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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12 ROBIN CREST and HOWARD A. MYERS,

Case No.: 20STCV16321

13 Plaintiffs,

14 v.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE PRELIMINARY
INJUNCTION**

15 GAVIN NEWSOM, in his official capacity as
16 Governor of the State of California

17 and

18 KIM JOHNSON, in her official capacity as
19 Director of the California Department of
20 Social Services,

21 Defendants.

Date: May 5, 2020
Time: 8:30 a.m.
Place: Dept. 28
Judge: Hon. Rupert A. Byrdsong

Action Filed: April 29, 2020

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs, taxpayers, Robin Crest and Howard A. Myers apply to this Court for a temporary
3 restraining order restraining and enjoining Defendants Gavin Newsom and Kim Johnson from
4 expending \$79.8 million of taxpayer funds on an initiative that clearly violates federal immigration law.

5 **I. INTRODUCTION**

6 Starting imminently in May 2020, Defendants plan to distribute \$75 million of taxpayer funds in
7 direct cash benefits to unlawfully present aliens in violation of 8 U.S.C. § 1621.¹ Defendants also plan
8 to spend an additional estimated \$4.8 million of taxpayer funds overseeing and administering the
9 distribution of those cash benefits. By this application, Plaintiffs are seeking to prevent this manifest
10 abuse of power before it's too late to do so. A temporary restraining order to preserve the status quo is
11 warranted because Plaintiffs can demonstrate that they are likely to succeed on the merits and that they
12 and the public fisc will suffer an immediate, irreparable harm without the order.

13 **II. FACTUAL BACKGROUND**

14 On April 15, 2020, Governor Newsom announced a new initiative to provide direct assistance to
15 unlawfully present aliens. The initiative, known as the “Disaster Relief Fund” or the “Disaster Relief
16 Assistance for Immigrants Project,” provides \$75 million to unlawfully present aliens who otherwise are
17 ineligible for state or federal insurance or other benefits “due to their immigration status.”

18 Governor Newsom anticipates 150,000 unlawfully present aliens “will receive a one-time cash
19 benefit of \$500 per adult with a cap of \$1,000 per household[.]” The cash “will be dispersed through a
20 community-based model of regional nonprofits with expertise and experience” serving unlawfully
21 present aliens. Governor Newsom charged his Director of the California Department of Social Services
22 (CDSS) to administer the cash benefits. CDSS will select immigrant-serving community-based
23 nonprofit organizations to conduct targeted outreach, provide application assistance, and delivery of the
24 cash benefits directly to qualified individuals.

25 On or about April 17, 2020, CDSS issued the “Disaster Relief Assistance for Immigrants Fact
26 Sheet.” The fact sheet reiterates that only unlawfully present aliens are eligible for direct assistance

27 ¹ The statute uses the phrase “an alien who is not lawfully present in the United States.” 8
28 U.S.C. § 162(d). Plaintiffs use the term “unlawfully present aliens” because it commonly appears in
federal law.

1 under the initiative. It further states, “The total amount allocated for the Disaster Relief for Immigrants
2 Project is \$79.8 million . . . Seventy-five million dollars will support direct assistance and an estimated
3 \$4.8 million will support program administration through qualified nonprofit organizations.” While all
4 \$79.8 million are from the General Fund, the appropriations come from two different enactments –
5 \$16.5 million from the Rapid Response Program, created and funded in June 2019 as part of the Budget
6 Act of 2019, and \$63.3 million from a March 2020 amendment to the Budget Act of 2019.

7 The March 2020 amendment referenced Governor Newsom’s March 4, 2020 proclamation of a
8 state of emergency. However, neither the proclamation nor the budget amendment makes an express or
9 even an implied reference to authorizing direct cash benefits to unlawfully present aliens. Similarly,
10 neither the Rapid Response Program nor the appropriation of monies for that program makes any
11 reference, express or implied, to authorizing direct cash benefits to unlawfully present aliens. Indeed,
12 the California State Legislature has not enacted any state law which affirmatively provides that
13 unlawfully present aliens are eligible for the cash public benefits of \$75 million.

