IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

RICARDO BENITEZ and JESSICA MARTINEZ, *Petitioners,* *v.* GAVIN NEWSOM, California Governor, In His Official Capacity, and KEELY MARTIN BOSLER, Director of California Department of Finance, In Her Official Capacity *Respondents.*	Case No. S261804 **IMMEDIATE RELIEF REQUESTED – NO LATER THAN APRIL 30, 2020**

REPLY TO THE PRELIMINARY OPPOSITION OF RESPONDENTS TO EMERGENCY PETITION FOR WRIT OF MANDATE

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INTRODUCTION

In an attempt to circumvent not only the California Constitution but also state and federal law, Governor Newsom has improperly designated $75,000,000 of the much-needed COVID-19 relief funds appropriated by the Legislature for undocumented workers as a substitute for unemployment benefits. The payment of cash to undocumented workers under the circumstances found in this case results in an unconstitutional "gift of public funds," and should be blocked by this Court.

In prohibiting "gifts of public funds," California's Constitution provides that money may never be appropriated "for the purpose or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State as a state institution…" (Cal. Const., Art. XVI, § 3.) On April 15, 2020, Governor Newsom announced his intention to violate this provision of the California Constitution when he issued a press release stating in part:

> The Governor also announced an unprecedented $125 million in disaster relief for **working** Californians.
>
> . . .
>
> California's $75 million Disaster Relief Fund will support undocumented Californians impacted by COVID-19 **who are ineligible for unemployment**

> **insurance benefits** and disaster relief, including the CARES Act, due to their immigration status.

(Petn., Ex. 3) (Emphasis added.)

Attempting to explain away an attempt to provide an unconstitutional "gift of public funds," the State argues that 1) Senate Bill 80 ("SB80") adopted a year earlier at a time when the current COVID-19 crisis had never been conceived of, and Senate Bill 89 ("SB89") provide the necessary statement of legislative intent to support adoption and implementation of the cash payments to undocumented workers; and 2) the "benefit" provided is not an "unemployment benefit subject to the federal prohibition." Neither argument is supported by a plain reading of the law, or the facts.

First, SB80 did not demonstrate *any* legislative intent to allow cash payments to "working undocumented residents." Instead, it simply established a process for providing *non-cash* relief to undocumented workers during an emergency. Nothing in SB80 establishes any intent to provide cash benefits to unemployed, undocumented workers—an unprecedented act in California and indeed national law. Secondly, SB89 does not establish that the giving of cash benefits to undocumented workers is an acceptable public purpose. In fact, SB89 says nothing at all about cash payments to undocumented workers, and therefore could never serve as a demonstration of the Legislature's intent, supporting a conclusion that the

payments satisfied a public purpose. Finally, the Governor has expressly described the benefit as a cash benefit to working undocumented Californians. The State argues that these are "disaster relief benefits" despite the Governor's express statement to the contrary. As will be seen in detail below, both arguments fail.

The State is unable to prove that the Legislature has ever affirmatively authorized cash payments to unemployed undocumented immigrants. In fact, the exact opposite is true, since both Federal and State law explicitly establish that an unemployed undocumented immigrant is not eligible for unemployment benefits, as a matter of law because his or her very employment violates federal immigration law. In addition, the State raises several other points that, while not actually framed as arguments, imply that benefits may be provided to undocumented workers under circumstances not found in the present case. These arguments are inapposite, and do not affect the analysis presented here. For all of these reasons, Petitioners respectfully request this Court grant the Writ and stay the Governor's intended unconstitutional gift of public funds.

ARGUMENT

I. THE GOVERNOR'S ATTEMPT TO APPROPRIATE $75M FOR UNDOCUMENTED WORKERS IS AN UNCONSTITUTIONAL GIFT OF PUBLIC FUNDS

There is no dispute that an appropriation of $63.3 million dollars of SB 89 relief funds has been authorized to be distributed to nonprofit

organizations who assign the cash to unemployed undocumented immigrants. Petitioners do not dispute that another $16.5 million has been appropriated to these same nonprofit organizations under SB 80.

