



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 21, 2022

FILE NO. 22-001

PENSIONS:
Felony Forfeiture
of Pension Benefits

Mr. Timothy Blair
Executive Secretary
General Assembly Retirement System
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Springfield, Illinois 62794-9255

Dear Mr. Blair:

I have your letter inquiring whether the charge to which former State Representative Luis Arroyo, a member of the General Assembly Retirement System (GARS), pled guilty is a "felony relating to or arising out of or in connection with his service as a member" as that phrase is used in section 2-156 of the Illinois Pension Code (the Pension Code) (40 ILCS 5/2-156 (West 2020)). For the reasons stated below, it is my opinion that Arroyo's felony conviction of the offense of fraud by wire, radio, or television (18 U.S.C. §§ 1343, 1346 (2012)) related to, arose out of, or was in connection with his official duties as a State Representative, thereby requiring the forfeiture of his pension benefits.

BACKGROUND

According to the records of the United States District Court for the Northern District of Illinois, on October 24, 2019, the United States filed a one-count criminal complaint against Arroyo. Complaint, *United States v. Arroyo*, No. 19-CR-805 (N.D. Ill. October 24, 2019) (Complaint). On October 1, 2020, a special grand jury returned an eight-count Superseding Indictment against Arroyo and a co-defendant. Superseding Indictment, *United States v. Arroyo*, No. 19-CR-805 (N.D. Ill. October 1, 2020) (Indictment). On November 3, 2021, Arroyo entered a "blind plea" of guilty to Count One of the Indictment for the offense of fraud by wire, radio, or television (18 U.S.C. §§ 1343, 1346 (2012)).¹ Minute Entry, *United States v. Arroyo*, No. 19-CR-805 (N.D. Ill. November 3, 2021). On May 25, 2022, the court held a sentencing hearing. Minute Entry, *United States v. Arroyo*, No. 19-CR-805 (N.D. Ill. May 25, 2022). The court sentenced Arroyo to fifty-seven months of imprisonment and two years of supervised release, and ordered him to pay a monetary penalty of \$100.² Judgment in a Criminal Case, *United States v. Arroyo*, No. 19-CR-805 (N.D. Ill. June 1, 2022). The court also ordered

¹A defendant may enter a "blind" or "open" plea that involves no inducement from the government, and both the defendant and the government may argue for any sentence permitted by law. See *People v. Lumzy*, 191 Ill. 2d 182, 185 (2000). Notably, Count One (18 U.S.C. §§ 1343, 1346 (2012)), Count Two (18 U.S.C. §§ 1343, 1346 (2012)), Count Three (18 U.S.C. §§ 1343, 1346 (2012)), Count Four (18 U.S.C. §§ 1341, 1346 (2012)), and Count Seven (18 U.S.C. § 666(a)(2) (2012)) are directed at both Arroyo and the co-defendant. Indictment, at 1-9, 12. Count Six (18 U.S.C. § 666(a)(2) (2012)) and Count Eight (18 U.S.C. § 1001(a)(2) (2012)) are directed at the co-defendant. Indictment, at 11, 13-14. Count Five (18 U.S.C. § 666(a)(1)(B) (2012)) is directed at Arroyo. Indictment, at 10. The court dismissed Counts Two through Five, and Count Seven. Judgment in a Criminal Case, *United States v. Arroyo*, No. 19-CR-805 (N.D. Ill. June 1, 2022).

²On June 6, 2022, Arroyo filed a notice of appeal "from the judgment entered in the above-captioned action on May 25th, 2022." Notice of Appeal, *United States v. Arroyo*, No. 19-CR-805 (N.D. Ill. June 6, 2022). On June 19, 2022, Arroyo filed a docketing statement providing: "[t]his is an appeal from a Sentence orally pronounced by the district court on May 25, 2022 * * *, and Judgment in a Criminal Case entered on the docket on June 1, 2022." Docketing Statement, *United States v. Arroyo*, No. 19-CR-805 (N.D. Ill. June 19, 2022).

