read thru  
it & call me if you have any  
questions

Obledo's # is:

(916) 445-1722  
445-6951

You can also reach

Steve Ybarra at that #.

Their argument is that  
Federal law (welfare law)  
requires them to do what they're  
doing - that's wrong for 2

reasons:

① The welfare dept. itself  
has argued successfully in  
other cases that STATE  
law prevails over Federal law

(2)

in the welfare area —  
California can, if it so  
desires, have a more  
liberal law than federal  
law —

(2) We believe that the  
federal law is not  
inconsistent with state  
law — federal law  
(see the last line of  
Judge's Memorandum Opinion  
page 1) allows aliens  
to collect welfare if  
they are in the U.S.  
"under color of law."  
We argue that that

(3)

includes all aliens who have not yet had a deportation hearing - They are protected by hundreds of laws & cannot be removed from the US without a hearing - therefore they are here "under color of law" - no one really knows what the fuck "under color of law" means anyway.

Bert Corona will be with us in Sacramento. Spoke with him this A.M. Please get back to me.  
Pete

HERMAN: THIS HAS BEEN THE STATE LAW SINCE 1971

§ 11102

PUBLIC SOCIAL SERVICES

Div. 9

with emergency hospitalization may recover the reasonable cost thereof from the county liable for his support. 14 Ops.Atty.Gen. 89.

County to which recipient of old age security or blind security removes may charge county of his former residence for expense of his necessary hospitalization or health service for period of one year after such removal. 13 Ops.Atty.Gen. 254.

Under former section 2200 (now this section), where a recipient of aid to the aged has moved from one county to another, the county to which such recipient has moved must furnish the hospitalization where the recipient is placed in a hospital, but the county from which he moved must, during the year, pay the cost thereof to the county granting hospitalization. 2 Ops.Atty.Gen. 347.

§ 11103. Repealed by Stats.1971, c. 578, p. —, § 23.6, eff. Aug. 13, 1971

Historical Note

The repealed section, added by Stats. 1968, c. 1313, p. 2497, § 1, related to the effect of invalidity of residence requirements.

§ 11104. Eligible aliens

Any alien who is otherwise qualified for aid shall be eligible to receive public assistance if he certifies under penalty of perjury that to the best of his knowledge he is in the country legally and is entitled to remain indefinitely, or if he certifies that he is not under order for deportation, or if he certifies that he is married to an individual not under order for deportation.

Such certification by the alien shall, upon receipt, be forwarded to the United States Immigration and Naturalization Service for verification. Aid shall continue pending such verification.

If an alien has been residing in the United States continuously for five years or more at the time the county department requests certification of his legal right to reside, the affidavits of two U. S. citizens attesting to such continuous residence by the alien shall constitute a rebuttable presumption that the alien is entitled to be in the country for purposes of determining eligibility.

If an alien subject to the provisions of this section is not fluent in English, it shall be the duty of the county department to provide an understandable explanation of the requirements of this section in a language in which the alien is fluent.

(Added by Stats.1971, c. 578, p. —, § 24, eff. Aug. 13, 1971.)

Cross References

- Affidavits, see Code of Civil Procedure § 2009 et seq.
- Affirmation of eligibility made under penalty of perjury, see § 11054.
- Perjury, see Penal Code § 118 et seq.
- Punishment, see Penal Code § 126.
- Presumption of truth of affirmations, affidavits and sworn statements, see § 11062.
- Presumptions, see Evidence Code § 600 et seq.

Library References

Paupers ⇔ 43(1).

C.J.S. Paupers §§ 2, 71.

these are the three options - Obsolete regulations get rid of the 2nd & 3rd options

the certification is to be mailed to INS - the alien is NOT to be sent to INS to cooperate

INS can verify that the 2nd or 3rd option were truthful -

that in fact the alien is not under order for deportation - that is, simply, regulations it is not enough that INS comes back & says the alien is not under order for deportation - INS must say the alien is in the country lawfully for aid to continue - we argue that only an immigration Judge can make this decision at a deportation hearing.

COURTS OPINION  
BASED ON  
SAME LAW

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SACRAMENTO

RAFAELA VARELA, et al., ) NO. 251426 DEPT. 12  
Plaintiffs, )  
vs. ) MEMORANDUM OPINION  
DAVID SWOAP, et al., )  
Defendants. )

Extrinsic aids are not necessary to ascertain the legislative intent in enacting Section 11104 of the Welfare and Institutions Code. The language of that section is clear and explicit. Pursuant to Section 11104, an alien, otherwise qualified, is eligible for aid upon his certification that to the best of his knowledge he is in the country legally and entitled to remain indefinitely or if he certifies that he is not under orders for deportation or if he certifies that he is married to an individual not under orders for deportation.