Respondents do not dispute that these nonprofit organizations are "not under the exclusive management and control of the State as a state institution." (Cal. Const. art. XVI, § 3.) In fact, Respondents do not contest—and could not credibly contest—Petitioner's assertion that "in the absence of such a legislative determination, public officials have no authority to spend public funds." (*People v. Honig* (1996) 48 Cal.App.4th 289, 352.) Instead, Respondents simply dismissed this Court's holdings in *People v. Hoing* and *Lertora v. Riley* (1936) 6 Cal.2d 171 as being "inapposite" because the "expenditures challenged by Petitioners have been expressly authorized by statute." (Resp. Brief p.14). An argument that is not supported by a plain reading of the law, or the facts.

The central issue presented by Respondents' Opposition is whether the Legislature ever enacted a law which affirmatively provides for the giving of public funds to unemployed undocumented immigrants. Respondents' Opposition did not produce a single enacted legislation where the Legislature made such an affirmative authorization. As such, since the underlining expenditure is not for a legitimate public purpose, the "appropriation of money by the legislature for the relief of one who has no legal claim therefor must be regarded as a gift …." (*Lertora*, supra, at p.

179.) Since the appropriation of $79.8 million dollars to nonprofits is a gift, it violates Cal. Const. Art. XVI, § 3 provisions that "No money shall ever be appropriated … for the purpose or benefit of any … institution not under the exclusive management and control of the State."

A. The California Legislature has Never Determined that Providing Undocumented Workers with a Cash Benefit is a Public Benefit.

Federal law prohibits aliens who are not lawfully in this country from receiving unemployment benefits. (26 U.S.C. § 3304(a)(14)(A).) State law is also in accord. (See Unemp. Ins. Code, § 1264.) Federal law provides that a state may provide a public benefit to aliens who are not lawfully in this country in accordance with federal law "only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility." (8 U.S.C. § 1621(d).) While 8 U.S.C. § 1621(b)(2) provides states with the authority to provide disaster relief to aliens not lawfully present in this country, without the legislature affirmatively providing for such public benefit those emergency disaster public benefits **must be non-cash.** Respondents completely ignore this ineluctable distinction. The State's argument fails both because any benefit must be non-cash *and* because the Legislature has never "affirmatively provided" that cash payments to undocumented workers serve a public purpose.

Respondents point to the adoption of SB80 in 2019 as demonstrating the Legislature's attempt to "affirmatively provide for such eligibility."

Unfortunately for Respondents, there is not a single word in SB80 that even discusses the possibility of cash payment to undocumented workers, much less affirmatively provides for it. SB80 was clearly established without any intent by the Legislature to provide a cash benefits to undocumented workers. Simply put, the Legislature has never stated that providing cash payments to undocumented workers is a legitimate public purpose. Without such an explicit finding, distribution of cash to undocumented workers is an unlawful and unconstitutional gift of public funds.

Ironically, the authorities relied upon by Respondents actually bolster Petitioners' argument. Respondents first cite from SB80, which requires the California Department of Social Services to "administer a rapid response program to award grants or contracts to entities that provide critical assistance to immigrants during times of need." (Resp. Brief p. 9:12-15 *citing* Welf. & Inst. Code, § 13400.) Respondents further quote from SB80's intent which provides that SB80 is "a state law that provides assistance and services for undocumented persons within the meaning of Section 1621(d) of Title 8 of the United States Code." (Resp. Brief p. 9.) Neither of these provisions support the State's argument that SB80 demonstrates the Legislature's intent to declare cash payments to undocumented workers as a public purpose.

None of the materials cited by Respondents contains any affirmative or even implied statement that the Legislature has ever made an affirmative

determination that the state's distribution of cash payments to undocumented workers (whether itself or through intermediaries) is a lawful public purpose. The statements of intent cited by Respondents simply evince a legislative intent to provide *non-cash* support and assistance to aliens not lawfully in California—a very different proposition than the state providing a form of cash unemployment benefits to individuals working in California in direct violation of federal law. Without such a demonstration of intent, the Governor's attempt to provide a cash benefit to undocumented workers remains an unconstitutional gift of public funds to the nonprofit organizations.