14 **III. ARGUMENT**

15 **A. The Court Should Grant A Temporary Restraining Order To Preserve Status Quo.**

16 Plaintiffs bring this action under Code of Civil Procedure Section 526a seeking injunctive and
17 declaratory relief. Section 526a authorizes actions against public officials to enjoin illegal expenditures
18 by a resident taxpayer who is assessed for and is liable to pay, or, within one year before the
19 commencement of the action, has paid income and/or other taxes that fund the State of California. Code
20 Civ. Proc. § 526a(a); *see Blair v. Pitchess*, 5 Cal. 3d 258, 267 (1971). The mere expending of a paid,
21 public official’s time performing unlawful or unauthorized acts is an illegal expenditure of taxpayer
22 funds that may be enjoined under section 526a. *See Blair*, 5 Cal. 3d at 268. The primary purpose of this
23 statute, originally enacted in 1909, is to ‘enable a large body of the citizenry to challenge governmental
24 action’” *Id.* at 267-268.

25 A temporary restraining order may be obtained on an *ex parte* basis where “[i]t appears from
26 facts shown by affidavit or by the verified complaint that great or irreparable injury will result to the
27 applicant before the matter can be heard on notice.” Code Civ. Proc. § 527(c)(1).

28 The general purpose of a temporary restraining order and preliminary injunction is to preserve

1 the status quo. *See Harbor Chevrolet Corp. v. Machinist’s Local Union*, 1484, 173 Cal. App. 2d 380,
2 384 (1959); *Grothe v. Cortlandt Corp.*, 11 Cal. App. 4th 1313, 1316 (1992). The “status quo” for
3 purposes of a temporary restraining order or preliminary injunction means the “last actual peaceable,
4 uncontested status which preceded the pending controversy.” *United Railroads of San Francisco v.*
5 *Super. Ct.*, 172 Cal. 80, 87 (1916); *Voorhies v. Greene*, 139 Cal. App. 3d 989, 995 (1983).

6 “[T]rial courts should evaluate two interrelated factors when deciding whether or not to issue [a
7 restraining order]. The first is the likelihood that the plaintiff will prevail on the merits at trial. The
8 second is the interim harm that the plaintiff is likely to sustain if the [restraining order] were denied as
9 compared to the harm that the defendant is likely to suffer if the [order] were issued.” *Church of Christ*
10 *in Hollywood v. Superior Court*, 99 Cal. App. 4th 1244, 1251 (2002), *quoting IT Corp. v. County of*
11 *Imperial*, 35 Cal. 3d 63 (1983); *see Code Civ. Proc.* §§ 526, 527.

12 Based on the face of the Complaint, the facts identified above, and the arguments presented
13 below, it is likely Plaintiffs will prevail on the merits. The California State Legislature has not enacted a
14 law affirmatively providing that unlawfully present aliens are eligible for the cash benefits flowing from
15 the “Disaster Relief Assistance for Immigrants Project.” Nonetheless, Defendants intend to begin
16 distributing those benefits to qualified individuals in May 2020. Thus, Plaintiffs also can demonstrate
17 interim harm if the status quo is not preserved and Defendants are allowed to make these illegal
18 expenditures of \$79.8 million of taxpayer funds. Indeed, those expenditures are undoubtedly already
19 happening as public officials at the California Department of Social Services at the very least have
20 begun spending their time on carrying out the Governor’s illegal initiative.