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Arroyo to forfeit funds in the amount of \$32,500 that were obtained, directly or indirectly, as a result of his wire fraud violation.³ Preliminary Order of Forfeiture, *United States v. Arroyo*, No. 19-CR-805 (N.D. Ill. June 1, 2022). The offense of fraud by wire, radio, or television is a felony under federal law. *See* 18 U.S.C. §§ 1343, 3559 (2012).⁴

The Indictment, pursuant to which the conviction was entered, indicates that Arroyo and the co-defendant "knowingly devised, intended to devise, and participated in a scheme to defraud the people of Illinois of the intangible right to the honest services * * * through bribery and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises[.]" Indictment, at 2. Specifically, the Indictment charges that between November 1, 2018, and October 1, 2019, the co-defendant paid bribes to Arroyo in the form of checks issued by Collage LLC (Collage), a company managed by the co-defendant, and made payable to Spartacus 3 LLC (Spartacus), a company controlled by Arroyo. Indictment, at 2-3. In exchange for these payments, Arroyo: (a) agreed to vote for and promote legislation in the Illinois House of Representatives related to the sweepstakes industry; (b)

³The amount of forfeited funds was the subject of the court's questions that were entered on the docket. *See* Minute Entries, *United States v. Arroyo*, 19-CR-805 (N.D. Ill. April 4, 2022 and May 24, 2022). The parties responded by filing supplemental documents. *See* Government's Supplement to its Sentencing Memorandum, *United States v. Arroyo*, 19-CR-805 (N.D. Ill. April 22, 2022); Exhibits to Government's Supplement to its Sentencing Memorandum, *United States v. Arroyo*, 19-CR-805 (N.D. Ill. May 24, 2022); Defendant's Supplement to Sentencing Memorandum, *United States v. Arroyo*, 19-CR-805 (N.D. Ill. April 27, 2022); Defendant's Supplemental Response and Statement, *United States v. Arroyo*, 19-CR-805 (N.D. Ill. May 25, 2022).

⁴When a federal offense is not specifically classified in the section defining it, it is classified by the maximum term of imprisonment authorized in that statutory provision. 18 U.S.C. § 3559(a) (2012). A maximum term of imprisonment of more than one year is classified as a felony under federal law. 18 U.S.C. § 3559(a) (2012). The term of imprisonment set forth for a violation of 18 U.S.C. § 1343 (2012) shall not be more than twenty years; however, when a violation is related to a presidentially declared disaster or affects a financial institution, the term of imprisonment shall not be more than thirty years. Accordingly, that offense is classified as a felony. 18 U.S.C. § 3559(a) (2012).

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promoted the enactment of legislation related to the sweepstakes industry by advising other members of the Illinois General Assembly to induce those people to sponsor and vote for such legislation; (c) promoted the enactment of legislation related to the sweepstakes industry by advising representatives of Illinois' executive branch to induce those individuals to support the enactment of legislation; and (d) spoke in favor of the legislation during proceedings in the Illinois House of Representatives, including during a committee hearing. Indictment, at 3.

To conceal the aforementioned scheme, the Indictment further alleges that Arroyo caused to be filed a Statement of Economic Interests form with the Office of the Illinois Secretary of State that falsely stated "N/A" in response to the directive, "[l]ist the name of any entity doing business in the State of Illinois from which income in excess of \$1,200 was derived during the preceding calendar year, other than for professional services[.]"⁵ Indictment, at 4. Based on this scheme, Count One of the Indictment charges that on or about May 3, 2019, Arroyo and the co-defendant "knowingly caused to be transmitted by wire communication in interstate commerce certain writings, signs, signals, and sounds, namely, data relating to the

⁵Article XIII, section 2, of the Illinois Constitution of 1970, requires that all candidates for or holders of state offices file a verified statement of their economic interests with the Secretary of State on an annual basis. Subsection 4A-101(a) of the Illinois Governmental Ethics Act (5 ILCS 420/4A-101(a) (West 2020)) implements this requirement and specifically applies to members of the General Assembly and candidates for nomination or election to the General Assembly.

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negotiation of check number 2088 in the amount of \$7,500 issued by Collage and made payable to Spartacus, which wire communication was routed across state lines[.]" Indictment, at 6.⁶

The Government's Sentencing Memorandum provides additional details regarding Arroyo's felonious scheme and the basis for the court's order of forfeiture. Government's Sentencing Memorandum, *United States v. Arroyo*, No. 19-CR-805 (N.D. Ill. February 4, 2022) (Government's Memorandum). For example, the Government's Memorandum indicates that "[b]eginning on November 1, 2018, and continuing until October 1, 2019, which was the same month that Arroyo was charged by complaint, [the co-defendant] paid Arroyo a total of \$32,500 in bribes through checks issued by Collage and made payable to Spartacus." Government's Memorandum, at 2. Further, "[d]espite being required by law to file a Statement of Economic Interests that would disclose, among other things, income received during the prior year, Arroyo never disclosed that he or Spartacus had any relationship with or received any money from

