Court of Appeal, Second Appellate District
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Court of Appeal, Second Appellate District
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No. B306122

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

CYNTHIA CERLETTI and HOWARD A. MYERS,
Petitioners-Plaintiffs and Appellants,
v.
GAVIN NEWSOM, In His Official Capacity as Governor of the State of California, and **KIM JOHNSON**, In Her Official Capacity as Director of the Department of Social Services,
Respondents and Defendants.

PETITION FOR WRIT OF SUPERSEDEAS OR OTHER EXTRAORDINARY RELIEF

Appeal from the Superior Court for the County of Los Angeles
Civil Division, Central District, Department 1
Superior Court Case No. 20STCV16321
The Honorable Samantha P. Jessner
Telephone: (213) 633-0601

IMMEDIATE RELIEF OR STAY REQUESTED
(of order denying temporary restraining order restraining the State from making illegal expenditures totaling $79.8 million of taxpayers' funds on cash benefits to unlawfully present aliens, and of initiative that provides for making the expenditures)

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TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL Second APPELLATE DISTRICT, DIVISION	COURT OF APPEAL CASE NUMBER: B306122
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 138586 NAME: Robert Patrick Sticht FIRM NAME: Judicial Watch, Inc. STREET ADDRESS: 425 Third Street, Suite 800 CITY: Washington STATE: DC ZIP CODE: 20024 TELEPHONE NO.: 202-646-5172 FAX NO.: E-MAIL ADDRESS: rsticht@judicialwatch.org ATTORNEY FOR (*name*): Petitioners Cynthia Cerletti and Howard A. Myers	SUPERIOR COURT CASE NUMBER: 20STCV16321
APPELLANT/ PETITIONER: Cynthia Cerletti and Howard A. Myers RESPONDENT/ REAL PARTY IN INTEREST: Gavin Newsom and Kim Johnson, Respondents (officials)	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (*Check one*): [X] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE	

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): Petitioners Cynthia Cerletti and Howard A. Myers

2. a. [X] There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	**Nature of interest *(Explain)*:**
(1)		
(2)		
(3)		
(4)		
(5)		

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: May 29, 2020

Robert Patrick Sticht
(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

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INTRODUCTION

Cynthia Cerletti and Howard A. Myers, citizens and resident taxpayers of the State of California, petition for a writ of supersedeas under Code of Civil Procedure section 923 during their appeal of an order denying their *ex parte* application for a temporary restraining order enjoining Governor Newsom's April 15, 2020 initiative insofar as it provides for making expenditures totaling an estimated $79.8 million of taxpayers' funds on cash benefits to unlawfully present aliens and on program administration through nonprofit organizations. The appeal presents substantial legal issues relating to the trial court's erroneous interpretation and application of 8 U.S.C. § 1621, and, in particular section 1621(d), as well as two state laws, Senate Bill 80 and Senate Bill 89, and further challenges the legal standard used by the trial court to decide the application.

Under federal law, unlawfully present aliens generally are ineligible for any State or local public benefit. *See* 8 U.S.C. § 1621(a). A State may provide eligibility "only through the enactment of a State law . . . which affirmatively provides for such eligibility." *See id.*, § 1621(d). Because our Legislature has not enacted any law which affirmatively provides that unlawfully present aliens are eligible for the cash benefits provided under the Governor's initiative, and the funding sources – Senate Bill 80 (SB 80) and Senate Bill 89 (SB 89) – do not fill that gap, the trial court's order and the initiative threaten irreparable harm to the Petitioners and the public.

Among other things, Petitioners have a statutory right to

permanent injunctive relief, a right that will be irrevocably lost if this Court ultimately reverses the trial court's order. *See* Code Civ. Proc. § 526a. And because this appeal is from an order denying a temporary restraining order, a writ of supersedeas is Petitioners' only remedy to preserve that right. *See People ex rel. San Francisco Bay Conservation & Dev. Comm'n v. Town of Emeryville*, 69 Cal. 2d 533 (1968).

Accordingly, Petitioners respectfully request that this Court grant their petition and issue a writ of supersedeas, staying the trial court's order and the Governor's initiative insofar as it provides for making expenditures totaling an estimated $79.8 million of taxpayers' funds on cash benefits to unlawfully present aliens and on program administration through nonprofit organizations, pending resolution of this appeal.

Petitioners also request that this Court grant a temporary stay of the trial court's order and the Governor's initiative pending determination of this petition, to preserve the status quo in aid of jurisdiction, to ensure the subject matter of the appeal is still in existence at the time the appeal is decided, and to avoid the loss of Petitioners' statutory right to permanent injunctive relief and other irreparable harm.