Respondents next argue that language in SB89 provides a sufficient statement of intent for the Governor's attempt to provide cash to undocumented workers. The State claims that SB89 contains a sufficient statement of intent to demonstrate that providing cash to undocumented workers is a public benefit. Respondents claim that since the funds appropriated under SB89 could be used "for any purpose related to the March 4, 2020 proclamation of a state of emergency upon order of the Director of Finance," presumably, anything goes. (Resp. Brief, p. 10:13-16; citing SB89.) Not a single word in that statement, nor in any of the materials referenced, indicates that the Legislature has determined that the distribution of cash payments to undocumented workers is a public purpose under SB89. In fact, SB89 does not contain a single provision describing

any cash payments to undocumented workers, much less authorizing this expansion of public policy. Without such a stated intent, the Governor's actions constitute an unconstitutional gift of public funds.

1. A single legislator's comment does not alter the plain meaning of a statute.

Respondents then attempt to further distract from the true inquiry by pointing to a number of off-the-cuff comments made by individual legislators after the passage of the legislation and at a time when no action was under consideration by the Legislature as a whole. Respondents improperly cite to a letter from Holly Mitchell, Chair of the Joint Legislative Budget Committee. It is well-settled law that casual remarks about legislation and regulation not made from the dais during debate on the legislation may not be used to establish legislative intent. (*County of Los Angeles v. Superior Court* (1975) 13 Cal.3d 721, 726; *City of Fairfield v. Superior Court* (1975) 14 Cal.3d 768, 779, 782; *Board of Supervisors v. Superior Court* (1995) 32 Cal.App.4th 1616, 1627.) Otherwise, the stray remarks of a single legislator could improperly change the intent and meaning of the legislation. That is a task for the deliberative body as a whole only. Accordingly, the statements of Holly J. Mitchell should be disregarded as having any relevance to the legal analysis before this Court.

2. Federal law permits non-cash benefits for undocumented immigrants only.

Respondents dismiss with little discussion the cases cited by Petitioner establishing that this Court may block the appropriation of funds for non-public purposes. (Resp. Brief p. 14:3-10.) Respondents' sole argument is that SB80 and SB89 established the "public purpose" of the payments. Respondents effectively concede that if the Legislature has not established a public purpose for the cash distribution to undocumented workers, then it must constitute an unconstitutional gift of public funds.

Ironically, both of the cited examples of past exemptions to 8 U.S.C. § 1621(d) involved **non-cash** benefits for undocumented immigrants. *Martinez v. Regents of Univ. of California* (2010) 50 Cal.4th 1277, 1296 dealt with the state allowing California resident undocumented immigrants to access in-state status for public colleges and universities, while *In re Garcia* (2014) 58 Cal.4th 440, 458 allowed California bar admission eligibility for applicants not lawfully present in the United States. The State provides no examples at all of the Legislature authorizing cash payments to undocumented immigrants.

3. Federal law is not vague.

Respondents then try to argue that the restrictions imposed by 8 U.S.C. § 1621(d) are vague and unclear regarding the present case.

Actually, 8 U.S.C. § 1621(d) is explicit about the types of state benefits that are not allowed unless specifically provided for by a state legislature:

> (c) "State or Local Public Benefit" Defined
>
> . . .
>
> (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State of local government or by appropriated funds of a State of local government.

(8 U.S.C. § 1621(c)(2)(B).) Congress has clearly provided that a state legislature must make a specific finding of a public purpose for any and all of these enumerated categories of benefits, including a wide range of cash payments. Congressional intent is "unmistakably clear."

Finally, even if this Court were to find that the $500 payments to undocumented workers are Disaster Relief Payments and not unemployment benefits (as Governor Newsom has clearly described them), that distinction is irrelevant unless the Legislature expressly finds that such cash payments constitute a public benefit. Without such a statement of

policy from the Legislature, only non-cash disaster benefits may be made to undocumented workers. (8 U.S.C. § 1621(b)(2).)

