NO CRIME TO BE POOR

Defending welfare fraud allegations in criminal, administrative, and immigration proceedings

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I. Introduction: Welfare Fraud Cases are Often Unjust and Impact Noncitizens Disproportionately

Immigrants as well as other low-income community members too often fall victim to unjustified allegations of "welfare fraud."[2] If charged criminally, such allegations may appear on their face to be indefensible to a public defender or private criminal defense attorney. And even if no criminal charges result, ongoing public benefits may be denied and restitution to the government agency which provided the benefits may be demanded.

In addition, a "welfare fraud" conviction often is devastating for noncitizens, leading to possible inadmissibility, deportability or ineligibility for immigration benefits and relief from removal. However, "welfare fraud" charges often cannot be legally substantiated and many defenses to such allegations do in fact exist.

This practice advisory outlines the required elements of welfare fraud in the criminal, administrative and immigration context, along with a broad overview of public benefits reporting requirements to help understand how to distinguish fraud from nonfraudulent error. Included are common explanations and defenses for scenarios that may appear fraudulent on the surface but are often simple human error by both public benefits recipients[3] and county welfare departments[4] and their workers. The California-specific names for programs commonly received by immigrants will be used, such as CalWORKs (California's version of the federal Temporary Assistance for Needy Families (TANF) program) and CalFresh (California's version of the Supplemental Nutritional Assistance Program (SNAP), formerly known as "food stamps").

NOTE: California counties are required by law to operate a program of General Assistance (GA) or General Relief (GR) for indigent individuals residing in the county who are not eligible for other cash assistance programs.[5] The counties have wide latitude to set the precise eligibility rules and requirements for their programs but are generally bound by constitutional requirements of due process under a substantial body of case law. While this advisory focuses on CalWORKs and CalFresh programs, many of the basic principles laid out below may apply to fraud allegations in GA/GR programs.

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[2] This practice advisory will use the terms "welfare" and "public benefits" interchangeably to refer to means-tested government programs designed to assist low-income individuals and alleviate poverty. While the former carries more stigma in some circles, it is more commonly used in the criminal law context; the latter term is more commonly used by the administrative agencies running the programs. Attorneys and non-attorney legal advocates who provide civil legal assistance in matters related to the receipt of public benefits will be referred to interchangeably as "public benefits attorneys" or "poverty lawyers."

[3] For brevity, this advisory will generally refer to benefits recipients, except where highlighting different considerations specifically for individuals who are applying for a public benefits program.

[4] California delegates most of the operation of state benefits programs to the county welfare departments. Depending on the county, these departments may be known by names such as "Human Services Agency," "Department of Public and Social Services," "Social Services Agency," or similar names. This advisory will generally refer to them as "the county" or "the county welfare department" and their staff as "the county worker(s)."

[5] California Welfare & Institutions Code § 17000 et seq.

Understanding the common causes of unfounded or unsupported welfare fraud allegations is particularly important for immigration attorneys and advocates because the structural inequities in the modern welfare system cause such allegations to fall disproportionately on immigrants and people of color along with certain other populations. Many of the strict reporting and compliance rules and harsh penalties in modern programs like CalFresh and CalWORKs stem from myths arising in the 1970s and 1980s about the so-called "welfare queen," while others have deeper roots in Puritan religious beliefs about the moral inferiority of the poor.[6]

Based on the premise that public benefits recipients are inherently untrustworthy and must be punished and coerced into compliance, the programs are rife with reporting and verification requirements more complicated than many Americans' annual tax filings, and yet most public benefits recipients are trying to navigate these rules on their own with little to no support from the programs designed to help them. More than 164 million individual U.S. tax returns were filed in 2020, and only 370 individuals were sentenced for tax fraud the following year.[7] In contrast, California reported 682 CalWORKs participants penalized for welfare fraud through administrative disqualifications or criminal prosecution in fiscal year 2021, out of roughly 80,000 adults on the program.[8] ***Put another way, the average U.S. taxpayer's odds of being punished for fraud are roughly 1 in 443,000, while a California public benefits recipient's odds of being punished for alleged fraud are 1 in 117.***

The fluctuating income and economic instability that make families more likely to need public benefits may also make compliance with reporting rules more difficult, as this advisory discusses. However, poverty lawyers also report that communication barriers rooted in counties' failures to provide language and disability accommodations required by law are at the heart of many welfare fraud allegations. While the state does not require counties to report the demographics of those referred for fraud investigation or criminally or administratively punished for fraud, poverty law attorneys and advocates report regularly seeing disproportionate numbers of clients who speak limited English or have disabilities in their welfare fraud and overpayment caseload. California has passed special laws allowing eligibility

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[6] Many scholars have discussed the role of America's early religious and political influences on its modern treatment of the poor, among the most prolific being Frances Fox Piven, known for *Regulating the Poor* (1972, with co-author Richard Cloward) and numerous other volumes. For background on the racist trope of the "welfare queen," and racist assumptions embedded in modern welfare programs, *see, e.g.,* Gilman, Michele Estrin, *The Return of the Welfare Queen*, American University Journal of Gender Social Policy and Law 22, no. 2, pp. 247-279 (2014); Ife Floyd, LaDonna Pavetti, Laura Meyer, Ali Safawi, Liz Schott, Evelyn Bellew, Abigail Magnus, *TANF Policies Reflect Racist Legacy of Cash* Assistance*: Reimagined Program Should Center Black Mothers*; Carten, Alma, *The Racist Roots of Welfare Reform*, The New Republic (Aug. 22, 2016), https://newrepublic.com/article/136200/racist-roots-welfare-reform.

[7] Internal Revenue Service, *SOI Tax Stats – Individual Statistical Tables By Filing Status: Individual Income Tax Returns Filed and Sources of Income: Individual Complete Report* (Publication 1304), Table 1.2 (2020), https://www.irs.gov/statistics/soi-tax-stats-individual-statistical-tables-by- filing-status. U.S. Sentencing Commission, *Quick Facts: Tax Fraud Offenses*, FY 2021, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Tax_Fraud_FY21.pdf.

[8] Data on CalWORKs fraud activity from California Department of Social Services (CDSS) Data Table "DSS 466 – Fraud Investigation Activity Report," FFY 21-22, https://www.cdss.ca.gov/inforesources/research-and-data/fraud-data-tables/dss466; data on adult household participation from California Legislative Analyst's Office, Budget and Policy Post, "Analyzing the CalWORKs Take-Up Rate" (Feb. 2, 2021), https://lao.ca.gov/Publications/Report/4340.

for public benefits programs for certain noncitizen survivors of domestic violence and other serious crimes[9], yet the upheaval that often results from fleeing domestic violence and the frequent homelessness of this population can lead to difficulties getting mail or keeping track of documents, let alone responding to letters from the county and filling out paperwork in a timely manner.

Those working with survivors of domestic violence also see survivors frequently targeted for welfare fraud accusations for reasons related to the abuse, including often being a victim of false fraud "tips" from the abusers, who see it as an easy way to gain an advantage or exert control over the survivor. Combined with anti-immigrant bias unfortunately present in many county workers, all these factors may make immigrants who need and qualify for benefits more likely to be accused of welfare fraud once they do apply.

NOTE: Other Public Benefit Programs for Noncitizens. This advisory focuses on CalWORKs (TANF) and CalFresh (SNAP), as these are the largest programs in California. Some noncitizens may be eligible for California's Trafficking and Crime Victim Assistance Program (TCVAP) and the federally funded Refugee Cash Assistance program (RCA). TCVAP and RCA generally follow CalWORKs rules with the exception that participants need not have a qualifying minor child in the family. The California Food Assistance Program (CFAP, sometimes known as "state CalFresh") similarly follows most procedural rules of the CalFresh program, other than which categories of immigrants qualify. For this reason, this advisory focuses on the rules for CalWORKs and CalFresh, and most of what is discussed will also be applicable to TCVAP, RCA, and CFAP.

The Cash Assistance Program for Immigrants (CAPI) provides aid to low-income elderly or disabled immigrants who have certain qualifying immigration statuses but are not eligible for Supplemental Security Income (SSI). CAPI mirrors SSI in most program rules other than which categories of immigrants qualify. This advisory does not focus on CAPI, though some information may be helpful in cases involving allegations of CAPI fraud.

II. Elements of Fraud and Their Application in Benefits & Immigration Contexts

A. Immigration Consequences for Fraud Convictions and Administrative Fraud Findings

Welfare fraud and perjury are two of the most common criminal charges related to "welfare fraud" allegations. Criminal convictions for these charges often trigger "crime involving moral turpitude" (CIMT) bases for inadmissibility and deportability grounds[10] for noncitizens. Some convictions rise to the level of immigration "aggravated felonies," which are a ground of deportation[11] and also a bar to most forms of immigration defenses or relief.

[9] *See* S.B. 1569, 2006 Reg., Leg. Sess. (Cal. 2006).
[10] 8 U.S.C. § 1182(a)(2)(A)(i)(I), INA § 212(a)(2)(A)(i)(I) and 8 U.S.C. § 1227(a)(2)(A)(i), INA § 237(a)(2)(A)(i).
[11] 8 U.S.C. § 1227(a)(2)(A)(i), INA § 237(a)(2)(A)(i).

The California Welfare & Institutions Code § 10980 subsections requiring an intent to defraud are always CIMTs for immigration purposes.[12] Authorities disagree as to whether perjury, California Penal Code § 118, always is a CIMT. The Board of Immigration Appeals (BIA), has held that it is a CIMT, regardless of whether the perjury is written or oral.[13] The Ninth Circuit Court of Appeals disagreed and held that at least *written* perjury under Calif. P.C. § 118 (e.g., lying when filling out a form) is not a CIMT.[14] But because the Ninth Circuit might change its ruling in deference to the BIA in the future, counsel representing noncitizens in criminal proceedings should act conservatively and assume that even written perjury will be held to be a CIMT.

Regarding aggravated felonies, the Immigration and Nationality Act (INA) provides that any offense that requires fraud *or deceit* is an aggravated felony, if the loss to the victim(s) exceeds $10,000 and is tied to that specific criminal count.[15] "Deceit" is broadly defined and reaches offenses that may not be fraud or CIMTs, including California perjury, both written and oral.[16] Note that even *misdemeanor* convictions involving fraud or deceit may include a loss to the victim of over $10,000,[17] in which case the misdemeanor will become an "aggravated felony" for immigration purposes. Under a separate statutory category of aggravated felonies, certain types of offenses, including perjury, become aggravated felonies regardless of the loss to the victim(s), if a sentence of a year or more is imposed on a single count.[18] This includes California perjury, Penal Code § 118. Since California *misdemeanors* presently have a 364-day maximum possible sentence,[19] no misdemeanor perjury conviction will be an aggravated felony under this category. However, misdemeanor convictions from before January 1, 2015, might have had a sentence of one year imposed. In sum, any conviction of California perjury is an aggravated felony if either a sentence of a year or more was imposed, or the loss to the victim(s) exceeded $10,000. Any conviction of California welfare fraud is an aggravated felony if the loss to the victim(s) exceeded $10,000 (but not if a sentence of a year or more was imposed).

Even one or two minor convictions of a CIMT can cause a noncitizen to become inadmissible or deportable,[20] and in turn result in the initiation of removal proceedings by Immigration and Customs Enforcement (ICE). The enormous burden of removal proceedings, with the consequent possibility of permanent separation from home, community and family, is a so-called "collateral" consequence of welfare fraud and perjury convictions. This is even true for

[12] While § 10980 does not use the term "defraud," the requirement of intent to deceive with the aim of acquiring a benefit for which the person is not eligible is treated similarly.
[13] *Matter of Martinez-Recinos,* 23 I&N Dec. 175 (BIA 2001).
[14] *Rivera v. Lynch,* 816 F.3d 1064 (9th Cir. 2016).
[15] 8 U.S.C. § 1101(a)(43)(M)(i), INA § 101(a)(43)(M)(i); *see Valansi v. Ashcroft*, 278 F.3d 203 (3d Cir. 2002).
[16] *Matter of Alvarado,* 26 I&N Dec. 895 (BIA 2016) and *Ho Sang Yim v. Barr,* 972 F.3d 1069 (9th Cir. 2020).
[17] *See* California W.I.C. § 10980(c)(2).
[18] 8 U.S.C. § 1101(a)(43)(S), INA § 101(a)(43)(S).
[19] California Penal Code § 18.5(a). Immigration authorities will hold that any California "one year" misdemeanor that occurred on or after January 1, 2015 has a potential sentence of 364 days, but misdemeanor convictions before that date still have a potential sentence of one year, unless otherwise indicated by the California statute at that time. *Velasquez-Rios v. Wilkinson,* 988 F.3d 1081 (9th Cir. 2021).
[20] *See* ILRC, *All Those Rules About Crimes Involving Moral Turpitude* (June 2021), https://www.ilrc.org/sites/default/files/resources/all_those_rules_cimt_june_2021_final.pdf.

misdemeanors in many cases, which may ultimately carry quite minor criminal penalties, yet devastating immigration consequences such as a bar to relief from removal or ineligibility for permanent residence. And CIMTs may result in deportation for even long-time lawful permanent residents (LPRs).