21 **B. Plaintiffs Are Likely To Succeed On The Merits.**

22 **1. 8 U.S.C. § 1621 Prohibits Defendants From Providing Cash Benefits To**
23 **Unlawfully Present Aliens Without An Affirmative Enactment By The**
24 **California State Legislature.**

25 Under federal law, unlawfully present aliens generally are ineligible for State or local public
26 benefits. 8 U.S.C. § 1621(a). With certain exceptions not relevant here, the term “State or local public
27 benefit” means:

- 28 (A) any grant, contract, loan, professional license, or commercial license provided by an
agency of a State or local government or by appropriated funds of a State or local
government; and

1 (B) any retirement, welfare, health, disability, public or assisted housing, postsecondary
2 education, food assistance, unemployment benefit, or any other similar benefit for which
3 payments or assistance are provided to an individual, household, or family eligibility unit
4 by an agency of a State or local government or by appropriated funds of a State or local
5 government.

6 8 U.S.C. § 1621(c). “A State may provide that an alien who is not lawfully present in the United States
7 is eligible for any State or local public benefit ... only through the enactment of a State law ... which
8 affirmatively provides for such eligibility.” 8 U.S.C. § 1621(d). It is indisputable that the direct cash
9 benefits to be provided to unlawfully present aliens under the “Disaster Relief Assistance for Immigrants
10 Project,” fall within the definition of a “State or local public benefit.” Thus, the relevant provision
11 presently is Section 1621(d), the exception to the general rule.

12 Section 1621(d) is unambiguous and sets forth two requirements. First, the provision says “State
13 law,” not executive order or proclamation. Nothing short of a law enacted by the legislature and signed
14 by the governor suffices. Second, the law must expressly authorize provision of the benefits to
15 unlawfully present aliens. In *Martinez v. Regents of the University of California*, 50 Cal. 4th 1277
16 (2010), the California Supreme Court held that section 1621(d) is not satisfied unless a legislative
17 enactment “expressly state[s] that it applies to undocumented aliens, rather than conferring a benefit
18 generally without specifying that its beneficiaries may include undocumented aliens.” *Id.* at 1296.

19 A review of the “Personal Responsibility and Work Opportunity Reconciliation Act of 1996,”
20 which enacted Section 1621, shows that Congress used the phrases “State agency” and “State or political
21 subdivision of a State” multiple times, but not in the language that became Section 1621. This
22 distinction further demonstrates that Congress intended Section 1621 to require enactments of state
23 legislatures – statutes – not executive orders or proclamations. Section 1621 may not be read to include
24 such items when interpreting its language “only through the enactment of a State law.” *See Sale v.*
25 *Haitian Centers Council, Inc.*, 509 U.S. 155, 168 n.16 (1993) (“To supply omissions transcends the
26 judicial function.”), *quoting Iselin v. United States*, 270 U.S. 245, 250 (1926) (Brandeis, J.); *see also In*
27 *re Miller*, 31 Cal. 2d 191, 199 (1947) (“Words may not be inserted in a statute under the guise of
28 interpretation”), *citing* Code Civ. Proc. § 1858.

In enacting Section 1621, Congress plainly decided to allow the states a small measure of
authority in an area – immigration and naturalization – that otherwise is reserved almost exclusively to

1 the federal government. Specifically, Congress decided to allow states to extend eligibility for state and
2 local public benefits to unlawfully present aliens, but only if the highest and most visible, politically
3 accountable levels of state government do so affirmatively. Section 1621 is a “stand up and be counted”
4 law designed to ensure political accountability in the event states wish to enter an area otherwise
5 reserved to the federal government. *See* H.R. Rep. No. 104-725, 104th Cong., 2d Sess., p. 383 (1996),
6 *reprinted in* 1996 U.S.C.C.A.N 2649 (“Only the affirmative enactment of a law by a State legislature
7 and signed by the Governor after the date of enactment of this Act ... will meet the requirements of
8 [Section 1621].”). Essentially, Congress said states may give state or local benefits to unlawfully
9 present aliens, but only if they do it out in the public with the state legislature affirmatively saying, yes,
10 we’re going to do this, so the elected representatives can be held accountable for that decision. It’s a
11 political accountability law.