⁶The Indictment further alleges that Arroyo and the co-defendant agreed to enlist a member of the Illinois State Senate (State Senator A) to promote the enactment of legislation related to the sweepstakes industry. Indictment, at 3. In August 2019, in the presence of the co-defendant, Arroyo asked State Senator A to promote the passage of legislation in the Illinois Senate related to the sweepstakes industry. Indictment, at 4. Arroyo met separately with State Senator A and offered to have the co-defendant pay State Senator A bribes in exchange for the sponsorship of, vote for, and promotion of legislation in the Illinois Senate related to the sweepstakes industry. Indictment, at 4. Arroyo told State Senator A that the payments could be disguised as a monthly consultant payment to a third party and that the payments would be the "[s]ame way I'm getting paid, I'm getting paid twenty-five, twenty-five hundred dollars a month." Indictment, at 4. On or about August 22, 2019, Arroyo made a \$2,500 payment to State Senator A in the form of a check issued by the co-defendant's company and made payable to State Senator A's nominee. Indictment, at 4-5. Arroyo told State Senator A that the payments would continue with a "check per month * * * six months to a year." Indictment, at 5. Additionally, Arroyo e-mailed State Senator A proposed legislation related to the sweepstakes industry and an explanation of that legislation. Indictment, at 5. In October 2019, Arroyo and the co-defendant prepared a consulting contract between the co-defendant's company and State Senator A's nominee for the purpose of concealing the payments Arroyo and the co-defendant made and planned to make to State Senator A. Indictment, at 5. On or about October 22, 2019, the co-defendant mailed a package to State Senator A that contained a \$2,500 payment in the form of a check issued by the co-defendant's company and made payable to State Senator A's nominee. Indictment, at 5. The consulting agreement was also included in that package. Indictment, at 5. On or about October 24, 2019, the co-defendant communicated to State Senator A that he had sent a check to State Senator A at an address provided by Arroyo. Indictment, at 5.

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Collage." Government's Memorandum, at 2. A number of officials confirmed that Arroyo began pushing for state legislation to legalize sweepstakes gaming machines beginning in the fall of 2018 and continuing into the spring and summer of 2019. Government's Memorandum, at 3-4. Arroyo began advocating for sweepstakes interests at approximately the same time that the co-defendant first paid Arroyo's lobbying firm. Government's Memorandum, at 6. In one instance, the co-defendant signed a check for Arroyo's lobbying firm the day after Arroyo publicly advocated for sweepstakes during a legislative committee hearing. Government's Memorandum, at 4, 6-7. After Arroyo's advocacy efforts failed, Arroyo and the co-defendant agreed to enlist State Senator A to promote the sweepstakes industry legislation during the fall 2019 veto session under a similar payment scheme. Government's Memorandum, at 4-5.⁷ In his own words to State Senator A, "Arroyo said, 'I'm getting paid ... \$2500 a month. And I've been looking to get a little bump from that because I've been really working my a** off.' In his own words, Arroyo tied the payments he received from [the co-defendant] to his efforts as an elected Representative in the General Assembly." Government's Memorandum, at 7.

ANALYSIS

Section 2-156 of the Pension Code requires the forfeiture of retirement annuities and other pension benefits of a member of the GARS⁸ upon the member's conviction of a service-related felony and provides, in pertinent part:

⁷See note 6.

⁸Arroyo became a member of the GARS as a result of his service as a member of the Illinois House of Representatives. 40 ILCS 5/2-101 *et seq.* (West 2020). Arroyo served as a State Representative from 2006 to 2019. Complaint, at 3; Government's Memorandum, at 2; *see also* Illinois General Assembly, Biography, former Representative Luis Arroyo, *available at* <https://www.ilga.gov/house/Rep.asp?GA=101&MemberID=2563>.

None of the benefits herein provided for shall be paid to any person who is convicted of any felony relating to or arising out of or in connection with his or her service as a member.^[9]
(Emphasis added.)