In addition to these convictions resulting in potential CIMTs, welfare fraud and perjury charges that are aggravated felonies have even more serious consequences. A conviction that falls within the immigration definition of an "aggravated felony," which also includes some misdemeanors, will bar eligibility for almost all forms of relief from deportation and removal, including asylum and all forms of cancellation of removal relief for noncitizens.[21] Even a long-time LPR with many decades legally in the United States, will be ineligible for LPR cancellation of removal and very likely ordered removed if they are found to have committed an offense defined as an aggravated felony, despite having no family or ties in their country of birth.

Long term detention may also result, as these convictions often trigger mandatory detention by ICE.[22] Mandatory detention means that the individual will be detained by ICE in an immigration detention facility, often in worse conditions than county jails and state prisons,[23] for the entire period that removal proceedings and any appeals are pending. In such cases, the detained immigrant is not allowed to request bond, or even in many cases have a bond hearing, while removal proceedings are pending.[24]

Applications for citizenship are also impacted, as welfare fraud and perjury convictions can form a basis for a finding of a lack of "good moral character" which is a statutory requirement for naturalization and certain other forms of immigration relief and benefits, if the act or conviction took place within the designated statutory period. Finally, many immigration benefits and relief from removal are discretionary, and even an administrative finding of "welfare fraud" may have a negative impact on the adjudicator's decision. As a consequence, noncitizens may be denied LPR status, denied naturalization to U.S. citizenship, ordered deported, denied visas to enter the U.S. and/or denied entry or reentry, and may be detained in ICE detention facilities, all due to a conviction for "welfare fraud" or "perjury" in a public benefits case.

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[21] *See* ILRC, *Practice Advisory: Aggravated Felonies* (April, 2017), https://www.ilrc.org/sites/default/files/resources/aggravated_felonies_4_17_final.pdf#:~:text=Aggravated%20felonies%20are%20defined%20at%20INA%20§%20101%28a%29%2843%29%2C,federal%20and%20state%20offenses%20can%20be%20aggravated%20felonies; In addition, immigrant advocates and criminal defenders may access the most recent full California Quick Reference Chart on criminal offenses and their immigration consequences by submitting a form to ILRC online here: https://www.ilrc.org/resources/california-quick-reference-chart-and-notes.

[22] INA § 236(c), *See Jennings v. Rodriguez*, 138 S.Ct. 830 (2018); *see also Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022); *See* ILRC, *Update: How to Avoid Mandatory Detention in the Ninth Circuit* (November, 2020), https://www.ilrc.org/sites/default/files/resources/mandatory_detention_update_11.2020.pdf#:~:text=Noncitizens%20%20with%20certain%20criminal%20records%20are%20subject%20to,even%20have%20the%20right%20to%20a%%2020bond%20hearing.

[23] Intelligencer, New York Magazine, *Everything We Know About the Inhumane Conditions at Migrant Detention Camps* (July 2, 2019), https://nymag.com/intelligencer/2019/07/the-inhumane-conditions-at-migrant-detention-camps.html.

[24] *Jennings v. Rodriguez*, 138 S.Ct. 830 (2018); *see also Rodriguez Diaz v. Garland*, 53 F.4th 1189 (9th Cir. 2022).

Administrative findings of fraud without convictions may also cause problems in immigration cases because they may lead to interrogations by immigration judges or ICE attorneys, consular officers or U.S. Citizenship and Immigration Service (USCIS) examiners to try to elicit an "admission" of a fraud criminal offense that constitutes a CIMT. Such an "admission" would then also lead to potential CIMT inadmissibility,[25] if the "admission" effectively complies with caselaw requirements.[26]

If avoiding a conviction is not possible

As this advisory sets out, it is almost always possible to contest charges of welfare fraud on the merits. This is an excellent strategy for noncitizen defendants. But on the rare occasions when that is not possible, informed criminal defense counsel still may be able to plea bargain to protect immigrant defendants against severe immigration consequences. Just one example of this strategy is that the Ninth Circuit found that California Penal Code § 530.5(a), which prohibits using another's identifying information for "any unlawful purpose," is not a CIMT,[27] and as discussed above, perjury in writing under Penal Code § 118 is not a CIMT (at least for now). Or, in many cases an immigrant can withstand having just one misdemeanor CIMT conviction on their record, if the sentence is no more than six months, and qualifies for the "petty offense" exception to CIMT inadmissibility.[28] Alternative pleadings to avoid aggravated felonies also exist, such as commercial burglary, which would be an effective plea for an LPR and certain other noncitizens (but not for someone with DACA), for example.

There are three caveats, however, to pleading to an alternative offense if defending against the charges is impossible. First, as these examples demonstrate, the law governing the immigration consequences of crimes is complex and counter-intuitive; it also changes frequently.

Second, different criminal bars apply to different categories of immigration status and relief from removal. For example, commercial burglary (entering a welfare office with intent to commit a crime) is a very good resolution for LPRs and many other noncitizens, as it does not trigger either inadmissibility or deportability grounds. But such a plea would destroy a noncitizen's Deferred Action for Childhood Arrivals (DACA) status, even as a misdemeanor, since burglary is considered a "significant" misdemeanor bar to DACA. Those with DACA and Temporary Protected Status (TPS) cannot safely plead to any felonies, nor to more than one (TPS) or two (DACA) misdemeanors. Asylum applicants or those with asylum status cannot plead to a "particularly serious crime" which is defined completely separately from inadmissibility and deportability grounds. Waivers of inadmissibility and deportability exist for some grounds and not others, for some noncitizens and not others. As a result, no pleas are completely "immigration neutral" for any defendant, and the consequences of a particular plea often vary widely from individual to individual.

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[25] 8 U.S.C. § 1182(a)(2)(A)(i), INA 212(a)(2)(A)(i) and 8 U.S.C. § 1227(a)(2)(A), INA 237(a)(2)(A).
[26] *See* discussion of admissions to a CIMT in ILRC, *Practice Advisory: All Those Rules About Crimes Involving Moral Turpitude* (June 2021), *supra* note 20.
[27] *See Linares-Gonzalez v Lynch*, 823 F.3d 508 (9th Cir. 2016) (P.C. 530.5 is not a CIMT because it does not require an intent to cause loss or harm to another).
[28] *See* discussion of INA 212(a)(2)(A) and other CIMT provisions in ILRC, *All Those Rules About Crimes Involving Moral Turpitude* (June 2021), *supra* note 20.

Criminal defense counsel should consult with an expert for *each* defendant who is a noncitizen and obtain documentation from the client of any current or pending immigration status, including work permits, "green cards" and pending applications, to help immigration counsel determine how a particular charge or plea will impact a particular defendant with regard to immigration status and/or relief. Fortunately, almost all California public defender offices currently have access to such advice.[29] In addition, for welfare fraud and related perjury charges, criminal defense counsel should also consult with expert public benefits practitioners, to obtain assistance in defending against such charges, as set out in **Parts III** and **IV** of this advisory.

The third caveat is that many prosecutors presently refuse to agree to an alternative to a charge of welfare fraud, which makes contesting these charges, with all the many defenses outlined in this advisory, even more critical.

The following case hypotheticals provide examples of how a criminal defense and immigration attorney can work together to figure out a plea that avoids significant immigration harm. Of course, working with a legal services or public benefits attorney who is expert in welfare fraud and benefits should be the first step in defending a client charged with related offenses.

> **EXAMPLE:** Soraya is an undocumented single parent who entered the United States without inspection. She has lived here for twenty-five years, since she was three years old. Soraya has three U.S. citizen children and has been charged with welfare fraud for alleged overpayments she received for her children over the past five years, totaling $9000. Defense counsel contacts immigration counsel and learns that if convicted of felony welfare fraud, Soraya will likely be placed in removal proceedings, detained indefinitely in an ICE detention facility, and lose her eligibility for non-LPR cancellation of removal even if she could show the exceptional and extremely unusual hardship her U.S. citizen children will face if their mother is deported. If Soraya is instead convicted of two misdemeanor counts, such as two welfare fraud offenses, or one welfare fraud and one perjury offense, the result will be the same. This devastating consequence will also be true if Soraya is only convicted of one CIMT misdemeanor now, but has any prior CIMT conviction in her past. Immigration counsel explains that if the charges are not defensible, but Soraya is only convicted of a single misdemeanor CIMT count, has no prior CIMTs, and her sentence is two months in jail, the conviction will fall within the "petty offense exception" to CIMT inadmissibility, and she will still be eligible to apply for non-LPR cancellation of removal in immigration court and also will not be subject to mandatory detention.
>
> **EXAMPLE:** Li is an LPR, has two U.S. citizen children and suffers from lupus, limiting her ability to work. As a result, she has received numerous benefits but now faces welfare fraud and perjury charges. If convicted of two counts of fraud or perjury which allegedly occurred on different occasions, she will be deportable and subject to mandatory detention by ICE. If Li didn't yet have seven years in the United States since her admission in a legal status, *at the time she committed the offense*, she will be ineligible for LPR cancellation of removal. If she pleads no contest to fraud due to an alleged overpayment of $10,100, or to perjury with a one-year sentence, she will also be ineligible for LPR cancellation, even if the offense

[29] If you work with a public defender office in California and believe that you do not have access to such advice, contact Kathy Brady at kbrady@ilrc.org.

allegedly occurred after she already had ten years of legal status, and she only receives probation. This is because a fraud conviction where the loss to the "victim" is over $10,000, constitutes an aggravated felony, as does a perjury conviction with a one-year sentence.[30] If Li's attorney instead negotiates a plea to second degree burglary, Li will avoid both deportability and mandatory ICE detention.

It is critical that immigration, public benefits and criminal defense counsel work together, not only to mitigate the worst consequences of criminal proceedings leading to detention and removal, but also to assist each other in the defense of their noncitizen client who may indeed be able to overcome the criminal charges altogether, as outlined below. If a conviction has already occurred, post-conviction relief should be considered if serious immigration consequences will result.[31] The best practice, however, is to avoid a criminal conviction or admission to a crime, altogether, as set out below in **Parts III** and **IV.**

Avoiding an effective "admission" of a CIMT

A noncitizen is inadmissible who is "convicted of, *or who admits having committed, or who admits committing acts which constitute the essential elements of* – (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime.…"[32] An "admission" must meet certain criteria to make someone inadmissible (see below), but no conviction is required.

Strict rules control what kinds of statements by a non-citizen constitute an "admission" of a CIMT. The conduct must be a crime under the laws of the place where it allegedly was committed.[33] The person must admit to commission of facts that constitute the essential elements of that offense. General admissions to broad and/or divisible statutes will not qualify. Where the noncitizen does not admit sufficient facts, Department of Homeland Security (DHS) or consular officials cannot use inferences.[34] The DHS or consular official must provide the noncitizen with an understandable definition of the elements of the crime at issue; this "informed admissions" rule is to ensure that noncitizens receive "fair play." The noncitizen's admission must be free and voluntary.[35] As "admissions" in a county public benefits

[30] Certain LPRs, but not all, could be eligible for an additional defense to removal called "212(h)" relief in these circumstances.

[31] California Penal Code 1473.7 is presently one of the best vehicles to vacate California convictions for noncitizens when probation has ended and negative immigration consequences flow from the conviction. P.C. 1016.5 is also often utilized, especially for older misdemeanor and some felony convictions. For a practical manual with guidance on how to achieve post-conviction relief for noncitizens, *see* ILRC, California Post-Conviction Relief for Immigrants: How to Use Criminal Courts to Erase the Immigration Consequences of Crimes (2023).

[32] 7 8 U.S.C. § 1182(a)(2)(A)(i)(I), INA § 212(a)(2)(A)(i)(I) (emphasis supplied).

[33] *Matter of R-,* 1 I&N Dec. 118 (BIA 1941); *Matter of M-*, 1 I&N Dec. 229 (BIA 1942); *Matter of D-S-*, 1 I&N Dec. 553 (BIA 1943); 22 CFR § 40.21(a).

[34] *Matter of B-M-*, 6 I&N Dec. 806 (BIA 1955); *Matter of A-*, 3 I&N Dec. 168 (BIA 1948); *Matter of Espinosa*, 10 I&N Dec. 98 (BIA 1962). *Matter of G-M-*, 7 I&N Dec. 40 (AG 1956); *Matter of E-N-*, 7 I&N Dec. 153 (BIA 1956).

[35] *See*, e.g., *Matter of K-*, 9 I&N Dec. 715 (BIA 1962); *Matter of K-*, 7 I&N Dec. 594, 597 (BIA 1957) *Matter of G-*, 6 I&N Dec. 9 (BIA 1953); *Matter of G-*, 1 I&N Dec. 225 (BIA 1942); *Matter of M-C-*, 3 I&N Dec. 76 (BIA 1947).