PETITION FOR WRIT OF SUPERSEDEAS

I. STATEMENT OF THE CASE

1. On April 15, 2020, Governor Newsom announced a new initiative to provide direct cash benefits to unlawfully present aliens.[1] (Ex. A) The initiative, known as the "Disaster Relief Assistance for Immigrants Project" ("DRAIP") provides $75 million to unlawfully present aliens who otherwise are ineligible for state or federal insurance or other benefits "due to their immigration status." (*Id.*)

2. Under DRAIP, approximately 150,000 unlawfully present aliens "will receive a one-time cash benefit of $500 per adult with a cap of $1,000 per household[.]" (*Id.*) The cash "will be dispersed through a community-based model of regional nonprofits with expertise and experience" serving unlawfully present aliens. (*Id.*)

3. Governor Newsom charged Kim Johnson, his Director of the California Department of Social Services ("CDSS"), to administer the cash benefits. On or about April 17, 2020, CDSS issued the "Disaster Relief Assistance for Immigrants Fact Sheet." (Ex. B) In it, CDSS stated it will select immigrant-serving community-based nonprofit organizations to conduct targeted outreach, provide application assistance, and deliver the

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[1] The relevant statute uses the phrase "an alien who is not lawfully present in the United States." 8 U.S.C. § 1621(d). Petitioners use the term "unlawfully present aliens" because it commonly appears in federal law. *See e.g., Arizona v. United States*, 567 U.S. 387, 419 (2012).

cash benefits directly to qualified individuals. (*Id.*) The fact sheet reiterated that only unlawfully present aliens are eligible for the direct cash benefits. (*Id.*)

4. The fact sheet further revealed that, "The total amount allocated for the Disaster Relief for Immigrants Project is $79.8 million . . . Seventy-five million dollars will support direct assistance and an estimated $4.8 million will support program administration through qualified nonprofit organizations." (*Id.*, n.2). While all $79.8 million are from the General Fund, the appropriations come from two different enactments – $16.5 million from the Rapid Response Program, created and funded in June 2019 as part of the Budget Act of 2019, and $63.3 million from a March 2020 amendment to the Budget Act of 2019. (*Id.*)

5. The March 2020 amendment referenced Governor Newsom's March 4, 2020 proclamation of a state of emergency. (*See* 2020 Cal. Stat., ch. 2, § 2 (SB 89)); (Ex. C). However, neither the proclamation nor the budget amendment makes an express or even an implied reference to authorizing direct cash benefits to unlawfully present aliens. (*Id.*) Similarly, neither the Rapid Response Program nor the appropriation of monies for that program makes any reference, express or implied, to authorizing direct cash benefits to unlawfully present aliens. (*See* 2019 Cal. Stat., ch. 23, § 2, Item 5190-151-0001, par. 24(a) (AB 74); 2019 Cal. Stat., ch. 27 § 96 (SB 80); Welf. & Inst. Code §§ 13400, *et seq.*) Indeed, the California State Legislature has not enacted any state law which affirmatively provides that unlawfully present aliens are eligible for the cash public benefits of $75

million.

6. On April 29, 2020, the original plaintiffs in the trial court, Robin Crest and Howard A. Myers, filed a complaint against Governor Newsom and Director Johnson for declaratory and injunctive relief.[2] (Ex. D) The complaint alleges that the enormous expenditures at issue violate 8 U.S.C. § 1621, and further seeks to enjoin those expenditures as well as all related expenditures of official time and other taxpayer-financed resources. (*Id.*; Ex. E)

7. On May 4, 2020, plaintiffs filed an *ex parte* application seeking a temporary restraining order restraining and enjoining Governor Newsom and Director Johnson from making the illegal expenditures and an order to show cause why a preliminary injunction should not be entered. (Ex. F) On the same day, defendants filed an opposition to the application. (Ex. G)

8. The *ex parte* was heard on May 5, 2020. (Ex. H, ¶3) After the trial court summarized the parties' papers, both parties argued the cause. (*Id.*, ¶¶ 7-10) At the conclusion of the hearing, after briefly questioning the parties, the trial court denied plaintiffs' application generally for the reasons stated in the opposition. (*Id.*, ¶¶ 11-14) The trial court wanted to "emphasize" two points. First, there must be a significant showing of irreparable harm as opposed to a general assertion not supported by evidence. Plaintiffs' argument did not rise to the case law

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[2] On May 19, 2020, a first amended complaint was filed by Cynthia Cerletti (successor to Robin Crest), and Howard A. Myers. (Ex. E)

involving a public entity. Second, defendants' argument about how SB 80 and SB 89 came into existence and how the court should read the Welfare and Institutions Code and 8 U.S.C. § 1621 were persuasive. (*Id.*, ¶ 14) The court subsequently issued a minute order stating that plaintiffs' application was "denied for the reasons set forth in the opposition papers. The court finds that plaintiffs have not met their burden to support the requested relief." (Ex. I)