In summary, there is simply no legislative intent demonstrating that cash payments to undocumented workers is a proper public purpose. Without such a legislative finding, the Governor's actions constitute an illegal gift of public funds.

B. The Proposed Payments Are Improper Unemployment Benefits to Undocumented Workers.

Respondents argue that the proposed cash payments to undocumented workers are not unemployment benefits, but are instead "disaster relief payments." The State's argument that the cash payments are not unemployment benefits is muddled and unclear – hardly the benchmark by which large public benefits programs should be administered. Respondents oddly argue that unemployment benefits are only used to "cushion the impact of industrial blight," when in fact unemployment benefits are used to cover a range of circumstances, including becoming unemployed because of the COVID-19 virus as demonstrated by Federal legislation providing a $600 benefit to American citizens or legal residents who became unemployed during (and presumably as a result of) the pandemic.

Respondents' argument cuts directly against statements explicitly by the Governor in announcing the creation of a program giving a cash benefit

to undocumented, unemployed immigrants. In the press release announcing the "New Initiatives to Support California **Workers** impacted by COVID-19," the Governor's Office stated that:

> The Governor also announced an unprecedented $125 million in disaster relief assistance for **working** Californians. This first in the nation, statewide public-private partnership will provide financial support to **undocumented immigrants** impacted by COVID-19.
>
> . . .
>
> California's $75 million Disaster Relief Fund will support **undocumented Californians** impacted by COVID-19 **who are ineligible for unemployment insurance benefits** and disaster relief, including the CARES Act, due to their immigration status. Approximately 150,000 undocumented adult Californians will receive a one-time cash benefit of $500 per adult with a cap of $1,000 per household to deal with the specific needs arising from the COVID-19 pandemic.

(Petn., Ex. 3 [emphasis added].)

In the press release, Governor Newsom effectively concedes that the cash payment is intended to take the place of federal unemployment

insurance benefits because of the ineligibility of workers due to their undocumented status. The State is using this fiction that these benefits are *not* for the express purpose articulated in the press release announcing the cash benefit, to try to side-step the express restrictions of 26 U.S.C. § 3304(a)(14)(A) prohibiting aliens unlawfully in this country from receiving unemployment benefits absent express state legislative authorization.

The State ineffectively argues that, despite the Governor's express statement to the contrary that the payments are for undocumented workers who are ineligible for federal unemployment benefits, this benefit "is not tied to loss of employment and the benefit amount is not tied to wages earned or services performed." (Resp. Brief p. 7:16-18.) The State's assertion is not supported by ordinary meaning and logic, let alone any authority.

The simple reason that Respondents struggle with this argument, is because the $500 cash grant described by the Governor in what he described as an "unprecedented" public-private partnership, *is* an unemployment benefit for undocumented workers barred by federal law. (26 U.S.C. § 3304(a)(14)(A).) Because the proposed cash payments constitute unemployment benefits to undocumented workers under state and federal law, the Governor's announced $75 million cash distribution constitutes an *ultra vires* gift of public funds that this Court should prohibit as inconsistent with the California Constitution and state and federal law.

CONCLUSION

COVID-19 is a terrible disease that thankfully fell less harshly on California than on other regions around the world. It would be the height of irony if Respondents' actions in response to this health crisis, were to render California's constitutionally and legally established limits on government expenditures of taxpayer dollars, a casualty of COVID-19.

For these reasons, Petitioners respectfully request that this Court grant the Emergency Petition for Writ of Mandate and stay the illegal gift of public funds unconstitutionally approved by the Governor. Immediate relief is required because the Governor has announced that unemployed undocumented immigrants may start applying for cash benefits in May.

Dated: April 30, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached REPLY TO THE PRELIMINARY OPPOSITION OF RESPONDENTS TO EMERGENCY PETITION FOR WRIT OF MANDATE uses a 13 point Times New Roman font and contains 2,836 words.

Dated: April 30, 2020

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