12 The report accompanying Section 1621 also confirms that Congress intended this section as a
13 political accountability law by requiring affirmative action by the people’s elected representatives – their
14 state legislators and governors. The Conference Agreement accompanying the bill describes the effect
15 of Section 1621 as follows:

16 No current State law, State constitutional provision, State executive order or decision of
17 any State or Federal court shall provide a sufficient basis for a State to be relieved of the
18 requirement to deny benefits to illegal aliens.... Only the affirmative enactment of a law
by a State legislature and signed by the Governor after the date of enactment of this Act,
that references this provision, will meet the requirements of this section.

19 H.R. Rep. No. 104-725, 2d Sess., p. 383 (1996), *reprinted in* 1996 U.S.C.C.A.N 2649. The omission of
20 any reference to executive orders or proclamations was deliberate. *Cf. Director, Office of Workers’*
21 *Comp. Programs v. Rasmussen*, 440 U.S. 29, 46-47 (1979) (the “legislative history of the 1972
22 Amendments convinces us that the omission was intentional. Congress has put down its pen, and we can
23 neither rewrite Congress’ words nor call it back ‘to cancel half a Line.’ Our task is to interpret what
24 Congress has said[.]”).

25 As demonstrated below, the California Legislature has not enacted a State law authorizing
26 payment of direct cash benefits to unlawfully present aliens under the “Disaster Relief Assistance for
27 Immigrants Project.” Accordingly, Section 1621(d) has not been satisfied.
28

1 **2. The Legislature Did Not Authorize Direct Cash Benefits To Unlawfully**
2 **Present Aliens When It Established or Appropriated Funds For The Rapid**
3 **Response Program.**

4 At least \$16.5 million of the taxpayers’ funds that Governor Newsom intends to spend are from
5 the Rapid Response Program, which was established and funded as part of the 2019 Budget process.
6 *See* 2019 Cal. Stat., ch. 23, § 2, Item 5180-151-0001, par. 24(a) (AB 74); 2019 Cal. Stat., ch. 27 § 96
7 (SB 80); Welf. & Inst. Code § 13400, *et seq.*² Defendants may argue that SB 80, which established the
8 program, satisfies Section 1621(d) because it expressly states that its terms applies to unlawfully present
9 aliens, which SB 80 refers to as “undocumented persons.” Welf. & Inst. Code § 13403.³ But a review of
10 SB 80 makes clear that it does not authorize any kind of cash benefits at all. Rather, it authorizes the
11 State to award grants or contracts to non-profit organizations that provide seven types of “in-kind”
12 benefits to unlawfully present aliens, none of which are direct cash benefits. The authorized benefits
13 are:

- 14 A. Medical screening/treatment;
- 15 B. Temporary shelter;
- 16 C. Food;
- 17 D. Clothing;
- 18 E. Transportation;
- 19 F. Communication; and
- 20 G. Outreach and case management expenses to support delivery of the benefits the
21 legislation authorizes.

22 *Id.* at § 13401(3). Because SB 80 does not authorize direct cash benefits to anyone, it plainly does not
23 affirmatively authorize cash benefits to unlawfully present aliens.

24 The enactment appropriating funds to the Rapid Response Program further confirms that the
25 Legislature did not expressly authorize direct cash benefits to unlawfully present aliens or anyone else.
26 The appropriation, found in the Budget Act of 2019 (AB 74), provides that the funds are to be used “to
27 reimburse participating entities, including, but not limited to non-profits, made beyond the scope of
28 technical support during immigration emergent situations” and “shall be available for any costs incurred
by entities providing critical assistance to immigrants during emergent situations during the 2018-19

29 _____
30 ² The balance of the “Rapid Response Reserve Fund” (Section 23.20 of the Budget Act of
31 2018) (AB 72) was also reappropriated in the Budget Act of 2019 to Item 5180-151-0001 for similar
32 purposes.

33 ³ Section 13403 states, “The Legislature finds and declares that this chapter is a state law that
34 provides assistance and services for undocumented persons within the meaning of Section 1621(d) of
35 Title 8 of the United States Code.”