Disqualification Consent Agreement (DCA) or Administrative Disqualification Hearing (ADH) waiver are often coerced and it is unlikely that a county caseworker or fraud investigator provided the noncitizen with an understandable definition of any related criminal offense, there is a very good argument that any such "admission" did not comply with the rules promulgated to protect noncitizens in these instances.[36] If you believe your client already might have admitted committing a CIMT to a welfare fraud investigator, caseworker or immigration officer, gather information from the client as to whether the authority in question explained all of the elements of the offense in an understandable manner before the admission was made, and met other immigration requirements for such admissions.[37]

Confessions of Judgment

Prior to January 1, 2023, a county could sometimes obtain a "confession of judgment" in administrative proceedings, relating to overpayment or fraudulent receipt of benefits.[38] Such a judgment, more common in non-governmental creditor-debtor cases, was filed and enforceable in civil court. It required that the individual defendant in the civil matter sign and file a written agreement, and that their attorney certify the defendant was advised of their waiver of rights and defenses. Arguably, such a "confession" does not constitute an "admission" or "conviction" for immigration purposes. Though proceedings ending with a "confession of judgment" may begin in criminal court, these confessions of judgment were not filed with the criminal court, they were not adjudications in criminal proceedings with all the rights accorded criminal defendants, and any pending criminal charges were usually dismissed as a result of the "confession." The Board of Immigration Appeals (BIA) has stated "[a]s we previously held in *Matter of Eslamizar,* 23 I&N Dec. 684 (BIA 2004), and *Matter of Cuellar*, 25 I&N Dec. 850 (BIA 2012), the distinction between criminal and noncriminal proceedings turns on the rights provided to the defendant. *If a proceeding does not afford defendants all of the constitutionally required rights of criminal procedure, it cannot produce a conviction for immigration purposes.* If the proceeding does afford defendants those rights, then a judgment of guilt in that proceeding constitutes a conviction under the Act." *Matter of Wong,* 28 I&N Dec. 518 (BIA 2022) (emphasis added). Such rights referred to in *Wong* as critical to the definition of "conviction" and missing in a "confession of judgment," include: proof beyond a reasonable doubt, the right to confront one's accuser, a speedy and public trial, compulsory process for obtaining witnesses in one's favor, and against being put in jeopardy twice for the same offense.[39]

"Confessions of judgment" also do not comport with the BIA's stated requirements for an "admission" to a CIMT, as discussed above. Another argument is that such an admission must be made to a DHS or consular official or an authority designated to make determinations related to the immigration process, such as a panel physician or civil surgeon who administers

[36] *See* discussion in Part III below.
[37] *See* the discussion on admissions to crimes in ILRC, *All Those Rules About Crimes Involving Moral Turpitude* (June 2021), *supra* note 20.
[38] Former California Code of Civil Procedure § 1132, (amended), §§ 1133 and 1134 (repealed)(2022).
[39] 28 I&N Dec. 518, 523-524.

the medical exam required for most applicants for permanent residency.[40] However, such a "confession of judgment" could be some proof of wrongdoing, including fraudulent conduct if such is admitted in the individual's statement. As such, the signed statement could impact whether or not an individual possesses or lacks the "good moral character" (GMC) required for naturalization and certain other immigration relief and benefits, as a matter of discretion, if the conduct occurred during the statutory GMC time period. Confessions of judgment have been abolished by statute in California, and those entered into on or after January 1, 2023 are no longer effective.[41]

Either a conviction or an admission of a CIMT or aggravated felony may lead to statutory ineligibility for certain forms of immigration relief from removal.[42] Further, people in contact with the criminal justice system are more likely to interact with ICE agents.

B. Fraud Contrasted with Overpayment[43] of Benefits

The crime of welfare fraud generally requires that a person has "willfully and knowingly, with the intent to deceive" lied or withheld material information to obtain public benefits, knowing they are not entitled to it.[44] Administratively, conduct that is considered fraudulent may be categorized by the welfare programs as an "intentional program violation" (IPV) when imposing a disqualification penalty or when pursuing a claim administratively instead of in the criminal system. In administrative disqualification hearings, IPVs have the same definition but in CalWORKs may have a lower burden of proof. IPV allegations may accuse public benefits

[40] *See Pazcoguin v. Radcliff*, 292 F.3d 1209 (9th Cir. 2002)(in an outlier 2-1 panel decision, the court found that an applicant for LPR status who had admitted past marijuana use to a panel physician designated by the U.S. Consulate to administer immigration medical examinations, was correctly denied admission to the United States as an LPR due to that admission. The court found compliance with the BIA standards since the admission to the physician was not challenged by the petitioner as being involuntary, unequivocal or unqualified).

[41] California Senate Bill 688, amending California Code of Civil Procedure § 1132 and repealing CCP §§ 1133 and 1134 (2022).

[42] One such example is that a commission of a crime leading to a conviction for a CIMT, or an admission of a CIMT, either of which may trigger inadmissibility or deportability grounds, will then "stop the time" accrual of the years of residency in the United States required for cancellation of removal relief. INA § 240A(d)(1). In addition, a CIMT conviction may otherwise fall within the eligibility bars precluding non-LPR cancellation (INA § 240A(b)(1)(C)), and an admission or conviction may bar Violence Against Women Act (VAWA) cancellation of removal relief. INA § 240A(b)(2)(A)(iv). Note that there are exceptions for one-time CIMT convictions or admissions. For inadmissibility, the "petty offense exception" will apply for a sole CIMT offense for which the maximum sentence is one year or less and the actual sentence six months or less, or the sole CIMT offense may fall within the youthful offender exception. INA § 212(a)(2)(A)(ii). And deportability is not triggered for a single conviction of a CIMT, for which commission of the offense does not fall within five years of the person's lawful admission to the United States and/or the maximum penalty for the offense is less than one year. INA § 237(a)(2)(A)(i).

[43] CalFresh refers to overpayments as "overissuances," but for simplicity this advisory will refer to both CalFresh overissuances and CalWORKs overpayments as "overpayments."

[44] Cal. Welf. & Inst. Code § 10980.

recipients of activity such as providing false information about household income or other resources, or omitting information about household circumstances.

Overpayment occurs when a household receives more public benefits than the county deems it should have, often because the county believes the household failed to report income or a change in household composition when it was required to do so. Most overpayments are due to simple human error by the benefits recipient (an "inadvertent household error") or even by the county (an "administrative error"). The latter occurs when the county has the information it needs to calculate the public benefits grant but fails to act on it or calculates incorrectly. In most cases, an overpayment requires the recipient to pay the money back, though there may be available defenses to repayment depending on the specific facts and program rules, particularly if the overpayment was caused by the county. However, a finding that a public benefits recipient was overpaid is *not* a finding that they committed fraud, and on its own will not result in criminal liability. Administrative errors and inadvertent household errors may result in overpayments, but lack, by their definition, the necessary intent for fraud cases and should not result in a criminal finding of fraud.

When notifying a household of an alleged overpayment, the county must categorize the nature of the overpayment. In CalFresh, the county may characterize the overpayment as administrative error, inadvertent household error, potential IPV or IPV, while in CalWORKs the overpayment may be characterized as "non-fraudulent," potential IPV, or IPV. In both CalFresh and CalWORKs a potential IPV may only be determined to be an actual IPV by an administrative disqualification hearing ("ADH") decision, a signed administrative disqualification hearing waiver, criminal court conviction, or a signed disqualification consent agreement ("DCA").[45] The administrative process to establish an IPV is discussed in more detail below. Absent one of these outcomes, an overpayment debt cannot be treated as fraudulent, and there has been no finding of wrongdoing by the public benefits recipient. Likewise, absent one of those outcomes, the establishment of an overpayment itself should not incur any immigration consequences for the debtor.

III. How "Welfare Fraud" Cases Begin

Three common ways that a "welfare fraud" case begins are through data matches, community "tips," and benefit beneficiaries disclosing information that they did not previously provide.

Data Matches

Data matches are among the most common basis for counties to allege both fraudulent and nonfraudulent overpayments. County welfare departments routinely access reports through consumer financial data matches much like the private sector, as well as certain government databases. The main data source is the Income and Employment Verification System or "IEVS."[46] In most counties IEVS data along with data matches from other sources are handled by a special unit known as the IEVS unit. Like any consumer credit report, IEVS and related

[45] CDSS, ACL 23-19, https://cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2023/23-19.pdf?ver=2023-02-17-142049-487. See also Links to Selected Administrative References section at the end of this advisory for links to location of All County Letters (ACLs) and All County Information Notices (ACINs) on the CDSS website.
[46] *See* CDSS ACL 17-73, https://www.cdss.ca.gov/Portals/9/ACL/2017/17-73.pdf.

databases can include bad matches such as duplicated entries, similarly-named individuals or identity theft. It also may include inaccurate information if, for example, an employer or government agency reports a payment as ongoing when in fact it has stopped.

Much of the information available in IEVS is for events—like starting a new job, or getting a new source of government income—that public benefits recipients are supposed to report directly to the county themselves. This means if a county alleges an overpayment based on an "IEVS match" they usually allege it as recipient error, either inadvertent or potentially fraudulent. This is not always the case. Sometimes recipients were not required to report the data under program rules, sometimes the data is wrong, and sometimes the county had the information in its possession but failed to act on it in a timely fashion as required by law. This last scenario is unfortunately common and should properly be classified as an administrative error, as discussed below. IEVS workers are supposed to validate the matches, and can dismiss them as in error or confirm that proper reporting occurred. IEVS workers are to give recipients a chance to respond to the information and provide an explanation, unless the case is currently under fraud investigation and contacting the recipient would jeopardize the investigation. In practice, advocates often see IEVS matches sent directly to fraud investigation with no meaningful check for accuracy, let alone intent. Failure to act on the data from IEVS matches in a timely manner—typically within 45 days of the data match—can estop the county from alleging fraud in a criminal proceeding under § 10980 or any other section of law (such as for perjury) for subsequent months.[47]

Fraud "Tips"

Often anonymous, fraud tips are supposed to come from members of the public concerned about abuse of public coffers. More often, they come from someone with a personal grudge against the benefits recipient, such as a neighbor, former employer, landlord, or perhaps most often, from abusive partners and former partners. Attorneys working with domestic violence survivors tell of abusers making fraud tips in retaliation for obtaining a restraining order or child support case. The latter is often how the abuser knows the survivor is receiving public benefits in the first place, when they get served with child support paperwork indicating the support will be paid in whole or part to the county welfare department. To avoid notifying the abuser, the public benefits recipient can request a domestic violence waiver of the requirement that they cooperate with the county's filing a paternity or child support case against the abuser.

PRACTICE TIP: If a client's fraud case started with an anonymous tip they believe to be from an abuser or other person acting in bad faith, look at the timing and basis of the allegation to corroborate this. In criminal court, the identity of the tipster must be revealed, while in administrative proceedings, many counties may withhold the tipster's identity.[48] Although

[47] *See* Cal. Welf. & Inst. Code § 10980(j).

[48] *See* CDSS, Manual of Policy and Procedures: Confidentiality, Fraud, Civil Rights and State Hearings (CDSS MPP), at CDSS MPP § 19-006, referencing Cal. Code of Evidence 1041, https://www.cdss.ca.gov/ord/entres/getinfo/pdf/1cfcman.pdf, but *see also* Cal. Code of Evidence 1042(d) (exceptions to nondisclosure of informant's identity where it would deprive defendant of right to fair trial). In order to require disclosure of the identity, the recipient would need to convince the ALJ they need the identity of the informant and the substance of the testimony in order to adequately defend against the accusation. If the county refuses to disclose, then they should be prevented from relying on this evidence in

counties cannot be required to provide personally identifying information about an informant who they do not intend to call as a witness, they are required to provide sufficient evidence to defend against the county's claim. Advocates should ensure that the Administrative Law Judge (ALJ) requires the county to disclose all relevant facts on which it relied in bringing the action. If the county relies on the testimony of a witness who was a confidential informant, the identity of the witness and the substance of his or her testimony may nevertheless be required to be provided to the claimant for the purposes of a fair hearing or an ADH.[49] Even if the witness identity is withheld, the substance and timing of the allegation must be disclosed. Often bad faith informants make allegations of facts that don't violate program rules, but are nonetheless acted on by overzealous fraud investigators as a reason to harass and question a benefits recipient. Tips can also be self-serving, such an abuser who has not paid child support falsely reporting that the survivor has not reported receiving support payments. Bringing these tainted motives to light in a hearing can help undermine the credibility of the tipster and the legitimacy of the investigation itself.

Self-Disclosure

Finally, a fraud case may begin when the public benefits recipient reports information to the county caseworker that was not previously provided. This is a very common occurrence during the course of the receipt of benefits, especially since questions related to eligibility are sometimes asked differently by the same or different caseworkers or missed entirely, and language translations and interpretations vary widely in accuracy and understanding. The fact that the information underpinning the fraud allegation was disclosed by the client would tend to demonstrate a lack of intent to hide or misrepresent relevant information. Upon close questioning, clients in this situation will often report that they were not asked about the information before, that they thought the county already knew about the information, or even that they actually had reported it before, and the worker did not act on it properly. Either scenario would be a strong case for classifying any resulting overpayment as an administrative error or inadvertent error.

A. The Process: "Welfare Fraud" Cases Often Begin with Administrative Determinations

Allegations of welfare fraud may be brought first in the administrative law context. For there to be an administrative determination that a household committed an "intentional program violation," (IPV) commonly known as welfare fraud, one of three things must happen:

(1) There must be a specialized type of fair hearing called an "administrative disqualification hearing" or "ADH."
(2) The client may sign a waiver of the right to this hearing, and accept the consequences of a finding of an IPV; this is called an ADH waiver.
(3) The client may sign a "Disqualification Consent Agreement" or "DCA."

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their arguments. The recipient can ask the ALJ to exclude the evidence and redact it in the county's brief (known as a "statement of position").