9. Convinced the trial court had seriously misinterpreted and misapplied section 1621, SB 80, and SB 89 – an error which this Court will review on appeal *de novo* – and because plaintiffs wished to obtain an immediate stay of the trial court's ruling and halt the $79.8 million illegal expenditures and dissipation of taxpayers' funds, on May 14, 2020, plaintiffs filed in this Court a petition for writ of mandate requesting an immediate stay. On the same day, this Court issued an order denying immediate stay request "for failure to provide an adequate record for review." (Ex. J) The order specifically noted that a copy of the opposition to plaintiffs' *ex parte* application for a temporary restraining order had not been submitted with the petition. (*Id.*) In response to this order, on the same day, plaintiffs filed an amended petition for writ of mandate, which attached the opposition and renewed the request for an immediate stay or other appropriate relief. (Ex. K) The amended petition was in all other material respects identical to the original petition and is therefore omitted from the supporting documents accompanying this petition.

10. On the next day, May 15, 2020, defendants filed a letter with this Court urging it to summarily deny plaintiffs' amended petition for writ of mandate on the basis that our Supreme Court, on May 6, 2020, had summarily denied what defendants mischaracterized as an identical petition for writ of mandate alleging that DRAIP violates section 1621. (Ex. L) (*citing Benitez et al. v. Newsom* (S261804) ("Benitez")) Plaintiffs filed a letter responding to defendants' letter on the same day. (Ex. M) In their response, plaintiffs pointed out at least three significant differences in the *Benitez* petition: (1) standing – that *Benitez* was not a citizen taxpayer action, but rather a petition brought by candidates for the California State Assembly relying solely on the public duty exception; (2) issues – that *Benitez* involved a constitutional challenge to the appropriations flowing to community based nonprofit organizations under California Constitution, Article XVI, Section 3, having to do with state expenditures made to organizations not under state control; and (3) briefing – that the *Benitez* petitioners devoted only one page of their 22-page petition in passing to section 1621, but the Governor, choosing to ignore altogether their core constitutional argument, instead devoted his 22-page opposition almost exclusively to section 1621. (*Id.*)

11. On May 18, 2020, this Court issued an order denying plaintiffs' amended petition for writ of mandate. (Ex. N) The order contained two paragraphs. In the first paragraph, the order noted that section 1621 had been presented to our Supreme Court in *Benitez* and rejected in a summary denial order, and this

Court likewise was denying the amended petition without treating that order as controlling. (*Id.*) In the second paragraph, the order reasoned that a ruling on a temporary restraining order is separately appealable and plaintiffs had made "an inadequate showing to justify seeking relief by way of mandate." (*Id.*) In addition, the order stated, "'mandamus does not generally lie to control the exercise of judicial discretion,'" and is instead "available solely where such discretion can be exercised in only one way," and that is not the case here. (*Id.*)

12. On the same day, as this litigation was ongoing, the CDSS selected twelve immigrant-servicing nonprofit organizations to help individuals apply for and receive cash benefits under DRAIP in their region. Unlawfully present aliens began applying on May 18, 2020. Benefits "will be available until the funding is spent or until June 30, 2020, at the latest. Applicants will be considered on a first come, first served basis."[3]

13. On May 21, 2020, plaintiffs filed a notice of appeal from the trial court's order, dated May 5, 2020, denying their *ex parte* application for a temporary restraining order. (Ex. O)

II. PARTIES

14. Petitioner Cynthia Cerletti is a citizen and resident taxpayer of the State of California, and a plaintiff in the underlying action (successor to original plaintiff Robin Crest). She also is an appellant in the underlying appeal.

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[3] *See Coronavirus (COVID-19) Disaster Relief Assistance for Immigrants*, Department of Social Services, (May 28, 2020) https://www.cdss.ca.gov/inforesources/immigration/covid-19-drai

15. Petitioner Howard A. Myers is a citizen and resident taxpayer of the State of California, and a plaintiff in the underlying action. He is an appellant in the underlying appeal.

16. Respondent Gavin Newsom is the Governor of the State of California, and a defendant in the underlying action. On April 15, 2020, he announced the initiative of making illegal expenditures totaling $79.8 million of taxpayers' funds on cash benefits to unlawfully present aliens and on program administration through private nonprofit organizations. In addition, Governor Newsom authorized the expenditures and directed Respondent Kim Johnson to oversee and administer the expenditures. He is sued in his official capacity only.

17. Respondent Kim Johnson is the Director of the California Department of Social Services, and a defendant in the underlying action. She is charged with overseeing and administering the illegal expenditures under the Governor's April 15, 2020 initiative. She is sued in her official capacity only.