The purpose of the felony forfeiture provisions in the Pension Code is to discourage official misconduct and to implement the public's right to conscientious service from those in governmental positions by denying retirement benefits to public servants convicted of violating the public's trust. *Ryan v. Board of Trustees of the General Assembly Retirement System*, 236 Ill. 2d 315, 322 (2010); *Kerner v. State Employees' Retirement System*, 72 Ill. 2d 507, 513 (1978), *cert. denied*, 441 U.S. 923, 99 S. Ct. 2032 (1979). The critical inquiry in determining if a felony is "relat[ed] to or ar[ose] out of or in connection with" public service is whether a nexus existed between the public servant's criminal wrongdoing and the performance of his or her official duties. *Devoney v. Retirement Board of the Policemen's Annuity & Benefit Fund for the City of Chicago*, 199 Ill. 2d 414, 419 (2002); *Bauer v. State Employees' Retirement System*, 366 Ill. App. 3d 1007, 1015-16 (2006), *appeal denied*, 222 Ill. 2d 567 (2006).

⁹This language is substantially similar to the language found in other provisions of the Pension Code that address the forfeiture of pension benefits subsequent to a felony conviction of public employees, judges, and public officers. *See* 40 ILCS 5/3-147, 4-138, 5-227, 6-221, 7-219, 8-251, 9-235, 10-109, 11-230, 12-191, 13-807, 14-149, 15-187, 16-199, 17-149.1, 18-163 (West 2020).

We note that, during the current 102nd General Assembly, an amendment to section 2-156 was introduced in the House of Representatives which would provide that none of the pension benefits provided for in article 2 of the Pension Code (40 ILCS 5/2-101 *et seq.* (West 2020)) shall be paid to any person who (i) first becomes a member on or after the effective date of the amendatory Act and (ii) is convicted of any felony. *See* 102nd Ill. Gen. Assem., House Bill 3153, 2021 Sess. House Bill 3153 was re-referred to the House Rules Committee on March 27, 2021.

Arroyo's conviction clearly related to, arose out of, and was in connection with his service as a State Representative. Arroyo's criminal conduct that resulted in his conviction occurred while he was a member of the Illinois House of Representatives, and the facts underlying the offense demonstrate that he used his position as a State Representative to obtain financial benefit for himself.¹⁰ Specifically, Arroyo and the co-defendant devised a scheme that defrauded the people of Illinois of their intangible right to his honest services as a member of the Illinois General Assembly. As part of that scheme, Arroyo accepted monetary payments that the co-defendant transmitted by wire communication in exchange for the promise that he would vote for, promote, and speak in favor of legislation related to the sweepstakes industry in the House of Representatives. Additionally, Arroyo and the co-defendant enlisted a member of the Illinois State Senate to promote the sweepstakes industry legislation under a similar payment scheme. Arroyo then took steps to conceal his criminal wrongdoing by filing a false Statement of Economic Interests with the Office of the Illinois Secretary of State. But for his status as a member of the Illinois House of Representatives, Arroyo would not have been in a position to engage in the wrongdoing underlying the offense of which he was convicted. This is precisely the type of misconduct that section 2-156 of the Pension Code was designed to discourage.

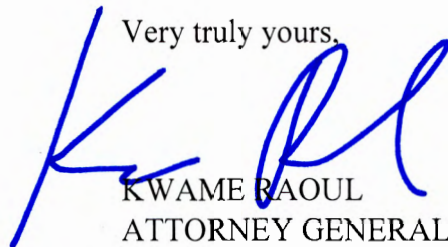
¹⁰Within days after a special investigating committee was established to investigate allegations of misconduct by a member of the House of Representatives, Arroyo submitted a resignation letter announcing his retirement effective at the close of business on November 1, 2019. *See* House Journal, 101st Ill. Gen. Assem., 67th Legislative Day, October 29, 2019, at 5-6, *available at* <https://ilga.gov/house/journals/101/2019/HJ101067R.pdf>; House Journal, 101st Ill. Gen. Assem., 69th Legislative Day, November 12, 2019, at 6, *available at* <https://ilga.gov/house/journals/101/2019/HJ101069R.pdf>.

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CONCLUSION

Based on the records of the United States District Court of the Northern District of Illinois, it is my opinion that former State Representative Luis Arroyo was convicted of a service-related felony that requires the forfeiture of his pension benefits under the General Assembly Retirement System pursuant to section 2-156 of the Illinois Pension Code.

Very truly yours,



KWAME RAOUL
ATTORNEY GENERAL