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Chapter 361: Ensuring Assistance for All Disaster Victims

William Kramer

Code Section Affected

Government Code § 8596 (amended).

AB 2327 (Caballero); 2008 STAT. Ch. 361.

I. INTRODUCTION

The State of California remains vulnerable to natural disasters such as earthquakes, floods, and fires.¹ When these disasters strike, victims expect the government to provide timely and effective assistance to alleviate suffering and meet basic needs for those who emerge from the disaster helpless and confused.² For these victims, survival becomes a first priority,³ and escaping to a place of safety becomes the ultimate goal.⁴ Time is short, so grabbing identification becomes a secondary concern.⁵ In these moments of crisis, disaster victims expect government assistance that applies equally to all people.⁶ Unfortunately, the government does not always live up to these expectations.⁷

Disaster victims experienced the government's failure on a large scale following Hurricane Katrina in 2005,⁸ and to some degree, during the 2007

1. See *California Combines Emergency Response Agencies*, CBS13, Sept. 27, 2008, <http://cbs13.com/local/california.emergency.response.2.827348.html> ("Here in California we know all too well the kind of destruction that natural disasters like floods, earthquakes and fires can cause." (quoting Governor Schwarzenegger)).

2. See CAL. GOV'T CODE § 8550 (West 2005) (recognizing the State of California's responsibility to mitigate the effects of disasters and to "protect the health and safety and preserve the lives and property of the people of the state").

3. See Letter from Francisco Lobaco, Legislative Dir., Am. Civil Liberties Union, to Anna Caballero, Assembly Member, Cal. State Assembly (Apr. 16, 2008) [hereinafter Lobaco Letter] (on file with the *McGeorge Law Review*) (arguing that when people flee their homes from a natural disaster "their first concern is to immediately get themselves and their families to safety").

4. See *id.* (discussing the immediate concern to find a safe location).

5. See 2008 Cal. Stat. ch. 361, § 1(a) ("Individuals fleeing a disaster or coping with emergency circumstances commonly lose access to their personal documents and identification, and replacing them during a disaster or emergency can be burdensome, if not impossible."); Lobaco Letter, *supra* note 3 ("[T]here is little time for packing or grabbing important documents before evacuating a threatened area.").

6. See CAL. GOV'T CODE § 8550 (recognizing California's responsibility to mitigate the effect of disasters and to "protect the health and safety and preserve the lives and property of the people of the state"); *id.* (providing protection for the people of the state).

7. See generally Press Release, White House, President Asks Bush and Clinton to Assist in Hurricane Relief (Sept. 1, 2005) (on file with the *McGeorge Law Review*) ("Four years after the frightening experience of September the 11th, Americans have every right to expect a more effective response in a time of emergency. When the federal government fails to meet such an obligation, I, as President, am responsible for the problem, and for the solution.").

8. See FED. GOV'T, THE FEDERAL RESPONSE TO HURRICANE KATRINA: LESSONS LEARNED (2007) (reporting on the failures of the government's response to Hurricane Katrina). Hurricane Katrina hit the Louisiana coastline and the city of New Orleans in August of 2005. Criticism has been levied on the federal

wildfires in San Diego.⁹ During the wildfires in San Diego, the State of California quickly established evacuation shelters for the victims and evacuees;¹⁰ however, hundreds of complaints revealed that not all evacuees were treated equally.¹¹ Those who found themselves without identification—either because they did not possess any identification or discarded it while escaping the fires—were asked to leave or were barred from entering the structure.¹² Many of these victims were minorities of Mexican or Central American descent, sparking accusations of discrimination and controversy over illegal immigration.¹³

Chapter 361 recognizes these difficulties and seeks to ensure that disaster assistance will be available to all eligible victims during an emergency.¹⁴ All disaster victims deserve timely and efficient protection of their health and safety.¹⁵ Chapter 361 will provide this protection by ensuring that all victims, including those without identification, receive needed assistance.¹⁶

II. BACKGROUND

A. Relevant Law

1. Immediate versus Long-term Assistance

Federal and state agencies understand that individuals fleeing a disaster may lose access to identification or personal documents.¹⁷ Therefore, agencies rarely require identification in order to provide victims with disaster-related assistance

government's lack of preparation and mismanagement in their response to the disaster. Scott Shane, *Storm and Crisis: The Fallout; After Failures, Government Officials Play Blame Game*, N.Y. TIMES, Sept. 5, 2005, at A1. The storm killed 135 people in New Orleans alone. See Louisiana Department of Health and Hospitals, Reports of Missing and Deceased, Aug. 2, 2006, <http://www.dhh.louisiana.gov/offices/page.asp?ID=192&Detail=5248> (on file with the *McGeorge Law Review*) (noting that of the 1,464 people killed in Louisiana, 135 were from New Orleans).