III. BASIS FOR RELIEF

18. Supersedeas is an appropriate remedy where (1) the appeal presents a substantial issue, and (2) failure to issue a stay is more likely to injure the appellant than issuance of a stay is likely to injure the respondent. *See Meyer v. Arsenault*, 40 Cal. App. 3d 986, 988-989 (1974); *Estate of Murphy*, 16 Cal. App. 3d 564, 568-569 (1971); *Davis v. Custom Component Switches, Inc.*, 13 Cal. App. 3d 21, 26-28 (1970); *Mills v. County of Trinity*, 98 Cal. App. 3d 859, 861 (1979); *see also id.*, 108 Cal. App. 3d 656,

659 (1980). Both factors are present here.

19. Here, the appeal presents substantial issues relating to the trial court's erroneous interpretation and application of 8 U.S.C. § 1621, and, in particular section 1621(d) thereof, as well as SB 80 and SB 89, and further challenges the legal standard used by the trial court to decide Petitioners' *ex parte* application for a temporary restraining order. The trial court denied the application generally for the reasons set forth in Respondents' opposition. (*See supra* ¶ 8) While it is impossible to discern the true basis for that ruling from the minute order or the proceedings, Petitioners will challenge at least the following prejudicial errors:

a. Unduly increasing Petitioners' burden by applying the wrong legal standard, specifically, a general rule against enjoining public officers or agencies from performing their duties. It is well settled that the rule does not apply to unconstitutional or void acts. *See Tahoe Keys Property Owners' Ass'n v. State Water Resources Control Board*, 23 Cal. App. 4th 1459, 1471 (1994) (citing cases). In addition, the statute authorizing the underlying action specifically provides for injunctive relief against public officers and agencies. *See* Code Civ. Proc. § 526a. Furthermore, in such circumstances, public harm is presumed. *See IT Corp. v. County of Imperial*, 35 Cal. 3d 63, 71 (1983) ("where a legislative body has specifically provided injunctive relief for a violation of a statute or ordinance, a showing . . . that it is likely to prevail on the merits should give rise to a presumption of public harm.").

b. Unduly increasing Petitioners' burden by misconstruing section 526a, specifically, as conferring standing to enjoin the illegal expenditures at issue, but not authority to seek prejudgment injunctive relief. Respondent cited two cases. *See White v. Davis*, 30 Cal. 4th 528 (2003); *Cohen v. Board of Supervisors of City & County of San Francisco*, 178 Cal. App. 3d 447 (1986). Neither case interpreted section 526a as to preclude prejudgment injunctive relief.

In *Cohen*, two plaintiffs, one a taxpayer, attempted to establish a conclusive presumption of irreparable injury, and the court rejected it, stating it would automatically equate illegal spending with a right to a preliminary injunction and leave no room for a true balancing of interim harm. *See id*. at 454. In *White*, again, plaintiffs relied solely on their taxpayer interest in not having public funds spent unlawfully to establish irreparable harm, and the Court, citing *Cohen* and two other appellate decisions, said a taxpayer's interest alone "ordinarily" does not "in itself" constitute the type of irreparable harm that warrants granting preliminary injunctive relief. *See id*. at 557. But the Court then added,

> In this case, however, we need not decide whether interim harm to a taxpayer's interest is *ever* in itself sufficient to justify a preliminary injunction barring the expenditure of public funds during a budget impasse, because even if there may be some circumstances in which granting a preliminary injunction might be warranted in a taxpayer action (for example, if the Controller continues to approve expenditures that have been held unlawful by a controlling judicial precedent), in the case before us we believe it is clear that in light of both the relative

> balance of harms and the lack of clear authority supporting the merits of plaintiffs' broad claim, the trial court abused its discretion in granting a preliminary injunction.

Id.

In addition, both *White* and *Cohen* are inapposite. In *Cohen*, "[t]he ordinance had not yet been enforced, and the chief of police had not adopted rules or regulations." Cohen, 178 Cal. App. 3d at 454. That clearly is not the case here. Here, there is no law allowing the challenged expenditure as required by 8 U.S.C. § 1621(d). In *White*, plaintiffs challenged the making of legal expenditures during a budget impasse. Clearly that, also, is not the case here.

c. Misconstruing and concluding, erroneously, that SB 80, which enacted Welf. & Inst. Code §§ 13401 *et seq*., (Rapid Response Program ("RRP")), "affirmatively provides," within the meaning of 8 U.S.C. § 1621(d), that unlawfully present aliens are eligible for $16.5 million of cash benefits from the RRP. The trial court further misconstrued section 1621(d) as being satisfied so long as the State enactment "affirmatively provides" for eligibility of unlawfully present aliens to receive "*any* State or local public benefit." Thus, the trial court erred insofar as it upheld eligibility for cash benefits on the basis that SB 80 provides eligibility for in-kind benefits. The trial court further misconstrued Welf. & Inst. Code § 13403, which delineates in kind benefits only, as expressly authorizing cash benefits. Similarly, the trial court misinterpreted the statute as giving CDSS the discretion to determine not only the necessity of benefits, but the nature of benefits, cash or in kind, as well. The

memorandum accompanying this petition will address these issues in greater detail.