By requiring an alien seeking to qualify under the second and third categories to certify that he is "in the country legally," defendant indeed has exceeded the authority granted him by the Legislature to implement and apply the statute. Obviously, if the defendant's interpretation were correct, there would be no need for the second or third categories at all. Under Federal

3 options

-1-  
This is what the Reagan administration required - unlike current regulations, they did not go so far as to require production of documentation & cooperation with INS - judge still said they went too far.

law, it is not only aliens lawfully admitted to this country who may be entitled to aid -- there also may be included those aliens permanently residing in this country under color of law (45 C.F.R. Section 233.50), and this provides a reason for the legislative enactment of the second and third categories.

The Court has examined "Alien Status Verification Form WR6" which defendant requires each county welfare department to use in seeking verification of an alien's status from the United States Immigration and Naturalization Service. The form provides a place wherein the Service may report that it has no record of the alien, and thereupon aid to the alien is terminated or refused.

This procedure also, in the Court's view, goes beyond the defendant's authority. The inability to find a record in our gigantic bureaucracy of itself should not and does not overcome a positive certification.

A preliminary injunction will issue restraining defendant from further utilization of his letter of October 31, 1973, relating to Section 11104 of the Welfare and Institutions Code and his interpretation of the statute set forth therein, and from further use of Form WR6 as it presently reads.

Plaintiff will be required to post a nominal bond in the amount of \$100.00.

DATED:

DEC 18 1973

IRVING H. PERLUSS

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JUDGE OF THE SUPERIOR COURT

This injunction was wiped out  
by Obledo's regulations issued  
in September 1975 -  
these are the regulations we are  
now attacking.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

1  
2  
3  
4 RAFAELA VARELA, et al, )  
5 Plaintiffs, )  
6 -v- )  
7 DAVID SWOAP, et al, )  
8 Defendants. )  
9

PRELIMINARY INJUNCTION

No. 251426

WE GOT Filed

ENDORSED:

FEB 4 1975

W. N. DURLEY, CLERK  
BY F. SEARLE, DEPUTY

10 The application for a Preliminary Injunction made herein  
11 came on regularly to be heard on November 14, 1974 pursuant to a  
12 Notice of Motion of Plaintiffs. PETER SCHEY, LEGAL AID SOCIETY OF  
13 SAN DIEGO, appeared as counsel for Plaintiffs and THOMAS E. WARRINER,  
14 Deputy Attorney General, appeared as counsel for Defendants.

15 Proof having been made to the satisfaction of the Court,  
16 the matter having been submitted to the Court, it appears to the  
17 Court that Defendant DAVID SWOAP'S letter TO ALL COUNTY WELFARE  
18 DIRECTORS of October 31, 1973 violates Government Code § 11373 in  
19 that the requirements set forth in said October 31, 1973 letter as  
20 to what an alien must certify to in order to be eligible for public  
21 assistance are inconsistent with, alter the scope of and impair W&I  
22 § 11104.

23 Furthermore, it appears to the Court that the last sentence  
24 of EAS § 42-407.131 and Defendant's form designated WR-6 violate  
25 Government Code § 11373 in that EAS § 42-407.131 and the WR-6 which  
26 require public assistance benefits to terminate if the U.S. Immigra-  
27 tion and Naturalization Service (INS) is unable to verify the alien's  
28 status and replies to the County Welfare Department that it has no

This letter<sup>-1-</sup> simply required  
aliens to "certify" (no proof necessary)  
that they're "in the country  
lawfully" & not under order for  
deportation.

1 record of the alien, are inconsistent with, alter the scope of and  
2 impair W&I Code § 11104. It therefore appears to the Court that  
3 there is a reasonable possibility that Plaintiffs will prevail on  
4 the merits.

5 NOW, THEREFORE, IT IS HEREBY ORDERED that during the pen-  
6 dency of this action, Defendant, STATE DEPARTMENT OF BENEFIT PAYMENT  
7 and Defendant, DAVID SWOAP, his successors in office, officers, agen-  
8 employees, representatives, and all persons acting in concert or par-  
9 ticipating with him or subject to his control or supervision includ-  
10 ing all County Welfare Directors, shall be and are hereby effective  
11 immediately prohibited and enjoined from:

12 1. Using Defendant's DAVID SWOAP'S Letter TO ALL COUNTY  
13 WELFARE DIRECTORS of October 31, 1973 in determining the eligibility  
14 of aliens for public assistance benefits and;

15 2. Using the last sentence of EAS § 42-407.131 and De-  
16 fendant's form designated WR-6 when INS replies that it has no re-  
17 cord of the alien as a basis to terminate public assistance benefit.

18 DATED: FEB 4 - 1975

19  
20 **IRVING H. PERLUSS**

21 IRVING H. PERLUSS  
22 JUDGE OF THE SUPERIOR COURT

23 **ATTEST:**

24 W. N. DUNLEY, CLERK  
25 By F. SEARLE  
26 DEPUTY CLERK  
27  
28



M E M O R A N D U M

U R G E N T

Mailed yesterday

11/8/76

to 120 people & groups

TO: Concerned Attorneys, Community Groups, Agencies  
and Workers

FR: Peter A. Schey, Robert Burkholder

RE: VARELA V. SWOAP; ALIEN ELIGIBILITY FOR PUBLIC  
ASSISTANCE

DATED: November 8, 1976

Despite a number of meetings with top officials of the State Department of Benefit Payments (SDBP), including two meetings with Mario Obledo, attended by various community leaders, their position remains that: (1) Aliens must produce documentation showing their lawful immigration status in the United States, and that (2) aliens in "questionable" cases must cooperate with Immigration and Naturalization Service.