9. See Gillian Flaccus, *1,500 Homes Lost; \$1B Loss in San Diego Area*, SEATTLE TIMES, Oct. 24, 2007 (discussing that in October 2007, the San Diego area experienced wildfires which destroyed at least 1,500 homes). The ACLU received complaints that police asked evacuees for identification, and those who could not supply identification were evicted from the shelter or not admitted at all. ACLU OF SAN DIEGO & IMPERIAL COUNTIES, FIRESTORM: TREATMENT OF VULNERABLE POPULATIONS DURING THE SAN DIEGO FIRES 5 (2007) [hereinafter ACLU REPORT].

10. See CITY OF SAN DIEGO, AFTER ACTION RESPONSE—OCTOBER 2007 WILDFIRES REPORT 7-8 (2008) (evaluating the City's response to the fires and explaining the process of setting up the evacuation centers).

11. See generally ACLU REPORT, *supra* note 9 (reporting incidents of unequal treatment during the San Diego wildfires).

12. *Id.* at 5-6.

13. See *id.* at 6 (noting complaints from persons of Mexican or Central American descent).

14. 2008 Cal. Stat. ch. 361, § 1(a)-(b).

15. ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 2327, at 2 (Apr. 23, 2008).

16. *Id.*

17. See CITY OF SAN DIEGO, *supra* note 10, at 28 (emphasizing the policy that "[i]dentification isn't required for evacuee registration").

immediately following a disaster.¹⁸ However, applications for *long-term* disaster assistance generally require that the victim present some form of identification.¹⁹ Long-term assistance programs can be provided by federal, state, local, or non-profit organizations.²⁰ Some examples of long-term assistance include housing assistance, disaster loans to residents and businesses, and help with processing insurance claims.²¹

2. *The California Emergency Services Act*

The California Emergency Services Act (ESA) established the Office of Emergency Services (OES).²² The ESA coordinates the emergency services functions of California so the state can mitigate the effects of disasters and protect the health and safety of the people of California.²³ The OES helps facilitate these goals by preparing and coordinating local governments and state agencies for emergencies that threaten lives, property, or the resources of the state.²⁴ Under the ESA, state entities and employees must provide all possible assistance to the director of the OES in preparing for and responding to emergencies.²⁵

18. *See id.* (recommending that victims/evacuees should not be required to present identification when entering a shelter); Interview with Michael Gervais, Assembly Fellow, Office of Assembly Member Anna M. Caballero, in Sacramento, Cal. (May 29, 2008) [hereinafter Gervais Interview] (notes on file with the *McGeorge Law Review*) (explaining how short-term assistance normally requires no information to determine eligibility). Examples of short term assistance include assistance like food, water, and shelter. *Id.*

19. *See* FEMA, What Information do I Need to Apply?, <http://www.fema.gov/assistance/process/index.shtm> (last visited Dec. 31, 2008) (on file with the *McGeorge Law Review*) (requiring a name and social security number to verify identification in order to receive long-term assistance). An example of long-term assistance to disaster victims is California's State Supplemental Grant Program (SSGP) "administered by the California Department of Social Services (CDSS) and provides grant funds to assist people who have suffered damage in a disaster area declared by the President and when the federal assistance to Individuals and Household Program (IHP) is implemented." Office of Emergency Services, Recovery Process—Sequence of Delivery, <http://rimsinland.oes.ca.gov/WebPage/oeswebsite.nsf/OpenBranchContent/B7F974F1AA22BA888825740B00612EF3?OpenDocument> (last visited Oct. 4, 2008) (on file with the *McGeorge Law Review*). SSGP requires applicants to have "applied to the Federal Emergency Management Agency (FEMA) and have received the maximum grant from FEMA's Individuals and Households Program (IHP)." California Department of Social Services, The State Supplemental Grant Program, <http://www.cdss.ca.gov/cdssweb/entres/forms/English/SSGP45.pdf> (last visited Oct. 4, 2008) (on file with the *McGeorge Law Review*).