d. Misconstruing and concluding, erroneously, that SB 89, which enacted Section 36 of the Budget Act of 2019, an appropriation measure for the pandemic emergency, satisfies section 1621(d) because the $63.3 million of cash benefits from Section 36 funds is for the same purpose already expressly authorized by SB 80, is allocated to the same budget item, is authorized by the state legislature under a delegation of authority to the Department of Finance to determine the spending of Section 36 funds, and is memorialized in an exchange of letters between the finance director and chair of the joint legislative budget committee. The memorandum accompanying this petition also will address these issues at some length.

20. If this Court denies a stay and then later reverses the trial court's order, Petitioners will be irreparably harmed not only by the $79.8 million illegal expenditure and dissipation of unrecoverable taxpayers' funds, but also the loss of their right to permanent injunctive relief provided by Code Civ. Proc. § 526a. *See People ex rel. San Francisco Bay Conservation & Dev. Comm'n. v. Town of Emeryville*, 69 Cal. 2d 533, 537 (1968) ("where, as here, difficult questions of law are involved and the fruits of a reversal would be irrevocably lost unless the status quo is maintained, justice requires that an appellate court issue a stay order to preserve its own jurisdiction."); *Davis*, 13 Cal. App. 3d at 26 (court's supersedeas power is meant "to preserve the status quo in aid of its jurisdiction and ensure that the subject

matter of the appeal is still in existence at the time the appeal is decided.”).

IV. JURISDICTION

21. This Court is authorized to grant a writ of supersedeas. Code Civ. Proc. § 923; *In re Christy L.*, 187 Cal. App. 3d 753, 759 (1986) (“An appellate court may issue a writ of supersedeas to stay a judgment . . . where an appeal from a judgment or order is pending.”); *Food & Grocery Bureau v. Garfield*, 18 Cal. 2d 174, 177 (1941) (“this court has inherent power to issue the writ[.]”).

22. This petition is timely as the notice of appeal was filed on May 21, 2020, from an order entered on May 5, 2020.

V. AUTHENTICITY OF EXHIBITS

23. Exhibits A through G, I, and O accompanying this petition are true copies of original documents on file with the trial court.

24. Exhibits H and J through N accompanying this petition are true copies of original documents on file with this Court in the related proceeding in which Petitioners sought a writ of mandate.

25. The exhibits are paginated consecutively, and any page references in this petition are to the consecutive pagination.

PRAYER

Petitioners pray that this Court:

1. Grant the petition and issue a writ of supersedeas staying the trial court's order dated May 5, 2020, and continuing the stay during the pendency of this appeal;

2. Stay the Governor's April 15, 2020 initiative, known as the "Disaster Relief Assistance for Immigrants Project" (DRAIP), insofar as it provides for making expenditures totaling an estimated $79.8 million of taxpayers' funds on cash benefits to unlawfully present aliens and on program administration through nonprofit organizations, plus expenditures of paid public officials' time and other taxpayer-financed resources, pending resolution of this appeal;

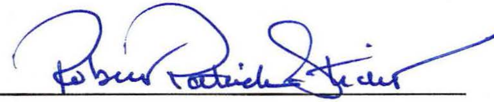
3. Grant a temporary stay of the trial court's order, and DRAIP insofar as stated above, pending determination of this petition, to preserve the status quo in aid of this court's jurisdiction, to ensure the subject matter of the appeal is still in existence at the time the appeal is decided, and to avoid the loss of Petitioners' statutory right to permanent injunctive relief and other irreparable harm;

4. Award Petitioners costs; and

5. Grant such other relief as is just and proper.

Dated: May 29, 2020

JUDICIAL WATCH, INC.

By: 

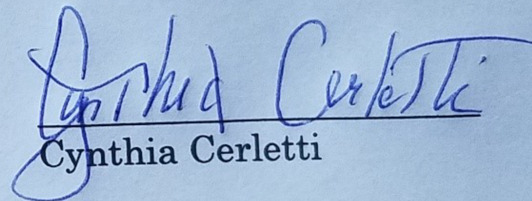
ROBERT PATRICK STICHT

Attorneys for Petitioners-Plaintiffs and Appellants, Cynthia Cerletti and Howard A. Myers

VERIFICATION

I, Cynthia Cerletti, am the petitioner-plaintiff and appellant in this proceeding. I have read the foregoing Petition for Writ of Supersedeas and know its contents. The facts stated therein are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