1 and 2019-20 fiscal years.” 2019 Cal Stat., ch. 23, § 2, Item 5180-151-0001, par. 24(a). It is a
2 reimbursement program, not a direct benefit program. *Id.* (funds “shall be available for the Rapid
3 Response Program pursuant to Section 13401 of the Welfare and Institutions Code to provide contracts
4 or grants to entities, including, but not limited to non-profit organizations, that provide critical assistance
5 to immigrants during emergent situations when federal funding is not available to support such
6 assistance.”) While the Legislature may have appropriated funds to reimburse non-profits that provide
7 food, shelter, clothing, medical care, and other specified types of in-kind benefits to unlawfully present
8 aliens, it did not appropriate funds – expressly or otherwise – to provid direct cash benefits to unlawfully
9 present aliens. As a result, Governor Newsom’s plan to distribute direct cash benefits to unlawfully
10 present aliens using at least \$16.5 million of taxpayers’ funds in the Rapid Response Program violates
11 Section 1621 and is therefore an illegal expenditure to be enjoined.

12 **3. The Legislature Did Not Expressly Authorize Direct Cash Benefits To**
13 **Unlawfully Present Aliens When It Amended The Budget Act of 2019.**

14 The bulk of the funds Governor Newsom intends to use – at least \$63.3 million – are from a
15 March 17, 2020 amendment to the Budget Act of 2019. *See* 2020 Cal. Stat., ch. 2, § 2 (SB 89). The
16 relevant provision, which added a new section – section 36 – to the Budget Act of 2019, reads, in its
17 entirety:

18 Notwithstanding any other law, \$500,000,000 is hereby appropriated from the General
19 Fund to any item for any purpose related to the March 4, 2020 proclamation of a state of
20 emergency upon order of the Director of Finance. Funds appropriated in this section may
21 not be expended prior to 72 hours after the Director of Finance notifies the Joint
22 Legislative Budget Committee in writing of the purposes of the planned expenditure.
23 The chairperson of the Joint Legislative Budget Committee or the chairperson’s designee
24 may shorten the 72-hour period by written notification. The amount of the appropriation
25 in this section may be increased in increments of \$50,000,000 no sooner than 72 hours
26 after the Director of Finance notifies the Joint Legislative Budget Committee of the need
27 for the increase. The chairperson of the Joint Legislative Budget Committee or the
28 chairperson’s designee may shorten the 72-hour period by written notification. The total
appropriation under this section shall not exceed \$1,000,000,000.

24 *Id.* Section 36 contains no express reference to the provision of any kind of benefits, cash or in-kind, to
25 unlawfully present aliens. It does not say its terms apply to unlawfully present aliens or even hint that
26 the Legislature had unlawfully present aliens in mind when it appropriated the emergency aid described
27 in Section 36. Governor Newsom’s March 4, 2020 proclamation, which Section 36 specifically
28 references, also makes no express or even an implied reference to authorizing direct cash benefits to

1 unlawfully present aliens.

2 “It is a settled principle of statutory interpretation that if a statute contains a provision regarding
3 one subject, that provision’s omission in the same *or another statute regarding a related subject* is
4 evidence of a different legislative intent.” *People v. Arriaga*, 58 Cal. 4th 950, 960 (2014) (citing
5 authorities) (italics added); *accord, In re Ethan C.*, 54 Cal. 4th 610, 638 (2012); *Posters ‘N’ Things v.*
6 *United States*, 511 U.S. 513, 520 (1994) (“This omission is significant in light of the fact that the parallel
7 list contained in the Drug Enforcement Administration’s Model Drug Paraphernalia Act, on which § 857
8 was based, includes [these factors].”).