20. *See* OES, Individual Assistance, <http://www.oes.ca.gov/WebPage/oeswebsite.nsf/content/A9E0A712093245058825740B00509812?OpenDocument> (last visited Dec. 31, 2008) (on file with the *McGeorge Law Review*) (stating that "assistance may come in a variety of ways," and listing examples). Examples of federal, state, and non-profit assistances are FEMA, OES, and the International Red Cross respectively. *Id.*

21. *See* FEMA & OES, Disaster Aid Brochure, [http://rimsinland.oes.ca.gov/WebPage/oeswebsite.nsf/ClientOESFileLibrary/Recovery%20-%20Individual%20Assistance%20Forms/\\$file/Tri%20Fold%20wDUA.doc](http://rimsinland.oes.ca.gov/WebPage/oeswebsite.nsf/ClientOESFileLibrary/Recovery%20-%20Individual%20Assistance%20Forms/$file/Tri%20Fold%20wDUA.doc) (last visited Dec. 31, 2008) (on file with the *McGeorge Law Review*) (overviews various available long-term assistance programs for the victims of the November 2008 California Wildfires).

22. CAL. GOV'T CODE § 8585 (West 2005).

23. *Id.* § 8550.

24. *Id.*

25. *Id.* § 8587.

Recently, Chapter 372, legislation signed into law along with Chapter 361, merged the OES and the Office of Homeland Security into the California Emergency Management Agency (CEMA).²⁶ The CEMA will oversee and coordinate the emergency preparedness and response recovery duties of the OES, in addition to homeland security activities.²⁷ Governor Schwarzenegger announced that combining the two offices will improve the state's ability to respond to disasters.²⁸

B. *The 2007 San Diego Fires*

During the infamous San Diego Fires of 2007, Qualcomm Stadium was converted into an evacuation center for evacuees and victims.²⁹ In a report following the wildfires, the City of San Diego claimed that its number one priority was the safety and security of victims and ensuring that no one was "denied access or services and few questions were asked of the people coming to seek shelter."³⁰ However, complaints from individuals at Qualcomm contradicted such claims.³¹

Some victims and evacuees stated that they were asked to show identification in order to access supplies or use the shelter.³² Specifically, the ACLU reported that at around midnight, San Diego City police officers walked around the stadium, woke up families, and asked for identification.³³ Families that were unable to provide identification were forced to leave the evacuation center in the middle of the night.³⁴ The next morning, the police made the same request to evacuees attempting to enter the stadium.³⁵ The police explained that identification was needed to ensure only true evacuees were using the evacuation center.³⁶ Although the City's report failed to mention these incidents, the report did acknowledge that the situation in the stadium was "chaotic."³⁷ The City's report also recognized that by Wednesday, October 23, 2007 (the day victims say the identification checks began), City staff had developed an "independent registration form" used to "gain control of who was inside [the stadium]."³⁸

26. *California Combines Emergency Response Agencies*, *supra* note 1.

27. SENATE FLOOR, COMMITTEE ANALYSIS OF AB 38, at 2 (Aug. 19, 2008).

28. *California Combines Emergency Response Agencies*, *supra* note 1.

29. Solomon Moore, *Stadium Provides Relief Amid the Fires*, N.Y. TIMES, Oct. 23, 2007, at A20.

30. CITY OF SAN DIEGO, *supra* note 10, at 27.

31. See ACLU REPORT, *supra* note 9, at 4-14 (listing reported civil liberties issues during the 2007 San Diego wildfires).

32. See *id.* at 4-9 (describing the problems evacuees faced with the police and border control); Gervais Interview, *supra* note 18 (stating that the OES had received similar reports).

33. ACLU REPORT, *supra* note 9, at 5.

34. *Id.*

35. *Id.* at 6.

36. *Id.*

37. *Id.*

38. CITY OF SAN DIEGO, *supra* note 10, at 28.

Some evacuees, especially minorities, felt the police targeted and discriminated against them.³⁹ Over a dozen evacuees told the International Red Cross (IRC) that they were afraid to leave the stadium because they feared police harassment outside; and more than half a dozen evacuees reported that police officers approached them while carrying donated supplies to their cars.⁴⁰ A majority of these complaints came from minorities of Mexican or Central American descent.⁴¹ For example, “five police officers surrounded a family in a parking lot and asked them to account for” the items they were carrying to their car, implying the family had stolen the supplies.⁴² Additionally, an IRC volunteer observed police approach a single African-American mother of three and accuse her of stealing supplies.⁴³ The fear of possible immigration inspection kept some evacuees from leaving the stadium⁴⁴ and others from entering the stadium.⁴⁵ Such fears proved legitimate when the police handed over six people to immigration officials after they were detained for suspected theft.⁴⁶