Date: May 28, 2020

Cynthia Cerletti

VERIFICATION

I, Howard A. Myers, am the petitioner-plaintiff and appellant in this proceeding. I have read the foregoing Petition for Writ of Supersedeas and know its contents. The facts stated therein are true of my own knowledge, except as to matters which are therein stated on information or belief, and as to those matters I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: May 28, 2020 ________________________

Howard A. Myers

MEMORANDUM OF POINTS AND AUTHORITIES

I. THIS COURT SHOULD ISSUE A STAY BECAUSE THE UNDERLYING APPEAL PRESENTS SUBSTANTIAL ISSUES AND THE BALANCE OF HARDSHIPS FAVORS A STAY.

A. Standard For Granting a Writ of Supersedeas.

Section 923 of the Code of Civil Procedure grants this Court virtually unlimited discretion to issue orders preserving the status quo in protection of its appellate jurisdiction. It provides:

> The provisions of this chapter [Chapter 2 Stay of Enforcement and Other Proceedings] shall not limit the power of a reviewing court or of a judge thereof to stay proceedings during the pendency of an appeal or to issue a writ of supersedeas or to suspend or modify an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo, the effectiveness of the judgment subsequently to be entered, or otherwise in aid of its jurisdiction.

Code Civ. Proc. § 923; *see also Food & Grocery Bureau*, 18 Cal. 2d at 177 ("this court has inherent power to issue the writ [of supersedeas] if such action is necessary or proper to the complete exercise of its appellate jurisdiction.")

"The purpose of the writ of supersedeas is to maintain the subject of the action *in status quo* until the final determination of the appeal, in order that the appellant may not lose the fruits of a meritorious appeal." *Dry Cleaners and Dyers Institute v. Reiss*, 5 Cal. 2d 306, 310 (1936) (italics in original); *see also Davis*, 13 Cal. App. 3d at 26 (court's supersedeas power is meant to "ensure that the subject matter of the appeal is still in existence at the time the appeal is decided.").

As our Supreme Court has explained, "'the rule now is that in aid of their appellate jurisdiction the courts will grant supersedeas in appeals where to deny a stay would deprive the appellant of the benefit of a reversal of the judgment against him, provided, of course, that a proper showing is made.'" *People ex rel. S.F. Bay etc.*, 69 Cal. 2d at 537 (*quoting Deepwell Homeowners' Protective Ass'n v. City Council of Palm Springs*, 239 Cal. App. 2d 63, 65-66 (1965)). "'On principle, it would be a terrible situation if in a proper case an appellate court were powerless to prevent a judgment from taking effect during appeal, if the result would be a denial of the appellant's rights if his appeal were successful.'" *Id*.

As explained below, this Court should issue the writ here to avoid irreparable harm to Petitioners and the public at large. Because this appeal is from an order denying a temporary restraining order, a writ of supersedeas is <u>Petitioners' only remedy</u> to prevent the loss of a statutory right to permanent injunctive relief. *See* Code Civ. Proc. § 526a; *People ex rel. S.F. Bay etc.*, 69 Cal. 2d at 536-537 (once trial court had dissolved its restraining order, writ was required to prevent town from resuming its fill operations and rendering appeal moot); *see e.g., Meyer v. Arsenault*, 40 Cal. App. 3d 986, 989 (1974) (writ issued to avoid irreparable injury from payment of money that likely could not be recovered after appeal); *Estate of Murphy*, 16 Cal. App. 3d 564, 569 (1971) (writ issued where appellant's ability to recover a distribution of trust property would be highly unlikely); *see also e.g.*, *Davis*, 13 Cal. App. 3d at 26 (writ issued where

corporate appellant operating profitably would be required to liquidate to the detriment of minority shareholders); *Wilkman v. Banks*, 120 Cal. App. 2d 521, 523 (1953) (writ issued to avoid irreparable damage to appellants from loss of "the fruits of a favorable determination on appeal if they were to be precluded in the meantime from continuing in their business of operating a sanitarium."); *Mills v. County of Trinity*, 98 Cal. App. 3d 859, 861 (1979) (writ issued where appellant would suffer irreparable harm if not allowed to collect disputed fees pending appeal).

B. Petitioners Will Raise Substantial Issues On Appeal.

Supersedeas relief is appropriate where (1) the appeal presents substantial issues, and (2) failure to issue a stay is more likely to injure the appellant than issuance of a stay is likely to injure the respondent. *See Meyer*, 40 Cal. App. 3d at 989; *Davis*, 13 Cal. App. 3d at 26; *accord Estate of Murphy*, 16 Cal. App. 3d at 569. Both factors are present here.