[49] *See* CDSS MPP § 22-073.232(c) and ACL 16-02.

A mere allegation that the individual was overpaid benefits is not a legal determination that the individual committed fraud, even if the language of the overpayment notice alleges a fraudulent cause. Overpayments happen for a variety of innocent reasons, including county error (known as "administrative error"). In an administrative hearing to challenge an overpayment, benefits advocates should make sure that the county states whether it intends to refer for prosecution (in which case the judge should advise the client that they are not required to testify). A benefits recipient may provide written testimony only, and not attend the hearing, due to the more flexible rules of evidence and procedure in administrative hearings. This is a strategic decision to be weighed by counsel and client.

NOTE: The definition of IPV for CalFresh is broader than the criminal fraud definition under Welf. & Inst. Code § 10980. Therefore advocates may see more CalFresh IPV cases than cases referred to prosecution. Representation at ADH hearings, described below, is important for CalFresh IPV allegations, however. There is a lower standard of proof and inferences that could support a finding against the benefits recipient if the individual does not appear (or have a representative appear on their behalf) at the hearing. Finally, check that any criminal charges are based on the statute and not the definition of an IPV.

1. Administrative Disqualification Hearings (ADHs)

If the county believes it has enough information to determine that an intentional program violation took place, it may either refer the case for criminal prosecution, or it may pursue an administrative finding of fraud through the administrative disqualification hearing (ADH). In theory, counties would refer all cases they believe meet this threshold for prosecution, and initiate an ADH only for those cases in which the prosecuting authority has determined (a) that facts do not warrant prosecution, or (b) those cases previously referred for prosecution and declined.[50] Many counties have monetary thresholds or other criteria to determine which cases get referred for criminal prosecution, and so pursue an ADH for cases that fall under the threshold where the county thinks they have the requisite evidence.

An ADH takes place before an administrative law judge. The public benefits recipient accused of overpayment or fraud has the right to an attorney or other representative but, unlike in criminal court, does not have the right to be appointed one. Many individuals represent themselves. Ideally, a benefits or poverty law practitioner from a civil legal aid organization would be available to represent the individual, though resources often make this difficult. A non-attorney appeals worker (sometimes called an "appeals officer," but typically an eligibility worker with extra training on appeals) will represent the county. Both sides may present evidence including witnesses. Rules of civil or criminal procedure do not strictly apply, but issues like hearsay may go to the weight of the evidence. The standard of proof is "clear and convincing evidence" for CalFresh IPVs and a "preponderance of the evidence" for CalWORKs.[51]

PRACTICE TIP: Weighing the Risks and Benefits of an Administrative Disqualification Hearing. Most benefits advocates interpret current law as collaterally estopping the county

[50] *See* CDSS MPP § 22-301.3.
[51] 7 CFR § 273.16(e)(6); CDSS MPP § 22-220.3; CDSS MPP § 22-305.45.

from bringing a criminal case on the same facts after an ADH finds a recipient committed an IPV. If a public defender encounters a criminal case filed subsequent to an ADH, they should argue collateral estoppel and violation of due process. As part of the ADH, the county must testify that they are appropriately in the ADH forum, which usually involves an affirmative statement that they are not referring the case to criminal court and the reason why (such as the amount being below their county District Attorney's threshold for prosecution). In such a situation, a subsequent criminal filing would indicate the county created a due process trap where they intentionally chose an initial forum with a lower standard of proof and fewer due process protections.

While a criminal court has more due process protections and the right to an attorney, criminal court judges are unlikely to have background in the nuances of welfare law, and may defer excessively to the county's representation that the person broke the rules. ALJs who conduct ADHs, however, have more familiarity with the complex reporting rules, and may even come from a legal aid background where they have observed many cases of county error. A client with a simple defense such as "I told my worker about the change in my income and she said it didn't matter," may have much better luck with an ALJ who understands that complex reporting rules mean it often *doesn't* matter, and that such a scenario is therefore plausible. A client whose defense rests on a difference of interpretation of welfare program rules may similarly find an ALJ used to weeding through layers of statute, regulation, and program guidance to be less deferential to the county on the issue of statutory interpretation.

In practice, many counties also fail to follow the clear ADH process and instead allege fraud first in the context of an overpayment notice. This gives the individual an opportunity to file for a fair hearing not only to defeat or reduce any alleged overpayment, but also to try to get factual findings showing inadvertent error or administrative error.[52]

PRACTICE TIP: If the county has sent an overpayment notice and is investigating a fraud case but has not initiated an ADH, benefit recipients can file for a fair hearing to contest the allegation of overpayment. Depending on the facts, it may be possible to negotiate an agreement (a "conditional withdrawal") with the county either reducing or eliminating the amount of the overpayment, and/or stipulating that the cause of the overpayment is either administrative error or inadvertent household error (i.e., it was nonfraudulent). Advocates have also had success in many cases going to hearing on the overpayment and getting a decision finding that the client either was not overpaid, or getting specific factual findings supporting a classification of the overpayment as inadvertent or county error. Since any testimony or evidence in the administrative case may be used in a subsequent criminal case, the risks of doing so will vary based on the facts and likelihood of success. The benefit is that if the administrative proceeding makes factual findings that the overpayment was caused by administrative error or that support a clear inference the recipient lacked fraudulent intent, it is

[52] While an overpayment hearing does not typically include legal findings of fraudulent intent vs nonfraudulent intent, it can include factual findings that support a clear inference of nonfraudulent intent.

highly likely that would put an end to any criminal prosecution.[53] The more flexible rules of administrative procedure may allow limiting these risks by, for example, providing evidence by written declaration and minimizing verbal testimony. The benefit recipient's case can be presented through witnesses and documents, while attacking county evidence as implied, conclusory, insufficient, etc. The county has the burden to establish the basic elements of the overpayment. If the county doesn't meet this burden, the hearing should end, as the client cannot be asked to make the county's case. If the county meets this burden, the client can rebut that evidence. In overpayment cases, the standard of proof is a "preponderance of the evidence," meaning the client wins if the evidence is just over fifty percent in their favor.

When the county decides to follow the administrative disqualification hearing route, it must send a written notice to the benefits recipient, stating the county's intent to seek an ADH. The notice of ADH must be sent on Form DPA 436B (County Information Letter) and must be accompanied by an ADH hearing waiver form and a form explaining why the county believes the person committed an IPV with a summary of the evidence the county intends to present at the ADH. The County Information Letter advises that the individual will receive a hearing notice from the State, and will then have 20 days from the State's notice of hearing to sign and return the hearing waiver form.[54]

The county can then request that the state hearing division schedule an ADH. Once the California Department of Social Services (CDSS) receives this referral, the CDSS State Hearings Division will provide written notification of a state hearing to the individual alleged to have committed an IPV, with a copy to the county. This notice of hearing must be sent at least 30 days prior to the date of the ADH. This notice can be sent by first class mail, but if the individual no longer receives benefits, the county must verify the individual's mailing address prior to mailing the IPV notice. If first class mail is returned as undeliverable, the hearing will be postponed to allow the county time to verify or obtain a valid address. If the hearing is rescheduled and the notice continues to be returned as undeliverable, a hearing will not be scheduled until such time that another verified address is provided.[55]

The ADH procedure laid out above is extremely detailed, but it is also mandatory. Failure to follow these detailed procedures can be a basis for cancellation of an ADH, or at minimum, of more time for the advocate to prepare.

2. ADH Waivers

The ADH waiver form allows the individual signing to either check a box to "admit to the facts as presented" or state that they do not admit to the facts alleged, but choose to sign the waiver and accept the penalty nonetheless.[56] There is no reason a recipient should ever check the box admitting the facts as presented, particularly as the specific facts (such as what was misrepresented or what benefit obtained) are not included in the ADH waiver itself. Someone

[53] *See People v. Garcia* (2006) 39 Cal.4th 1070, 1087–1089 (county barred by administrative action in a subsequent criminal prosecution only if (1) the issue in the criminal proceeding is identical; (2) the issue was actually litigated).
[54] *See* CDSS MPP § 22-202.44.
[55] *See* ACL 17-118, (Nov. 21, 2017).
[56] CDSS MPP § 22-202.41(f).

who has affirmatively indicated that they do not admit the facts as presented cannot be said to have made an "admission" to a CIMT for purposes of immigration law. Like the Disqualification Consent Agreement (DCA) described below, the ADH waiver includes an allegation the recipient has committed an IPV, rather than the crime of welfare fraud as specifically defined in Welf. & Inst. Code § 10980.

The county is not allowed to use threats, coercion, or the promise of leniency with respect to criminal prosecution in obtaining the respondent's signature on a waiver.[57] If an individual signs the ADH waiver, they have seven days to rescind their waiver.[58] The County Welfare Department (CWD) also shall not initiate an ADH against an accused individual whose case is currently being referred for prosecution or subsequent to any action taken against the accused individual by the prosecutor or court of the appropriate jurisdiction.

Despite these procedural safeguards, poverty law advocates have seen county fraud investigators present the ADH waiver in person to individuals under investigation, coercing them into signing it under threat of criminal prosecution. Advocates also report numerous instances of clients with limited English or limited literacy being lied to about the substance of the waiver, such as being told they need to sign it "to get the results of the investigation."

For CalFresh, an IPV does not require the individual to have made a misrepresentation to gain some benefit, nor does any misrepresented fact need to have been material. These are required elements of the criminal offense, and admission to a CalFresh IPV in an ADH waiver is not the same as an admission to a criminal offense.

While the CalWORKs IPV language in an ADH waiver does contain these extra elements, it may not meet the requirement that it was freely made and non-coercive. This is particularly true if it was presented to the individual in a way not compliant with the public benefits rules, such as on the spot by a fraud investigator pressuring someone to sign it "or else." Along with misrepresentations about the content and effect of the ADH waiver, public benefits advocates hear many stories from recipients who are told by investigators that failure to sign the ADH waiver will result in them being locked up, their children being removed into foster care by social services, and all manner of other inherently coercive statements that can cause even an innocent individual to sign in order to avoid the risk. An attorney who learns a signed ADH waiver was not properly presented to the recipient or was signed under coercion has grounds to seek invalidation of the signature by an ALJ in an administrative hearing challenging the county's actions, even if the seven-day revocation period has passed.

NOTE: This analysis is based on the current version of the ADH waiver[59] as revised in 2022. Always check the specific document that the client signed, as versions and specific language on the form may vary over time and across counties.

[57] CDSS MPP § 22-202.443.
[58] CDSS MPP § 22-320.321.
[59] This ADH waiver is known by CDSS and counties as the "DPA 479" form, available at https://www.cdss.ca.gov/cdssweb/entres/forms/English/DPA479.pdf.

3. Disqualification Consent Agreements (DCAs)

Disqualification Consent Agreements are only offered when a criminal prosecution has been initiated, but there was no final court determination of guilt, either because the individual completed court ordered diversion or was not prosecuted due to complying with the terms of a deferred adjudication agreement (DEJ) with the prosecutor. The DCA itself states that the individual is accepting the penalty of disqualification even though there has been no criminal finding that they committed fraud. Like the ADH waiver, the DCA document allows the signatory to select between two options: admitting the facts to be true as alleged or stating that they do not admit the facts as alleged but are nonetheless willing to accept the penalty.[60]

NOTE: Deferred Adjudication Agreements are unfortunately "convictions" for immigration purposes, despite the defendant's completion of all DEJ terms. This is true in any case where there is a guilty or no contest plea or a judicial finding of guilt.[61] As such, noncitizen defendants should generally never accept DEJ for welfare fraud or perjury cases. Pre-plea diversion, however, is not a "conviction" for immigration purposes, as long as the defendant can reasonably complete the diversion requirements and avoid a subsequent conviction for failure to make restitution or other terms of the diversion order.

While the DCA was designed for use in cases where a criminal charge has resulted in deferred adjudication, in practice advocates have occasionally seen it misused in other contexts in lieu of an ADH waiver. Such use is impermissible and should invalidate the DCA. The DCA must be preceded by a written notice to the individual informing them of the consequences of signing it; such notice may not be presented in person or at the time of signing.[62] Failure to conform the notice to these requirements should render the DCA unenforceable.[63] Unfortunately, once a DCA is signed there is no longer relief available in an administrative hearing, and the individual's recourse lies only in court action.[64]

A DCA should not be an "admission" of a CIMT for immigration purposes

A DCA should not be considered an "admission" of a crime involving moral turpitude (CIMT) that would trigger a ground of inadmissibility or deportability. However, if immigration authorities become aware of a DCA, it could easily lead to interrogation of an immigrant with the intention of attempting to solicit such an admission for immigration purposes. In order for an "admission" of a CIMT to be valid, it must be freely made, non-coercive, and with the noncitizen having been shown the elements of the relevant penal code or welfare and institutions code on which the CIMT allegation is based.[65] There is inherent coercive pressure in the signing of a DCA, as without it the client is likely facing a criminal conviction, so advocates would be right to question whether it can be freely made and non-coercive.