The ACLU compiled these accounts and various others into one report regarding the human rights and civil liberties compromised during the 2007 San Diego Wildfire.⁴⁷ The report concluded with the following recommendations: the immediate “cessation of identity checks in the disbursement of emergency shelter, food water and other supplies during a disaster;” the temporary cessation of immigration patrols at evacuation centers to allow the relief effort to focus on providing victims with the necessary assistance; and a commitment from civic leaders that all disaster victims can access assistance “without fear of apprehension, inspection, or disparate treatment.”⁴⁸ Taking these recommendations into account, Chapter 361 seeks to avoid the compromises to human rights and civil liberties that victims of the 2007 San Diego Wildfires had to endure.⁴⁹

39. ACLU REPORT, *supra* note 9, at 6.

40. *Id.* at 7.

41. *Id.* at 6.

42. *Id.* at 7.

43. *Id.* at 7-8.

44. *Id.* at 7.

45. See Richard Marosi & Ari B. Bloomekatz, *Evacuation Raise Deportation Fears*, L.A. TIMES, Oct. 28, 2007, <http://theenvelope.latimes.com/la-me-border28oct28.0,900968.story> (on file with the *McGeorge Law Review*) (discussing a fire victim who decided not to go to the shelter for fear of deportation).

46. Randal C. Archibold & Will Carless, *Glare of Fires Pulls Migrants From Shadows*, N.Y. TIMES, Oct. 27, 2007, at A1; see also ACLU REPORT, *supra* note 9 (“Although San Diego Police Department policy prohibits officers from calling in Border Patrol unless a criminal charge has been lodged, police in this instance violated that policy and called in Border Patrol without lodging a formal charge.”).

47. See generally ACLU REPORT, *supra* note 9 (discussing the infringement upon human rights and civil liberties).

48. *Id.* at 28.

49. See Gervais Interview, *supra* note 18 (explaining the reasons for introducing the bill).

III. CHAPTER 361

Motivating its decision to enact Chapter 361, the Legislature found that persons fleeing a disaster often lose access to their personal identification,⁵⁰ and that replacing this information during the disaster can be difficult, if not impossible.⁵¹ The Legislature further found that it is critical that all disaster evacuees and other victims receive timely and effective assistance to alleviate suffering and meet basic needs.⁵² Responding to these legislative findings, Chapter 361 requires all entities providing disaster-related services to strive to provide all victims with the assistance they need and are eligible to receive.⁵³ Chapter 361 also requires public employees to assist victims in securing “disaster-related services and assistance” without requiring unnecessary information to determine eligibility under state and federal law.⁵⁴

IV. ANALYSIS OF CHAPTER 361

Chapter 361 received overwhelming support⁵⁵ from organizations that promote equality and want to ensure that “during a disaster-related emergency, relief and recovery services are available to all disaster victims in a fair and expeditious manner.”⁵⁶ Supporters hope to avoid another situation like that which took place at the Qualcomm Stadium during the 2007 San Diego wildfires.⁵⁷ Chapter 361 accomplishes this goal by clearly stating the policy of California that during an emergency, all entities performing disaster related work shall strive to ensure that *all* victims receive necessary assistance.⁵⁸ To avoid expelling or blocking any victims from receiving needed assistance, Chapter 361 also prohibits public employees assisting evacuees and other victims from eliciting any information or documents that are not strictly necessary to determine

50. 2008 Cal. Stat. ch. 361, § 1(a).

51. *Id.* Finding replacement identification is especially difficult for “vulnerable populations, such as low-income individuals, seniors, or persons with disabilities.” *Id.*

52. *Id.*

53. CAL. GOV'T CODE § 8596(c) (amended by Chapter 361).

54. *Id.* (amended by Chapter 361).

55. See ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 2327, at 4-5 (Apr. 23, 2008) (listing 30 different organizations in support including the ACLU, American Red Cross, and several religious, international, and immigration organizations).

56. Lobaco Letter, *supra* note 3.

57. See *id.* (emphasizing the ACLU's support for Chapter 361 and the unfortunate events of the 2007 San Diego wildfires).