Regarding the first factor, the petition need not show that the appeal will be successful, but rather only that the appeal raises a substantial issue. *See Deepwell*, 239 Cal. App. 2d at 67 ("It is not the function of this court in passing upon an application for supersedeas to pass on the merits of the judgment appealed from; the validity of such judgment is to be reviewed on the appeal therefrom."); *see e.g., Meyer*, 40 Cal. App. 3d at 988 (judgment declaring insurance policy in full force and effect at the time of an accident presented "substantial question of law"); *Estate of Murphy*, 16 Cal. App. 3d at 568-569 (appeal presented

"substantial issues" relating to the interpretation of a trust); *Davis*, 13 Cal. App. 3d at 27-28 (appeal presented "substantial issues" relating to the amount of the judgment); *Mills*, 98 Cal. App. 3d aat 861; *see also id.*, 108 Cal. App. 3d 656, 659 (1980) (question whether increased fees exacted by county resolution constituted a "special tax" within the meaning of the state constitution presented a substantial issue).

This petition at the very least satisfies that standard.

1. 8 U.S.C. § 1621 Prohibits Cash Benefits To Unlawfully Present Aliens Absent An Affirmative Enactment By The Legislature.

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

> (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
>
> (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 or local government or by appropriated funds of a State or local government.

8 U.S.C. § 1621(c).

An exception to this general rule of ineligibility is provided in subsection (d) of the same statute. It states,

> A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) only through the enactment of a State law after the date of the enactment of this Act [enacted August 22, 1996] which affirmatively provides for such eligibility.

8 U.S.C. § 1621(d).

Here, there is no dispute that the direct cash benefits being provided to unlawfully present aliens fall within the definition of a "State or local public benefit." The parties' dispute surrounds Section 1621(d), the exception to the general rule of ineligibility.

The trial court's May 5, 2020 order denying Petitioners' *ex parte* application for a temporary restraining order contains no reasoning or citations to the record or case law. (Ex. I) The trial court denied the application "for the reasons set forth in the opposition papers." (Id.; Ex. H ¶¶ 11-14) On this appeal, Petitioners will contend that none of those arguments has merit.

2. The Legislature Did Not Authorize Direct Cash Benefits To Unlawfully Present Aliens When It Enacted And Funded The Rapid Response Program (SB 80).

Petitioners will contend, for example, that the trial court prejudicially erred by concluding the State made unlawfully present aliens eligible for $16.5 million of cash benefits at issue through the passage of SB 80, a State law enacted June 27, 2019, because it "affirmatively provides" for such eligibility, within the meaning of Section 1621(d).

At least $16.5 million of taxpayers' funds used for the cash

benefits initiative are drawn from the Rapid Response Program ("RRP"), which was established and funded as part of the 2019 Budget process. *See* 2019 Cal. Stat., ch. 23, § 2, Item 5180-151-0001, par. 24(a) (AB 74); 2019 Cal. Stat., ch. 27 § 96 (SB 80); Welf. & Inst. Code § 13400, *et seq*.[4] The trial court appears to have taken the bait that because SB 80, which established the RRP, expressly states that its terms apply to unlawfully present aliens (SB 80 uses the term "undocumented persons"), [5] such persons are eligible for the cash benefits at issue. *See* Welf. & Inst. Code § 13403. But a review of SB 80 makes clear that it does not authorize any form of cash benefits at all. Rather, it authorizes the State to award grants or contracts to non-profit organizations that provide seven types of "in-kind" benefits to unlawfully present aliens, none of which are, or even remotely resemble, direct cash benefits. The authorized benefits are:

A. Medical screening/treatment;
B. Temporary shelter;
C. Food;
D. Clothing;
E. Transportation;
F. Communication; and

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[4] The balance of the "Rapid Response Reserve Fund" (Section 23.20 of the Budget Act of 2018) (AB 72) was also reappropriated in the Budget Act of 2019 to Item 5180-151-0001 for matching purposes.

[5] Section 13403 states, "The Legislature finds and declares that this chapter 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."

G. Outreach and case management expenses to support delivery of the benefits the legislation authorizes.

Id. at § 13401(3). Because SB 80 does not authorize direct cash benefits to anyone, it plainly does not "affirmatively provide" cash benefits to unlawfully present aliens. The trial court's order simply cannot be squared with the statute.