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[60] CDSS MPP § 20-300.221.
[61] 8 U.S.C. 1101(a)(48), INA 101(a)(48), *Matter of Mohamed*, 27 I&N 92 (BIA 2017).
[62] CDSS MPP § 20-300.221.
[63] *See*, e.g., *Williamson v. Department of Health and Rehab. Servs*., 603 So.2d 592 (Fla. App. 1992).
[64] 7 CFR § 273.16(f)(2)(ii); CDSS MPP § 22-202.42.
[65] *See* discussion of "admissions" to crimes in Part II, above, and in ILRC, *All Those Rules About Crimes Involving Moral Turpitude* (June 2021), *supra* note 20.

A DCA may also lack the necessary elements for an admission. Unlike an ADH waiver, there are separate versions of the DCA for CalWORKs and CalFresh. The CalWORKs DCA includes the required elements that the recipient lied "for the purpose of establishing or maintaining the family's eligibility for CalWORKs/AFDC or for increasing, or preventing a reduction in, the amount of the grant." While the CalWORKs DCA contains specific language about the violation alleged, this language is based on the IPV requirements in the program rules, not on the criminal offense as set out in the Welf. and Inst. Code § 10980. It does not include all the elements of the criminal offense.

The CalFresh DCA only includes an accusation of an Intentional Program Violation (IPV), and does not provide any description of the elements of criminal welfare fraud under California Welf. and Inst. Code § 10980. Thus, it would not meet the requirement of a CIMT, including that the person be informed of the definition and elements of the crime prior to signing.[66]

Where the recipient signed a DCA, it is helpful if the individual has checked the box stating that they do not admit the facts as alleged. Even if an individual has ill-advisedly marked that they admit the facts as alleged, an immigration practitioner should be able to assert a defense. A DCA does not form the basis for a criminal complaint, because it does not contain the specific facts alleged, and because it does not contain an "admission" to all the elements of a criminal offense. In addition, the signed DCA does not mean a noncitizen has "committed a crime for which they have not been arrested," and a noncitizen is not then required to respond in the affirmative to such a question on immigration forms, or in interviews or court proceedings.

Further, practitioners may also argue that an illegally obtained ADH waiver or DCA, or one where the individual did not accept fault, should not constitute a finding of an "admission" of fraud and a CIMT for purposes of immigration consequences.

NOTE: The analysis in this section is based on the current version of the California Department of Social Service (CDSS) ADH Waiver, CalWORKs DCA[67] and CalFresh DCA[68] as of this publication. Always get a copy of the specific document client signed, as versions and specific language on the form may vary over time and across counties.

B. Understanding the Basis of a Fraud Allegation

In addition to specifying <u>what</u> and <u>when</u> recipients must report, program rules may also specify <u>how</u> the information should be reported, such as in writing on a specific form, or to a specific individual such as the eligibility worker. These rules often lack force of law, and the relevant sections of the Welfare and Institutions Code requiring such reporting generally only require the information be reported "to the county." While reporting in the prescribed method is certainly ideal, a fraud allegation should never stand where there is clear evidence the individual reported the information but in the incorrect manner or to the incorrect individual at

[66] *Matter of K-*, 7 I&N Dec. 594, 597 (BIA 1957).
[67] The CalWORKs DCA is known by CDSS and counties as the ABCD 478A, https://www.cdss.ca.gov/cdssweb/entres/forms/English/ABCD478A.PDF.
[68] The CalFresh DCA is known by CDSS and counties as the CF 478, https://www.cdss.ca.gov/cdssweb/entres/forms/English/CF478.pdf.

the county. Such efforts should be flagged as prima facie evidence that there was no effort to hide the information from the county, and therefore the intent element of fraud is missing.

1. "Failure to Report"

The rules for applicants and recipients in different public benefits programs are voluminous and byzantine. When receiving multiple benefits such as CalWORKs (California's TANF program) and CalFresh (California's SNAP program), the rules in different programs sometimes are duplicative and other times differ completely and are possibly contradictory. The most common basis for an allegation of welfare fraud is essentially a failure of the household to report information (such as new income or changes in income, the presence or absence from the household of an individual, or the ownership of property or resources) that they were required to report to the county welfare department. Sometimes this is alleged as a failure to affirmatively report the information, and sometimes it is alleged as putting incorrect information on a required form.

Without further evidence, such allegations alone should not meet the threshold for criminal or administrative findings of fraud unless they address intent.

2. Did the Individual Actually Fail in their Reporting Obligation?

For fraud cases that begin as an allegation of failure to report, the threshold question is whether the individual failed in their reporting obligation. Each public benefits program has rules on (1) what must be reported to establish or maintain eligibility and (2) when it must be reported. Eligibility for CalWORKs and CalFresh are established on an annual basis, with most households required to submit a semi-annual report at six-months.[69] Recipients are only mandated to report certain specified changes between those scheduled reports; these items are known as mandatory mid-period reports, and must usually be made within ten days of the change.[70]

CalWORKs mandatory mid-period reports include (1) an increase in income over the household's "income reporting threshold"; (2) someone moving into or out of the household; (3) address change; (4) change in "fleeing felon" status; and (5) a court finding that someone in the household has violated probation or parole.[71] Child-only CalWORKs cases where there is no eligible adult included in the grant, may be subject to annual reporting, which also includes certain mandatory mid-period reports.[72]

CalFresh mandatory mid-period reports include (1) an increase in income over the household's "income reporting threshold"; (2) when someone characterized as an "able bodied adult without dependents" has a decrease in work hours below 20 hours/week or 80 hours/month; and (3) "substantial" lottery or gambling winnings.[73]

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[69] *See* ACL 12-25; *see also* ACIN I-58-13.
[70] *Id.*
[71] *Id.*
[72] ACL 12-49 and ACL 12-49E (errata).
[73] ACL 12-25.

3. Interim Reporting Thresholds (IRTs)

Both CalWORKs and CalFresh recipients must report new income only if it exceeds a certain "income reporting threshold" or "IRT." Exactly what this IRT is may be different for each program and even within the programs, leading to confusion. It is very common for the county workers themselves to get confused about the IRT rules and apply the wrong ones, or apply them to a household that is actually excluded from the IRT reporting requirements. When this happens, they may incorrectly make an overpayment assessment against the household, when they were not in fact overpaid. They may also incorrectly refer the household for a fraud investigation for failure to report income, when there was no obligation to report the new or changed income.

The CalFresh IRT is 130% of the Federal Poverty Level (FPL) for a household of their size, while the CalWORKs IRT is the lower of: 1) 55 percent of the Federal Poverty Level for a family of three, plus the amount of income last used to calculate the household's monthly grant amount, or 2) the amount of income likely to render the household ineligible for CalWORKs benefits.[74] This CalWORKs IRT can vary tremendously between households but also change for a household from one reporting period to the next. CalFresh households where all members receive CalWORKs follow only the CalWORKs IRT for both programs, but households where the household includes some members who get CalWORKs and some who don't will follow separate IRTs for the two programs.[75] This means that depending on the household's starting income and the number of people in the household, the actual dollar amount that may exceed IRT can be very small or quite large, and many families have no clear idea of what amount of change in income triggers a report.

Both CalWORKs and CalFresh also exclude certain households from having to report income over IRT—but their rules are different and cause confusion. In CalWORKs, households that have unearned income need not report when that unearned income by itself exceeds the IRT; households must still report if they start receiving earned income, and the total income (earned and unearned) is over the IRT.[76] For CalFresh households, IRT includes income from any source, but for those whose income is already over 130% FPL at the time of certification, there is no IRT, and they are not required to make a mid-period report even if income goes up.[77] In both programs, the households excluded from IRT reporting must only report the change at their next semi-annual report or annual recertification.[78]

Similarly, both CalWORKs and CalFresh recipients have ten days to report income over the IRT. However, in CalWORKs, the ten days start from when "known,"[79] in CalFresh, the ten days start from when the income is received.[80] This may be another source of confusion that supports lack of intent to violate reporting requirements or commit fraud.

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[74] *Id.*
[75] ACL 15-42.
[76] CDSS MPP § 44-316.324(b) and CDSS MPP § 44-316.324(b).
[77] ACL 15-42.
[78] *See* ACL 12-25 and ACL 15-42.
[79] CDSS MPP § 44-316.32.
[80] ACL 15-42.

In addition, CalWORKs and CalFresh require that the county provide a form called the SAR 2, that sets out the IRT amount for the individual household, at certain points in time. These include: at the time of approval of the initial application; at any time the household's IRT changes during the certification period, whether the household has an IRT or not; at the annual eligibility renewal; or upon request. The county's failure to ever send the SAR 2 (or to send it in the correct language) is an absolute defense against fraud for not reporting when an IRT has been exceeded. The IRT level for which the recipient was last notified will be used for reporting purposes, will continue until the county welfare department has had an opportunity to inform the recipient of any applicable IRT change, so review of the last SAR 2 is key to showing what the recipient believed the IRT level was at the relevant time.[81] The failure to send the SAR 2 form subsequently after any change may be a defense if the passage of time caused the recipient to not remember or misremember the rule. The regular defenses regarding willfulness, knowledge and intent also apply, for example if the recipient thought the IRT applied to take home pay and not gross, or misunderstanding whether one-time payments like bonuses need to be included, etc.

PRACTICE TIP: The CDSS guidance on what does and does not need to be reported mid-period is extremely detailed and included in a number of all-county letters (ACLs) and all-county information notices (ACINs) which set out various case examples. Reviewing these scenarios for an example on point or at least analogous to your client's situation can be very helpful. While ACLs and ACINs are not formally promulgated regulations and therefore do not have force of law, they are an acknowledgment by CDSS of how it interprets counties' obligations under the law, and they are in effect relied on by counties to meet these obligations. For CalFresh and CalWORKs semi-annual reporting examples (most cases), *see* ACL 12-25 and ACIN I-58-13 (questions and answers); for CalWORKs child-only cases subject to annual reporting, *see* ACL 12-49 and 12-49E (errata); for CalFresh cases not subject to interim reporting, *see* 15-42.[82]

NOTE: Reporting requirements in TCVAP and RCA. The Trafficking and Crime Victim Assistance Program (TCVAP) and the Refugee Cash Assistance program (RCA) generally follow all CalWORKs reporting rules with the exception that property or resources in the country of origin are not considered a countable resource and therefore should not be required to be reported.[83] The California Food Assistance Program (CFAP, sometimes known as "state CalFresh") similarly follows most procedural rules of the CalFresh program.[84]

4. What Should NOT Result in a Criminal or Administrative Finding of "Fraud"?

Fraud requires more than just a household's failure to follow reporting requirements, even if that failure resulted in the household getting more aid than they should have qualified for. An

[81] All County Information Notice (ACIN) I-16-94, for example. Other letter guidance states the same rule.
[82] See Links to Selected Administrative References section at the end of this advisory for links to location of All County Letters (ACLs) and All County Information Notices (ACINs) on the CDSS website.
[83] CDSS MPP § 69-206.21.
[84] CDSS MPP § 63-403.2.

overpayment should only be characterized as fraud when there is evidence the household had a specific intent to willfully and knowingly provide wrong information or withhold information with the intent to deceive the county for the express purpose of obtaining aid they knew they were not entitled to get.[85] All elements must be present. A negligent action or failure to act is not fraud. When assessing intent, counties should consider among other factors whether a client's failure was caused by other factors such as disability, language barriers, mistake, or confusion. Even when the client has provided a demonstrably false fact on an application, it is important to look at how the client understood the question and whether the county has met its burden in showing that the client's statement was knowing and willful. For assessing *mens rea* in fraud cases, it is the individual's understanding of what they were being asked that is pertinent, not the government's intent in asking.[86]

IV. Common Defenses in Welfare Fraud Cases

A. A County's Failure to Adequately Advise the Individual of their Reporting Responsibilities

Some public benefits programs have very technical due process requirements that may be particularly helpful in proving that the person was not adequately advised of their reporting obligations as a matter of law.

In CalWORKs, counties have an affirmative legal duty to ensure that CalWORKs applicants or recipients understand their rights and responsibilities in relation to applying for and maintaining eligibility for aid, including their obligations to report changes that may affect eligibility.[87] They are required to discuss these responsibilities with applicants at the time of application for aid, and must provide a notice of these rights and responsibilities in a specific written format (currently a state form called the SAWS 2A SAR) at the point of eligibility for new or restored cases and at every annual redetermination.[88] The notice must be in "simple and understandable language."[89] These obligations remain even if the case is processed and approved over the phone.[90]

CalFresh similarly requires that individuals be advised of their rights and responsibilities in an interview that takes place at the time of application for CalFresh.[91] The SAWS 2A SAR (or other required form) must also be provided to the client and a signed copy maintained by the county.

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[85] Calif. W.I.C. § 10980.
[86] *See e.g., United States V. Henderson* 318 F. Supp. 3d 1221 (E.D. Wash. 2018) [While *Henderson* involved a prosecution for willfully and knowingly making a false statement to the Dept. of Veterans Affairs in an application for benefits, the same *mens rea* applies to false statements in the context of W.I.C. § 10980(a).]
[87] CDSS MPP § 40-107.1.
[88] CDSS MPP §§ 40-131, 40-173.5.
[89] CDSS MPP § 40-173.
[90] ACL 16-119.
[91] CDSS MPP § 63-300.4.