58. See CAL. GOV'T CODE § 8596(c) (amended by Chapter 361) (“Entities providing disaster-related services and assistance shall strive to ensure that all victims receive the assistance that they need and for which they are eligible.”).

eligibility for such assistance.⁵⁹ This includes identification cards, which some victims either do not possess or may lose in an effort to escape disaster.⁶⁰

The California Department of Public Health (CDPH) was Chapter 361's sole opponent.⁶¹ The CDPH argued that Chapter 361 is "overly broad" and may conflict with established codes and guidelines that oversee emergencies.⁶² The CDPH interpreted Chapter 361 as setting broad expectations that would be difficult to meet during a major emergency situation and could expose the state to liability.⁶³ While CDPH's own guidelines emphasize a *population*-based care during emergencies, Chapter 361 emphasizes *individual*-based care.⁶⁴ Such a contradiction in policy led the CDPH to oppose Chapter 361.⁶⁵

Because the CDPH did not voice its opposition until four months after the bill's introduction,⁶⁶ Chapter 361's supporters, including many human-rights and minority-rights organizations,⁶⁷ did not provide a direct rebuttal to the CDPH's claims. Instead, supporters argued that the requests for identification during the San Diego wildfires were not required by law, but were used to intentionally or inadvertently restrict access to critical emergency services.⁶⁸ In response to these events, Chapter 361's supporters claimed that Chapter 361 would allow emergency workers to assist the needs of victims in a simple and practical manner.⁶⁹

V. CONCLUSION

When disaster strikes, people often forget their differences and come together to help others in need. The state normally responds by establishing shelters where volunteers and state employees work together to provide safety and protection⁷⁰

59. *Id.*

60. See Gervais Interview, *supra* note 18 (explaining the reasons for introducing AB 2327).

61. SENATE FLOOR, COMMITTEE ANALYSIS OF AB 2327, at 6 (June 16, 2008).

62. *Id.* at 6-7.

63. *Id.* at 7.

64. *Id.*

65. *Id.*

66. The bill was introduced on Feb. 21, 2008. See AB 2327, 2007-2008 Sess. (Cal. 2008) (as introduced on Feb. 21, 2008). The first mention of the CDPH's opposition was in a June bill analysis. See SENATE FLOOR, COMMITTEE ANALYSIS OF AB 2327, at 6 (June 16, 2008). All thirty recorded supporters of the bill had sent in their letters of support by Apr. 23, 2008. See ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 2327, at 4-5 (Apr. 23, 2008) (listing all thirty supporters). Thus, none of the letters of support addressed the CDPH's claims.

67. See ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 2327, at 2 (Apr. 23, 2008) (listing the organizations that supported Chapter 361).

68. See Letter from Larisa Casillas, Dir., Bay Area Immigrant Rights Coal., to Anna Caballero, Assembly Member, Cal. State Assembly (Mar. 11, 2008) (on file with the *McGeorge Law Review*) (discussing the misuse of requiring identification).

69. Letter from Elsa Quezada, Chairperson, Cal. Found. for Indep. Living Ctrs., to Anna Caballero, Assembly Member, Cal. State Assembly (Apr. 22, 2008) (on file with the *McGeorge Law Review*).

70. See CITY OF SAN DIEGO, *supra* note 10, at 7-8 (evaluating the City's response to the fires, and

to alleviate suffering and meet the basic needs of victims.⁷¹ In emergency situations, not all evacuees will have the time to gather their identification before fleeing for safety.⁷² Additionally, while immigration is a controversial issue in the United States,⁷³ most people agree on the need to provide assistance to all victims of disaster.⁷⁴

Chapter 361 codifies the lessons learned from the 2007 San Diego Fires and seeks to ensure that disaster assistance will be available to *all* eligible victims during an emergency.⁷⁵ Ultimately, Chapter 361 will provide timely and efficient protection to disaster victims irrespective of their ability to provide identification.⁷⁶

explaining the process of setting up the evacuation centers).

71. 2008 Cal. Stat. ch. 361, § 1(b).

72. *See supra* note 5.

73. *See* Immigration: The Perpetual Controversy, Apr. 1996, <http://www.theatlantic.com/unbound/flashbks/immigr/immigint.htm> (on file with the *McGeorge Law Review*) (“[A]rticles on immigration . . . demonstrate that immigration has always been an incendiary issue, even during bygone eras of expansion and optimism.”).

74. *See* ACLU, Governor Signs Important Disaster Victim Protection Bill, Sept. 19, 2008, <http://www.aclu.org/immigrants/gen/37006prs20080929.html> (on file with the *McGeorge Law Review*) (discussing the passage of the bill and the view of supporters, including Reshma Shamasunder, Executive Director of the California Immigrant Policy Center, who said “[i]t is critical that immigrant populations and others feel confident that when a disaster strikes they, just like all other residents of our state, can secure the help they and their families so urgently need”).

75. 2008 Cal. Stat. ch. 361, § 1(a)-(b).

76. ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 2327, at 2 (Apr. 23, 2008).

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