9 Section 36 of SB 89 stands in stark contrast to SB 80, which at least referenced unlawfully
10 present aliens in the context of authorizing specific, in-kind benefits other than the direct cash benefits
11 challenged here. As SB 80 plainly demonstrates, the Legislature knows how to satisfy section 1621(d)
12 when it wants to do so.⁴ The absence of any similar express language in Section 36 demonstrates that
13 the Legislature, when enacting SB 89, neither intended to create a direct cash benefit program that
14 included unlawfully present aliens nor appropriated money for such an initiative. Accordingly,
15 Governor Newsom’s plan to distribute direct cash benefits to unlawfully present aliens using \$63.3
16 million of taxpayers’ funds in the emergency appropriation from Section 36 violates 8 U.S.C. § 1621
17 and is therefore an illegal expenditure to be enjoined.

18 **4. Because The Legislature Has Not Expressly Authorized Direct Cash**
19 **Benefits For Unlawfully Present Aliens, The Expenditure of Funds To**
20 **Administer Such A Program Also Is Unlawful.**

21 Governor Newsom intends to use an estimated additional \$4.8 million of taxpayers’ funds to
22 administer his illegal direct cash benefit initiative. The source of these funds is the same as outlined
23 above for the \$75 million in direct cash benefits to be distributed to unlawfully present aliens. Because
24 the direct cash benefit is illegal under Section 1621, any expenditure of funds to administer the illegal
25 program is unlawful as well. *Blair*, 5 Cal. 3d at 268-269; *see also Ames v. Hermosa Beach*, 16 Cal. App.
26 3d 146, 150-151 (1971) (“In other cases, courts have held that where government funds were employed
27 . . . to enforce laws which are themselves unconstitutional and therefore void . . . this use constitutes an
28 ‘illegal expenditure’ in the context of Code of Civil Procedure, section 526a and may be remedied under

⁴ See *supra* note 3 and accompanying text.

1 that section by an injunction sought in a taxpayer’s suit.”).

2 **C. Plaintiffs And The Public Fisc Will Suffer Immediate Irreparable Harm.**

3 The interim harm factor “involves consideration of such things as the inadequacy of other
4 remedies, the degree of irreparable harm, and the necessity of preserving the status quo.” *Abrams v. St.*
5 *John's Hospital & Health Center*, 25 Cal. App. 4th 628, 636 (1994). Here, all three considerations
6 support a restraining order. First, an injunction is what Code Civ. Proc. § 526a governing Plaintiffs’
7 action allows. *See IT Corp.*, 35 Cal. 3d at 71 (“where a legislative body has specifically provided
8 injunctive relief for a violation of a statute or ordinance, a showing . . . that it is likely to prevail on the
9 merits should give rise to a presumption of public harm.”). Second, Plaintiffs will suffer a substantial,
10 irreparable injury if a restraining order is not granted. Defendants intend to spend within days \$79.8
11 million of taxpayers’ funds on an illegal activity. Without a restraining order, those funds will be spent,
12 and there is no way of recovering them after they are distributed. Third, for that very reason, the status
13 quo must be preserved, and the public fisc must be protected, pending trial on the merits of this action.
14 Once the direct cash benefits are distributed to unlawfully present aliens in violation of federal law, the
15 injury cannot be remedied. Similarly, expenditures made to administer the distribution of those cash
16 benefits will have been expended out of the public fisc, and that injury cannot be remedied. Preserving
17 the status quo is essential to protecting taxpayer funds from these illegal expenditures.

18 **IV. CONCLUSION**

19 Governor Newsom’s “Disaster Relief Assistance for Immigrants Project” clearly violates 8
20 U.S.C. § 1621. Unless restrained, an illegal expenditure of \$79.8 million of the taxpayers’ funds of
21 nearly 40 million Californians will be distributed and spent and completely dissipated starting
22 immediately. This Court should preserve the status quo where those funds remain in the state’s treasury,
23 grant a temporary restraining order, and issue an order directing the Governor and his Director of the
24 Department of Social Services to show cause why a preliminary injunction should not be entered.

25 Dated: May 4, 2020

JUDICIAL WATCH, INC.

26 By: /s/ Robert Patrick Sticht.
27 ROBERT PATRICK STICHT

28 Attorneys for Plaintiffs,
Robin Crest and Howard A. Myers