Our position has not changed. We still argue that state law, namely, Welfare and Institutions Code §11104, simply requires that the alien certify under penalty of perjury that:

"he is in the country legally and is entitled to remain indefinitely, or if he certifies that he is not under order for deportation..."

The language of §11104 is clear on its face, and that is why Judge Perluss gave us a preliminary injunction on February 4, 1975, saying:

"The language of that section [11104] is clear and explicit...an alien is eligible for aid upon his certification that to the best of his knowledge he is in the country legally and entitled to remain indefinitely or if he certifies that he is not under orders for deportation..."

Despite this Court Order, SDBP issued so-called "emergency" regulations in September, 1975 that do not allow the alien to "certify" to anything. The regulations require production of documentation and cooperation with I.N.S.

STEVE  
916-445-0198

Nov. 8, 1976

WRU

November 8, 1976

The results of the current policy, which we attempted to overturn through negotiations are as follows:

1. In Los Angeles County alone, approximately 1,000 people each month are being denied aid or terminated from aid (according to L. A. County statistics). These people are 100% Chicanos, who are being denied the basic necessities of life---food, medical attention and shelter. They are people who should qualify for these benefits under state law (§11104);
2. Aliens in "questionable" cases have been locked into rooms while trying to apply for public assistance while INS was called to come and pick them up;
3. People in "questionable" cases have been denied basic and emergency medical treatment even in terminal cases;
4. Immigration attorneys report that a high percentage of aliens being deported by INS (without legal representation in most cases) are people who were forced to "cooperate" with INS as a condition of receiving welfare.

THE WELFARE DEPARTMENT IS REQUIRING ALL APPLICANTS TO SHOW PROOF OF CITIZENSHIP OR IMMIGRATION PAPERS. THOUSANDS OF POOR PEOPLE LAWFULLY IN THE U.S. DO NOT HAVE THESE DOCUMENTS IN THEIR POSSESSION. CITIZENS AND NON-CITIZENS, DEPORTABLE ALIENS AND NON-DEPORTABLE ALIENS ALIKE ARE ALL HAVING THEIR RIGHTS TRAMPLED ON BY THE EFFORTS OF THE WELFARE SYSTEM TO BE THE LAW-ENFORCEMENT ARM OF THE MIGRA.

Every group, agency and individual receiving this memo is urged to immediately send a letter or telegram to the Governor demanding that the current regulations be dropped and that Welfare and Institutions Code section 11104 be followed as written. The Governor should also be urged to order SDBP to follow the court ruling in Varela v. Swoap. We have been told that the final decision lies with Gov. Brown. Please let him hear your voices; immediately communicate with him at:

GOVERNOR JERRY BROWN  
STATE CAPITOL BUILDING  
SACRAMENTO, CAL., 95814

COME TO SACRAMENTO FOR THE COURT HEARING

This case is again set to be argued before Superior Court Judge Perluss in Sacramento on November 19, 1976, at 1:30P.M. Many people and agencies will be meeting at the Governor's office in the State Capitol at noon on Thursday November 18, 1976. We will try to meet with the Governor to demand that he order his officials in the welfare system to follow the state law.

People will also be meeting with other legislators and the press to publicize the tragic conditions imposed on the Chicano population of this State by the Brown Administration.

At a minimum we believe and hope that every concerned agency and organization will send a representative to Sacramento to voice opposition against the current regulations adopted by the Brown administration. Even the Reagan administration did not require production of documentation and cooperation with INS. The Brown administration has turned the welfare system into the most effective law enforcement tool that INS has in this State. Please join us in Sacramento in letting the administration, the legislature and the public know of this intolerable situation.

If you have any questions, please contact either ROBERT BURKHOLDER or PETER SCHEY at (714) 233-5463.

PLEASE DETACH BELOW AND MAIL BACK TO US:

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NAME OF INDIVIDUAL and/or ORGANIZATION: \_\_\_\_\_

WE BELIEVE THAT THE BROWN ADMINISTRATION SHOULD DROP THE CURRENT WELFARE REGULATIONS AND SHOULD FOLLOW THE COURT ORDER ISSUED IN VARELA V. SWOAP AND THE STATE LAW AS STATED IN WELFARE AND INSTITUTIONS CODE SECTION 11104:

\_\_\_\_\_

yes

\_\_\_\_\_

no

WE HAVE COMMUNICATED WITH THE GOVERNORS OFFICE ON THIS:

\_\_\_\_\_

yes

\_\_\_\_\_

no

MAIL TO:

ROBERT BURKHOLDER/PETER SCHEY  
3040 Imperial Ave  
San Diego, Cal., 92102

Thank you.