PRACTICE TIP: If the county fails to provide the required adequate notice, then the recipient was inadequately advised of their reporting obligations and should not be liable for fraud. Any overpayment resulting from a failure to report in such a situation should be characterized as an administrative error rather than fraud. A county's failure to produce a signed copy of the correct notice of rights and responsibilities is prima facie proof they did not properly advise the individual. The case file should also include a worker notation that the form was provided, and orally reviewed (if an oral advisal is also required). Otherwise, the notice is inadequate and the allegation of a failure to report should fail.

B. Inadequate Language Access

Both the state and the counties have a duty to provide language access in public benefits programs, including oral interpretation and written materials such as applications and informational notices. Counties are required to determine the language preferences of applicants and recipients. The program instructions vary on what this means in practice.[92] Although the application forms ask about oral and written language preferences, the application may not have been in the correct language, calling into question whether the applicant understood what information was requested, or understood the meaning of the answers provided, especially if the applicant was not the person filling out the form. Sometimes people helping an applicant—often because the applicant is unaware of the right to free language assistance—may mark English as the language preference if the helper speaks a non-English language but can only read English. This does not address the applicant's own language needs. Poor translation, particularly if the interpreter is not a professional, may render the language assistance meaningless.

Under *Be Vu v. Mitchell and Bolton*, a state-wide settlement agreement, there is a formula for determining population thresholds for written translations of materials used in CalFresh and jointly in CalFresh and CalWORKs, which currently requires materials be made available in 18 client languages.[93] A notice in the wrong language is not a legally adequate notice; the deadline for appealing such a notice is also tolled due to its insufficiency.[94] Recipients who got overpayment notices in the wrong language should appeal as soon as the notice is understood, and they disagree with the allegations. As stated above, such failures in timely notices by the county may eliminate or reduce any overpayment debt enough to avoid criminal referral and/or establish some facts about a lack of willful intent that could stave off an ADH imposition of a penalty. California law is generally stronger than federal law regarding the provision of language access.

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[92] *Cf.* ACIN I-02-14 (CalWORKs process); CDSS MPP § 22-107 *et seq.;* ACL 08-16 (describing statewide settlement in *Be Vu v. Mitchell and Bolton* No. CPF-04-504362 (CA Superior Ct. San Francisco, Dec. 4, 2006). *See also* ACL 08-51 (Language preference must be reassessed "during any subsequent reverifications of eligibility for services and/or benefits" or at least annually. "Counties are reminded that the use of interpretive services includes contacts with the Fraud Early Detection Program, Income Eligibility & Verification System, Overpayments, Collections and Special Investigative Unit staff (*see* Division 21-103).").

[93] *See* ACL 08-16.

[94] *See Santiago v. D'Elia*, 79 A.D.2d 1020 (N.Y. App. Div. 1981) (Analogous example regarding language and the New York public benefit program requirements).

In the context of a fraud allegation, if a county lacks evidence of the required notice(s) of rights and responsibilities or the relevant required form being provided to the recipient in the correct language—or, if the client speaks a non-threshold language, that the documents were orally interpreted—this would be a defense to any overpayment or allegation of fraud for failure to correctly report. The failure to document in the case file that the county provided an interpreter in all relevant meetings would similarly provide such a defense.[95] County reviews by the CDSS Civil Rights Unit and Management Evaluation reports—both available on the CDSS website—may provide excellent corroboration that a county has a pattern and practice of regularly failing to provide language services.

PRACTICE TIP: In some situations, a client speaks one language but reads another. Language access requires that counties accommodate such language needs separately.

Even if oral translation is provided, the fact that the public benefits recipient received no written copy of the rules they may have received orally, could be helpful for showing an honest mistake. The rules and paperwork for receipt of benefits are complex and people are supposed to have a written copy for future reference. Finally, make sure the translation of the documents was accurate and correct; many non-English speakers have complained about incomprehensible translations even for common languages like Spanish.

C. Inadequate Disability Access

If an individual has a disability, the county is required under both federal and state laws to provide any reasonable accommodations necessary to participate in the welfare program, including those needed to understand and comply with their reporting obligations.[96] The disability itself should also be taken into account in determining whether the person formulated the willful intent needed to meet the statutory definition of fraud, or whether their failure to comply with program rules was unintentional.

As with language access, if an individual needed a reasonable accommodation in order to understand or comply with their reporting obligations—such as having all notices read aloud, or telephonic reminders of reporting requirements—then the county must document in the case notes that it provided all such accommodations at all relevant interactions. A single notation that the client needs accommodations at the time of application would not be sufficient proof that they were provided in the interview where reporting obligations were discussed, for example.[97]

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[95] *See* ACL 06-20 (once the county has been informed that the applicant/recipient needs an interpreter, the county must offer and provide an interpreter for each client contact; limits use of untrained interpreters or minors, even if supposedly at the benefit recipient's request); ACL 08-65 (Documentation of Interpretive Services – list of five things that allow CDSS to verify provision of language access); CDSS MPP § 22-115.2 (Forms, including information inserted into forms by the county, must be provided in the recipient's language); ACL 21- 128 (offering interpreters and allowing benefit recipients to use their own interpreter); ACIN I-09-06 (similar to § 22-115.2, but covering the period prior to that section's implementation).
[96] Americans With Disabilities Act (ADA), 42 U.S.C. § 12101; ACL 19-45; ACL 21-78.
[97] ACL 21-78.

An individual needn't specifically request a "reasonable accommodation" nor invoke the Americans with Disability Act in order to trigger its protections. It is enough that the individual explained they needed extra help or were unable to do certain things as a result of a physical or mental condition.[98] If the county is on notice of the person's disability and need for accommodation, then any overpayments arising from the county's failure to provide such accommodation should be deemed county-caused overpayments rather than household errors or fraud.

Even if the person did not disclose their need for a disability-related accommodation, advocates may use proof of a disability-related reason the person was unable to understand or comply with program rules as a defense to the intent element of the fraud allegation. This comes up frequently in the context of readability. More than half of American adults read below a 6th grade level,[99] and nearly one in five adult CalWORKs recipients have no formal education,[100] yet many CalWORKs notices are written at a college reading level or above. (This is despite the statewide consent decree in *Turner v. McMahon*, which requires CalWORKs notices to be written at a 6th grade reading level or below.[101]) Among immigrants the disparity can be even more stark. While a 1999 survey showed forty-four percent of TANF recipients lack a high school education, a study conducted the same year in California found that up to ninety percent of some immigrant populations receiving TANF lacked a high school education.[102] The same fraud defense would apply to an individual who does not have a legally-defined disability but has limited literacy—such as due to a limited education history.

As with language access, Civil Rights reviews and Management Evaluation reviews of individual counties, available on the CDSS website, are great sources for showing a particular county's pattern and practice of not providing and/or not documenting provision of reasonable accommodations. This evidence of systemic failures can shore up other evidence from the individual case, such as the accused individual's credible testimony that disability services were not offered or provided.

D. General Defenses

In addition to defenses related to the individual's understanding of the need to report, advocates will often find that the individual accused of fraud either tried to explicitly report the information but ran into barriers, or that they thought the county already knew the information required to be reported.

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[98] ACL 19-45; ACL 21-78.
[99] Neitzel, Michael T., "Low Literacy Levels Among U.S. Adults Could Be Costing the Economy $2.2 Trillion a Year," Forbes, Sept. 9, 2020 (citing U.S. Department of Education statistics).
[100] Department of Health and Human Services (HHS), *Characteristics and Financial Circumstances of TANF Recipients Fiscal Year (FY) 2019*, Table 20, https://www.acf.hhs.gov/sites/default/files/documents/ofa/fy19_characteristics_final.pdf.
[101] All County Information Notice I-151-82, November 23, 1982.
[102] Doris Ng, *From War on Poverty to War on Welfare: The Impact of Welfare Reform on the Lives of Immigrant Women*, Equal Rights Advocates, (April 1999).

1. Barriers to Reporting

In addition to communication challenges rooted in language barriers or disability, most county welfare departments have systemic barriers that make it harder for individuals to report information even when they try to do so. For example, most counties use some sort of phone system to receive reports, but wait times to reach a worker can be quite lengthy, often hours long. Many systems reach capacity and stop accepting phone calls for long stretches even during hours they are supposed to be operating. At the same time, in-person office access may require hours of travel by public transit or in rural areas. Some counties refuse to accept information in person and insist on phone reports even when that system is dysfunctional.

Online reporting systems may not be accessible to individuals with limited technological know-how or may suffer their own outages. Many county systems no longer assign an individual worker to a household's case, so they may speak with a different person every time they try to reach the county to report. As with any large bureaucracy, advocates and recipients regularly report information only to find that the next worker they talk to professes to find no record of the report.

These wait times and barriers to in-person reporting were exacerbated to such an extent by the widespread office closures during the COVID-19 public health emergency, that counties were required to treat all non-fraudulent overpayments between April 2020 and June 2022 as administrative errors in the CalWORKs program.[103] This may have led some counties to overreport overpayments resulting from failure to report during this period as fraudulent, when in fact the lack of reporting was the result of those same systemic barriers.

2. Nonfraudulent Delay or Lack of Diligence

Sometimes the reason for a household's failure to follow a reporting requirement is quite simply that they got overwhelmed and forgot about it or didn't get to it by the time it was due. Simple human error like this would not meet the "willful and knowing" *mens rea* for withholding of information from the county and should generally fall under the category of inadvertent or nonfraudulent household error. It is important to center the individual's subjective experience when evaluating the credibility of such an excuse. Many public benefits recipients seek out assistance at points of crisis in their lives. They may have been economically destabilized by the need to separate from an abusive partner, deal with a serious health challenge, or suffer the unexpected loss of a job. Studies consistently show female public benefits recipients experience sexual assault or domestic violence at shockingly high rates—as high as 65% by some studies[104]—and due to the low-income limits and grant amounts, many households on CalWORKs are homeless or in imminent risk of homelessness.

Dealing with these challenges, or even more common life events such as the birth of a new baby, a death in the family, or the need to move suddenly, can make it harder to prioritize

[103] *See* ACL 22-87.

[104] University of Massachusetts at Boston, *In harm's way? Domestic violence, AFDC receipt and welfare reform in Massachusetts* (1997); 4 Taylor Institute, *Trapped by poverty/trapped by abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare* (1997); W. Curicio, Passaic County Board of Social Services, *The Passaic County Study of AFDC Recipients in a Welfare-to-Work Program,* (study conducted 1995-1997).

paperwork. A mother distraught that her abusive partner just increased their visitation time may not immediately think of the need to report this event to the county welfare department. While major life changes may trigger the need to report, they also make it harder for individuals to focus on the need to report.

The COVID-19 public health crisis amplified this effect for many families. As schools and childcare closed and lower-income families suffered disproportionate losses of income and housing destabilization, the pandemic made it harder to focus energy on jumping through bureaucratic hoops. Many households applied for benefits who had never been on aid before and were less familiar with the rules. Understanding the full picture of a client's life and what they were dealing with at the time they failed to meet a program requirement can help you draw that picture for the finder of fact so that they can understand the context in which your client is alleging that a failure was negligent rather than willful and knowing. The bureaucracy of the welfare system amplified by the criminal justice system can be utterly dehumanizing; it is an advocate's job to bring our client's humanity back to the center of the analysis.

3. Actual or Presumed County Knowledge

One common reason a public benefits recipient didn't report information to the county is because they thought—sometimes correctly—that the county already knew. Counties are required at application to notify people of the IEVS data match system described above, and many recipients incorrectly assume that the existence of the IEVS match means the county already knows about their earnings or other financial information and therefore the recipient doesn't need to report it. This also commonly comes up when an individual didn't report the information on the correct reporting form, but told the county in another way, such as through an informal verbal report, and so didn't think they needed to list the information twice.

Sometimes this can be proved simply by obtaining a copy of the case notes or of scans of all submitted documents in a case, which may show that the information was in fact reported. The absence of such corroboration is also not dispositive. As mentioned above, most county welfare departments are structured so that applicants and recipients may interact with many different employees, and workers often fail to document every interaction with recipients fully and correctly. This is especially true if the worker did not think it was relevant to their individual duties at the time it was provided. They may even have reassured the recipient that the information was irrelevant.

Counties are required to run an applicant IEVS report prior to approval. The failure to do so means that counties fail to review information with the applicant, which would have provided the applicant an opportunity to clarify what they had not understood or what information they forgot to provide.

The statutory requirements for public benefits recipients to report certain information refer only to reporting the information to the county.[105] They do not specify the exact worker or even the specific form. The fact that the individual shared the information with anyone at the county welfare department should frequently render the overpayment an administrative error, but at

[105] *See, e.g.,* Calif. Welf. & Inst. Code § 11265.1-3.

the very least shows a lack of intent to hide the information from the county. Common examples of this:

- A CalWORKs recipient reports increased work hours and wages to the county worker who coordinates their supportive services such as childcare (often called the "Welfare to Work" worker), but not to the eligibility worker who calculates their benefits.
- Someone receives both CalFresh and Medi-Cal, and reports income to the Medi-Cal program that they fail to report to the CalFresh program.
- Someone's income may even come directly from the county welfare department itself, such as if they are a care provider under the In-Home Supportive Services (IHSS) program, or if their work is through a subsidized employment program with the county.[106]

Even if a state hearing decision does not find that the county had enough knowledge of the facts to classify the overpayment an administrative error, the attempt to report should be helpful proof in an ADH or criminal case that the individual had no intent to hide the information.

4. Nothing Gained

Another possible defense to a core element of a criminal welfare fraud allegation is the fact that the individual gained nothing of value through the failure to report.[107] This may be because even if the fact at issue had been reported, the amount of aid would have stayed the same or even increased. An example of this is where a household failed to report that a member left the household. While this information may have decreased the household size, if the person who left also had countable income, then loss of that income may have still resulted in a net increase of benefits. The criminal welfare fraud statute also requires that misrepresented facts or withheld information be material; the fact that the household gained no benefit supports a lack of materiality.

Echoing the criminal welfare fraud statute, an intentional program violation in CalWORKs requires that the requisite act or omission be committed in order to "establish or maintain CalWORKs eligibility, or to increase or prevent a reduction in the amount of the CalWORKs grant." In contrast, a CalFresh IPV requires only intentionally making a false or misleading statement, or misrepresenting, concealing, or withholding facts, or committing any act which constitutes a violation of the Food Stamp Act, the CalFresh Program regulations, or any state statute relating to the use, presentation, transfer, acquisition, receipt, or possession of food stamp benefits.[108] This means an intentional misrepresentation alone may still constitute an IPV for CalFresh, though it would not sustain a criminal fraud charge. In practice, the fact there was nothing gained may still be helpful in an administrative CalFresh case to show a lack of intentionality.

> **EXAMPLE:** The county receives a tip that Ms. Nelson has failed to report income from a tenant living in an RV parked on her property, and also that the tenant is her boyfriend. Ms.

[106] *See, e.g., Guerrero v. Superior Court,* 213 Cal. App. 4th 912 (Cal. App 1, 2013); *see also* the unreported case of *People v. Pahoua Lo*, CA 3d. App. Ct. November 24, 2008. 2008 WL 4967931.
[107] *People v. Ochoa*, 231 Cal.App.3d 1413, 1420 (1991) ("[N]onentitlement to the aid obtained or received is clearly an element of the crime of welfare fraud.").
[108] CDSS MPP § 20-351(i)(1); CDSS MPP § 20-300.1.

Nelson explains to the fraud investigator that the family friend living in the RV does not pay rent, but that she lets him stay there as a favor because her estranged husband borrowed money from him and never paid the debt. Ms. Nelson receives CalFresh and CalWORKs for herself and her minor children. Her attorney successfully argues that she receives no income from this arrangement and that the friend, who lives in a separate structure and does not buy or prepare food with the family, is not part of her household. She has no obligation to report this information to the county. Even if the county alleged that the debt forbearance was a form of income, if Ms. Nelson believed it was not—and therefore lacked intent to withhold information about her income—she has not committed an IPV. Whether her relationship with the individual is romantic or platonic is irrelevant.

PRACTICE TIP: Perjury Allegations. Often the county will try to enhance a criminal fraud case by charging the individual with perjury in addition to welfare fraud. A perjury charge still requires proof that the alleged misstatement was material, i.e., that it affected the outcome of the proceeding (or in this case the benefits determination) in which it was made.[109] The argument that nothing was gained by the misstatement should thus provide an adequate defense for both a fraud charge and a perjury charge.

E. Defenses to Specific Substantive Allegations

1. Failure to Report Income

County's Income Report is Incorrect

Counties often base allegations of unreported income on third-party reports that compile data from payroll processing, state employment insurance records, and other data sources. Anyone who has reviewed their own consumer credit report will know that there may be gaps or inaccuracies in such information. A common inaccuracy is the inclusion of payroll income based on a point-in-time match and then projections that the income continued for a certain time period when it may not have done so. Other times there may be a false match with another individual with a similar name or because of an incorrect or stolen social security number. Counties often fail to do further investigation if a recipient reports issues with stolen identity, such as sharing a photo with the alleged employer for verification of whether the recipient is actually the person reported to be employed. Advocates should push for better matching processes if the county is relying solely on reports based on name, social security number or other easily stolen information such as address and date of birth.

PRACTICE TIP: Always obtain all reports or data matches (sometimes known as an "IEVS report") that underpin the county's allegation of unreported income and compare to the individual's actual income based on paystubs or other sources. Employers engaged in exploitative labor practices targeting immigrants, such as paying less than minimum wage, may also falsely report data to state systems or generate paystubs that show a worker was

[109] *People v. Kobrin*, 11 Cal.4th 416, 420 (1995).

paid more than they actually received. Always verify information from the employer with the worker to ensure that it is accurate.

County's Income Report is Correct, But County Failed to Act in a Timely Fashion

The welfare fraud statute[110] prohibits the prosecution for an overpayment of CalWORKs or CalFresh for any month in which the county had income and eligibility verification (IEVS) data match information indicating any potential for issuance of excess benefit if the county welfare department or human services agency did not take specific action. The agency must 1) process the IEVS data match within 45 days of receipt; and 2) provide to the benefits recipient a timely and adequate notice of action for the collection of the overpayment by the quarter after the quarter in which the discrepancy was discovered. If the county did not do both, the benefits recipient cannot be prosecuted for overpayment. This means that if the benefits recipient is found to have committed an IPV through the criminal prosecution process, the months in which the county was in receipt of the IEVS data match information would be considered an Inadvertent Household Error and could not sustain a criminal fraud allegation.[111] Counties are still required to pursue an ADH, however, including if the loss of those months of excess benefits puts the case below a criminal prosecution threshold.[112]

NOTE: New Hire Registry and Income of In-Home Supportive Services (IHSS) Providers. CDSS requires that when a worker is hired as an IHSS provider, that information must be sent to something called the New Hire Registry. The New Hire Registry is one of the data matches for IEVS, and when matched with a public benefits recipient, requires the county to issue a specific reminder to the recipient who is working that they need to report their new income. The county's failure to provide that reminder, known as a "SAWS 30," would be a failure to process IEVS information timely as required for criminal prosecution under Welfare & Institutions Code (W.I.C.) § 10980(j), and in the administrative context would be another factor showing the county had needed information and erred in not meeting its own duties, and therefore the overpayment should be categorized as an administrative error.

PRACTICE TIP: If an individual states they did report the information, such as the start of a new job, to the county worker and the worker told them it did not matter, the county's failure to respond to a data match in a timely fashion may corroborate the benefits recipient's version of events by supporting the implication that the worker believed—even if incorrectly—that the information did not need to be acted on.

Income Not Reasonably Anticipated

Both CalWORKs and CalFresh only count past income to calculate future benefits if the income is "reasonably anticipated" to continue. In CalFresh, this means the amount and date of receipt must be known at the time the reporting is due. There are a variety of reasons the income may not have been reasonably anticipated to continue at the time, and so long as that

[110] Calif. Welf. & Inst. Code § 10980(j).
[111] *See* ACL 18-22, Mar. 27, 2018, which includes helpful examples with a timeline.
[112] *Id.*

report is accurate, there should be no overpayment even if the income does in fact materialize.[113] Many cases that begin as an allegation of fraud are simply a matter of a county acting on a data match showing the individual did receive income, without looking at whether that income was reasonably anticipated at the time.

> **EXAMPLE:** Ms. Mendoza works as a substitute teacher for a small school district. She does not know when she will be called in to work. Some months she works 2-3 days a week, while others she may only work 2-3 days for the entire month. The county notifies her in August that they believe she committed fraud by making more in May than she reported in April, and not making an interim report of her increased income for that month. Ms. Mendoza has a strong defense that her May income was not reasonably anticipated when she made the April report. Even if she should have reported receipt of income in excess of her Interim Reporting Threshold (IRT), it would not continue to be budgeted income, and thus would not have affected future eligibility. Also, the increase in May income exceeded her IRT but was immaterial to her benefits calculation because it was not expected to continue into June, due to the end of the school year.

Income that Should be Excluded from Consideration

Both CalWORKs and CalFresh exclude certain income in whole or in part from consideration in calculating benefits.[114] In reviewing IEVS reports and data matches, county workers often fail to properly apply these exemptions. These exemptions are too numerous to discuss in this advisory but generally occur because of the nature of the income (for example, from certain government or charitable sources), or because the owner of the income is not someone whose income matters (for example, earnings of a high school student, or of certain individuals excluded from the CalWORKs or CalFresh grant).[115] These rules can trip up worker and recipient alike, leading to incorrect reporting by recipients, but also incorrect calculation of overpayments by the worker. Advocates regularly see failure to properly apply exemptions that can result in the county actually owing the recipient due to an underpayment. This is especially true when the exemptions or exclusions are different between programs.

> **EXAMPLE:** Ray and Tanya live with their two children, Alicia (16 years old) and Ray Junior (19 years old). Tanya is disabled and gets SSI benefits, while Ray and Alicia get CalWORKs. Junior attends college while working part time, spending his money on his own food and school costs. Ray gets a call from a fraud investigator; their CalFresh case was referred because an IEVS match showed unreported income by Junior. Tanya is confused; she remembers talking to the county worker last summer, when the worker told her Junior would be removed from the CalWORKs grant because he was 18 and graduated high school. She asked if Junior's summer job would hurt their grant, and the worker told her his income no longer mattered.

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[113] W.I.C. 11004.1(b), ACL 12-25.
[114] *See, e.g.,* CDSS MPP §§ 63-502.2 and 63-502.3 (CalFresh exclusions and deductions) and CDSS MPP § 44-111 (CalWORKs).
[115] For a sampling of CalFresh income exemptions, see Legal Services of Northern California CalFresh Guide, 50 Things That Are NOT Income (2023), available at https://calfresh.guide/things-that-are-not-income/.

> While Junior's age and student status makes him ineligible for CalWORKs, children under 22 living with their parents must be included in the CalFresh household unless they are otherwise excluded from CalFresh eligibility. So Junior (and his income) would be part of the CalFresh case but not the CalWORKs case. Junior and his income may be excluded from the CalFresh case under a rule excluding certain full-time students, but there are many exceptions to this rule. Even if he is included, however, his income itself could be exempt if it is from an exempt source, such as a work-study job. The rules and exemptions are very complicated and confusing to benefits recipients and even to many caseworkers.

With rules like these, it is inevitable that workers and recipients both make many errors. Factual development and consultation on program rules with a knowledgeable attorney or advocate can be key to fighting what may at first seem like a watertight case of welfare fraud. In the example above, even if Junior's work ends up impacting the grant calculation, the misunderstanding by Tanya and Ray is entirely reasonable. Unfortunately, this fact pattern with young adult children and confusion over whether their income counts or not for calculation of benefits is one advocates regularly see in welfare fraud referrals.

2. Failure to Report Property[116]

Ownership or Value Incorrect or Misunderstood by Individual

Like income matching reports, property or resources are sometimes flagged due to third-party reports using social security numbers or other data to connect real property or bank accounts. This is less common than income matching, and unreported property often only comes up because the benefits recipients themselves mention the property to the county or because the individual provided bank records or other proof of property to the county later on, such as at annual renewal. However, when the data comes from system matches, it may be prone to the same type of errors as income matches and be incorrect regarding the owner or value of the property.

It is also possible for an individual accused of fraud for hiding an asset to have honestly but mistakenly believed it was not theirs or that it was not worth enough to matter. A common example is when the individual's name was added to the title of an account or to an asset like a vehicle or property for reasons of convenience, such as to manage the account for another individual who was elderly or infirm, or to help get a better insurance rate on a vehicle owned by a family member. This titling of one person's asset in another's name may happen particularly often in families where some members do not have social security numbers but others do.

Generally, the property must be "actually available" to the individual in order to count towards the property or asset limit.[117] If an individual does not realize they own the property, or if there are practical reasons they cannot access it or convert a nonliquid asset to cash, the asset should not be deemed available. For example, if title is in the benefits recipient's name to help someone who could not be on the title, a defense is that the resource is not "actually available"

[116] Due to changes in 2009 and 2011, most CalFresh recipients do not have a property or asset limit, so this section would apply primarily to CalWORKs or other cash aid cases and some CalFresh cases with very old facts.
[117] California W.I.C. § 11257(b)(2); CDSS MPP § 63-501.3(i).

because the recipient has a fiduciary duty to the actual owner. If an elderly parent pays for a car that the adult child has put in their name, because they need to drive the parent to appointments, the value of the car is not available to the adult child as an asset if they would have to return all the funds from a sale to the parent. A common scenario for immigrants may be when the asset is abroad, the person cannot travel, and certain formalities necessary to liquidize the asset must be done in person. For humanitarian immigrants such as asylees, refugees, and crime victims, the TCVAP and RCA programs recognize the inherent difficulty in accessing assets in the home country and exclude them from consideration.[118]

3. Residency

It is not uncommon for counties to allege fraud on the basis that the individual did not reside in the county, but even if true, this is not always a correct basis for overpayment, let alone fraud. Residency fraud accusations often start because of electronic benefits transfer (EBT) usage outside the county or state. Such usage alone is not a basis for determining a change of residence or an overpayment, but recipients should be wary of the likelihood that regular out-of-county use may trigger an investigation.[119]

Most public benefits programs have provisions for the temporary absence of a household member for various reasons, and public benefits recipients do not lose their constitutional right to free movement simply because they receive benefits. The exact length of a temporary absence allowable before benefits are impacted varies by program. CalFresh, for example, allows a temporary absence of up to 12 months as long as the household member intends to return,[120] while CalWORKs will presume a temporary absence is permanent after 60 days.[121] For CalWORKs and joint CalWORKs/CalFresh cases, a household must report a change of address or change in household composition within ten days.[122] CalFresh-only households are only required to report at the next semi-annual report.[123] In practice, fraud investigations are often initiated on much briefer absences.

In addition, the point at which a temporary absence becomes a permanent change of residence is complicated. As in other areas of law, “residency” is a complex determination involving such factors as how long the person has been gone, where the bulk of their contacts and activity take place, and whether they intend to return. A person may initially have no need to report a temporary absence, but then at some point form enough of a connection to their new location that a change of residence has occurred and must be reported. For example, a week-long visit to an elderly parent could get extended if the parent has a medical emergency. The adult child could have been dealing with that crisis, and not focusing on going back or public benefits reporting rules. This uncertainty can be used to defend an allegation of residency fraud, undermining the element of intent. A change of residence often also fails to result in any sort of wrongful gain.

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[118] CDSS MPP § 69-206.21.
[119] ACL 15-94.
[120] *Id.*
[121] CDSS MPP § 42-407.23.
[122] CDSS MPP §§ 44-316.321(d) and (f).
[123] ACL 17-58.

EXAMPLE: Ms. Delacroix has been fighting her abusive ex-spouse for custody of their children. The abuser makes a fraud tip to County A that Ms. Delacroix really lives in County B, even though she applied for CalFresh in County A using a mailing address. County A sends a fraud investigator who tries to get Ms. Delacroix to sign an ADH waiver and agree to repay $5000 worth of CalFresh benefits. Residence in a particular county is not a requirement of eligibility for CalFresh, and Ms. Delacroix asked the worker when she applied if she could use a mailing address. Ms. Delacroix should not sign the ADH waiver because she did not commit an IPV and was not even overpaid, though her case should be transferred to County B, where she lives.

PRACTICE TIP: Travel outside the country. Public benefits recipients have the same right to travel from their home as any other individual, and there is no specific prohibition on travel outside the United States in the CalWORKs and CalFresh programs other than the general limits on absences described above. The Cash Assistance Program for Immigrants (CAPI) follows the same rules as the federal Supplemental Security Income program and can suspend benefits if the individual is out of the country for over a month.[124] Even when travel is allowed, some benefits may not be used while outside the United States, and households may also run into fraud trouble if they let someone else use their benefits back in California while they are abroad.

4. Unreported Changes in Household Composition

Another common fraud allegation is the failure to provide information about a person who allegedly lives with the household, or failure to report the absence of a person included in the household. Such allegations can usually be broken up into two questions: (1) Was the person actually living in the household or absent from the household as alleged? (2) Did the individual accused of fraud know that this was relevant information for the county to have?

While the question of whether an individual was living in the household or not may seem simple, it can be surprisingly complex. The relationships and living arrangements of families can be dynamic. Particularly when changes in living arrangements happen gradually or temporary situations become unexpectedly drawn out, it can be hard to determine the exact date someone entered or left a household. For example, a teenager raised by one parent may temporarily move in with the other parent after a fight. A romantic partner may spend the night with increasing frequency as the relationship grows. A young adult may frequently spend weeks at a time staying with friends but regularly return for weeks as well.

These are the same sorts of fluid and sometimes fraught situations that exist in all families, but when a family is on public benefits, they are expected to report such comings and goings immediately, precisely, and often to a complete stranger. Counties often demand corroborating evidence such as proof an individual maintained a separate residence, or proof their name was added to a utility bill. This need for formal proof can be difficult to come by if the housing is informal such as renting a room, or if there is a reason such as lack of a social security number or bad credit that someone is not able to be added to an account or a lease. Explaining these reasons can help shore up the individual's credible testimony in a fraud proceeding.

[124] CDSS MPP § 49-010.24.

Besides a lack of formal certainty over whether the living arrangement had changed, it is also common that individuals don't know that it matters. This is especially true if the person involved is not listed on the public benefits case. Except for a parent or spouse ineligible due to immigration status, the living arrangements and income of someone not on the public benefits case are often irrelevant and need not be reported. However in certain situations they can become relevant. For example, in the example of Ray, Tanya, and Ray Junior above, a 19-year-old college student may be totally irrelevant for the CalWORKs case, and their absence from the household and/or income need not be reported. In some circumstances they may also be ineligible for CalFresh if they are a full-time student, while under other circumstances they would become eligible for CalFresh, and their living arrangements and income would once again matter. County workers also get confused in these situations and may tell the teen's mother she doesn't need to know any details about the adult teen—thinking only of CalWORKs rules—forgetting such details may be relevant for CalFresh.

The circumstances under which an individual leaves the home may also impact the reasonableness of delay in failure to report. For example, a parent who loses custody of their child may be so distraught that they are focused on getting their child back and not thinking about the impact on their CalFresh. The same may be true for someone who is dealing with the loss of a partner to death or separation. Many of us have likely experienced a time of great stress or crisis when we have simply not been able to keep up with tasks like checking the mail, staying on top of paperwork, and following up with bureaucracies—particularly if the latter can involve hours and hours on hold, often only to find no one is available to speak your language.

For many of us, such human lapses are met with compassion, perhaps minor bureaucratic headaches, or even small financial penalties. For public benefits recipients, who face the relentless stress of poverty on top of such a crisis, the consequences can be utterly unforgiving and involve a criminal record or the deprivation of money needed for food and rent. For public benefits recipients who are also immigrants, the consequences can mean deportation and a lifetime of separation from the ones they love.

V. Conclusion

Public benefits overpayment and fraud cases create significant risks for noncitizens, due to the possibility for criminal prosecution leading to potentially devastating immigration consequences. Advising clients and developing defenses for noncitizens in welfare fraud cases requires specialized knowledge of the relevant state law, regulations and guidance, county practices, administrative and criminal defenses, as well as immigration consequences of admissions and convictions. Criminal defense counsel who have immigrant clients charged with welfare or benefits fraud should consult early on in the process with public benefits practitioners as well as experienced immigration attorneys. It should never be assumed that charges of welfare fraud are indefensible based on the "facts" alleged by the government, even when it is clear that overpayments of benefits were received or that there was a clear failure in reporting. Allegations must be scrutinized under the lens of specific program rules, as facts that appear criminal on their surface may not even amount to overpayments, let alone sustain criminal fraud charges. The complexity of these rules and the individual characteristics of the accused, including limited English, limited literacy, disability, and general life upheaval, should

also be emphasized in understanding the reasonableness of any failure to follow program rules, and whether the county has met its burden of *mens rea*.

It is also critical for advocates to identify and develop strategies to use in administrative disqualification hearings within the short windows of time available. The administrative disqualification hearing is an opportunity for practitioners to challenge the allegations of IPV or fraud, and if successful, avoid referral to criminal proceedings on the same grounds.[125] Bay Area Legal Aid and the ILRC also recommend that immigration practitioners consult with their clients about whether they are already receiving benefits or plan to apply. Practitioners who have clients planning to apply for benefits can reach out to public benefits practitioners to assist clients in understanding reporting requirements and to avoid mistakes leading to harmful criminal and immigration consequences.

California has recognized the importance of allowing many categories of immigrants access to the safety net that public benefits can provide, especially recognizing its importance for immigrant survivors of crime or exploitation and the elderly and disabled. Yet the factors which make these individuals eligible and in need of this help are often the same factors that make it harder to navigate the complex and often unforgiving program rules once they apply.

Collaboration between poverty lawyers, immigration attorneys and criminal defense attorneys can ensure that immigrants get a fair chance to defend themselves against such accusations.

[125] *People v. Sims*, 32 Cal.3d 468 (1982).

Resources:

To find the contact for your local civil legal aid office:
www.LawHelpCA.org

LSNC Guide to CalFresh Benefits:
https://calfresh.guide/

CDSS Regulations and Policy Guidance, including All-County Letters and All-County Information Notices:
https://cdss.ca.gov/inforesources/rules-regulations
https://cdss.ca.gov/inforesources/letters-and-notices

ILRC Practice Advisories and Publications on Immigration Consequences of Crimes:
https://www.ilrc.org/crimes

ILRC, Practice Advisory: *All Those Rules About Crimes Involving Moral Turpitude*:
https://www.ilrc.org/sites/default/files/resources/all_those_rules_cimt_june_2021_final.pdf

ILRC, Practice Advisory: *Aggravated Felonies*:
https://www.ilrc.org/sites/default/files/resources/aggravated_felonies_4_17_final.pdf#:~:text=Aggravated%20felonies%20are%20defined%20at%20INA%20§%20101%28a%29%2843%29%2C,federal%20and%20state%20offenses%20can%20be%20aggravated%20felonies

ILRC Practice Advisories and Manual on Post-Conviction Relief:
https://www.ilrc.org/immigrant-post-conviction-relief

Links to Selected Administrative References

Most of the administrative reference materials cited in this article are available through the website of the California Department of Social Services, www.cdss.ca.gov. Though the specific links for these materials—namely, All County Letters, All County Information Notices, and the CDSS Manual of Policies and Procedures—are subject to change, we are providing the most current links here for ease of reference. For All County Letters, the first two digits represent the year in which the guidance was issued, while for All County Information Notices, it is the last two digits that represent the year of issuance. An "E" after the document number for either one indicates that it is an errata to a prior guidance document of the same number.

ACL 06-20: https://cdss.ca.gov/lettersnotices/entres/getinfo/acl06/pdf/06-20.pdf

ACL 08-16: https://cdss.ca.gov/lettersnotices/entres/getinfo/acl08/08-16.pdf

ACL 08-51: https://cdss.ca.gov/lettersnotices/entres/getinfo/acl08/08-51.pdf

ACL 08-65: https://cdss.ca.gov/lettersnotices/entres/getinfo/acl08/08-65.pdf

ACL 12-25: https://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2012/12-25.pdf

ACL 12-25E: https://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2012/12-25e.pdf

ACL 12-49: https://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2012/12-49.pdf

ACL 12-49E: https://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2012/12-49e.pdf

ACL 15-42: https://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2015/15-42.pdf

ACL 15-94: https://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2015/15-94c.pdf

ACL 16-02: https://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2016/16-02.pdf

ACL 16-119: https://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2016/16-119.pdf

ACL 17-58: https://www.cdss.ca.gov/Portals/9/ACL/2017/17-58.pdf?ver=2019-06-26-135933-050

ACL 17-58E: https://www.cdss.ca.gov/Portals/9/ACL/2017/17-58E.pdf?ver=2019-06-26-135943-733

ACL 17-73: https://www.cdss.ca.gov/Portals/9/ACL/2017/17-73.pdf?ver=2019-06-26-140413-447

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ACL 19-52: https://www.cdss.ca.gov/Portals/9/ACL/2019/19-52.pdf?ver=2019-06-10-150118-517

ACL 21-78: https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2021/21-78.pdf?ver=2021-07-23-142636-270

ACL 21-128: https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2021/21-128.pdf?ver=2021-11-16-124020-573

ACL 22-87: https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2022/22-87.pdf?ver=2022-10-19-125411-653

ACL 23-19: https://www.cdss.ca.gov/Portals/9/Additional-Resources/Letters-and-Notices/ACLs/2023/23-19.pdf?ver=2023-02-17-142049-487

ACIN I-151-82: https://cdss.ca.gov/lettersnotices/entres/getinfo/acin82/I-151-82.pdf

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ACIN I-58-13: https://www.cdss.ca.gov/lettersnotices/EntRes/getinfo/acin/2013/I-58_13.pdf

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MPP Division 19: https://www.cdss.ca.gov/ord/entres/getinfo/pdf/1cfcman.pdf

MPP Division 20: https://www.cdss.ca.gov/ord/entres/getinfo/pdf/2cfcman.pdf

MPP Division 22, 22-001 to 22-085: https://www.cdss.ca.gov/Portals/9/Regs/4CFCMAN.pdf

MPP Division 22, 22-100 to 22-345: https://www.cdss.ca.gov/ord/entres/getinfo/pdf/5cfcman.pdf

MPP Division 40, 40-100 to 40-127: https://www.cdss.ca.gov/Portals/9/Regs/Man/EAS/2EAS.docx?ver=2023-05-04-110523-880

MPP Division 40, 40-128 to 40-197: https://www.cdss.ca.gov/Portals/9/Regs/EAS/3EAS.docx?ver=2022-12-30-095617-807

MPP Division 42, 42-200 to 42-600: https://www.cdss.ca.gov/Portals/9/Regs/5EAS.pdf

MPP Division 44, 44-001 to 44-315: https://www.cdss.ca.gov/Portals/9/Regs/Man/EAS/12EAS.docx?ver=2023-05-04-110523-833

MPP Division 44, 44-316 to 44-509: https://www.cdss.ca.gov/Portals/9/Regs/Man/EAS/12EASa.docx?ver=2023-05-04-110524-273

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MPP Division 63, 63-400 to 63-405: https://www.cdss.ca.gov/ord/entres/getinfo/pdf/fsman04a.pdf

MPP Division 63, 63-501 to 63-502: https://www.cdss.ca.gov/ord/entres/getinfo/pdf/fsman05.pdf

MPP Division 69, 69-200 to 70-105:
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