Furthermore, the enactment appropriating funds to the RRP confirms that the Legislature did not expressly authorize direct cash benefits to unlawfully present aliens or anyone else. The appropriation, found in the Budget Act of 2019 (AB 74), provides that the funds are to be used "to reimburse participating entities, including, but not limited to non-profits, made beyond the scope of 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 and 2019-20 fiscal years." 2019 Cal Stat., ch. 23, § 2, Item 5180-151-0001, par. 24(a). Thus, SB 80 is a reimbursement program, not a direct benefit program. *See id*. (funds "shall be available for the Rapid Response Program pursuant to Section 13401 of the Welfare and Institutions Code to provide contracts or grants to entities, including, but not limited to non-profit organizations, that provide critical assistance to immigrants during emergent situations when federal funding is not available to support such assistance.") So, while the Legislature may have appropriated funds to reimburse non-profits that provide food, shelter, clothing, medical care, and other specified types of in-kind benefits to unlawfully present aliens, it clearly did not

appropriate funds – expressly or otherwise – to provide direct cash benefits to unlawfully present aliens. The trial court's order plainly misconstrued SB 80 and cannot stand.

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

Petitioners also will contend on this appeal that the trial court prejudicially erred by concluding the State made unlawfully present aliens eligible for an additional $63.3 million of cash benefits at issue through the enactment of SB 89, a March 17, 2020 amendment to the Budget Act of 2019, which added a new section 36. *See* 2020 Cal. Stat., ch. 2, § 2 (SB 89). Section 36 reads in its entirety as follows:

> Notwithstanding any other law, $500,000,000 is hereby appropriated from the General Fund to any item for any purpose related to the March 4, 2020 proclamation of a state of emergency upon order of the Director of Finance. Funds appropriated in this section may not be expended prior to 72 hours after the Director of Finance notifies the Joint Legislative Budget Committee in writing of the purposes of the planned expenditure. The chairperson of the Joint Legislative Budget Committee or the chairperson's designee may shorten the 72-hour period by written notification. The amount of the appropriation in this section may be increased in increments of $50,000,000 no sooner than 72 hours after the Director of Finance notifies the Joint Legislative Budget Committee of the need for the increase. The chairperson of the Joint Legislative Budget Committee or the 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.

Id.

Section 36 contains no express reference to the provision of any sort of benefits, cash or in-kind, to unlawfully present aliens. It does not say its terms apply to unlawfully present aliens or even hint that the Legislature had unlawfully present aliens in mind when it appropriated the emergency aid described in Section 36. Governor Newsom's March 4, 2020 proclamation, which Section 36 specifically references, also makes no express or implied reference to authorizing direct cash benefits to unlawfully present aliens. (Ex. C)

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

Section 36 of SB 89 stands in stark contrast to SB 80, which at least referenced "undocumented persons" in the same series of welfare provisions authorizing specific, in-kind benefits other than the direct cash benefits challenged here. As SB 80 plainly demonstrates, the Legislature knows how to satisfy

section 1621(d) when it wants to do so.[6] The absence of any affirmative language in Section 36 demonstrates that the Legislature, when enacting SB 89, neither intended to make unlawfully present aliens eligible for direct cash benefits nor appropriated money for such an initiative. The trial court prejudicially erred in concluding otherwise.

Respondents did not properly seek Legislative action to correct the obvious shortcomings in SB 89. Instead, Respondents once again relied on the trial court to fill the holes in the law. Specifically, they argued that SB 89 satisfies section 1621(d) because the funds are for the same purpose already expressly authorized by SB 80 (support to unlawfully present aliens in an emergency), are allocated to the same budget item governing that program, are authorized by the state legislature through a delegation of authority to the Department of Finance to determine the spending of Section 36 funds, and are memorialized in an exchange of letters between the finance director and chair of the joint legislative budget committee. But these bare arguments do not withstand scrutiny under either Section 36 or section 1621(d), and they also ignore important legislative history as well as our Supreme Court's interpretation of what Congress required of the states in section 1621(d).

As its text indicates, Section 36 is an appropriation measure, not a benefits authorization. Funds were appropriated solely for purposes related to the March 4, 2020 proclamation of emergency, not the much earlier RRP. That some of the funds

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[6] See *supra* note 5 and accompanying text.

were ultimately allocated to the same budget line item proves nothing, and that line item – for local assistance, State Department of Social Services – contains 28 paragraphs, none of which involves programs providing cash benefits to unlawfully present aliens. A further review of Section 36 indicates that the exchange of correspondence between the finance director and chair of the joint legislative budget committee is not a legislative act, but rather a simple notification; Section 36 contains a 72-hour notice provision, which the chairperson is authorized to shorten by written notification. Thus, Section 36 refutes all of Respondents' arguments.

Section 1621(d) likewise refutes them. The statute sets forth two requirements. First, the provision says "State law," not executive order or proclamation. Nothing short of a law enacted by the Legislature and signed by the Governor suffices. Second, the law must expressly make unlawfully present aliens eligible for the State or local benefit. In *Martinez v. Regents of the University of California*, 50 Cal. 4th 1277 (2010), the California Supreme Court held that section 1621(d) is not satisfied unless a legislative enactment "expressly state[s] that it applies to undocumented aliens, rather than conferring a benefit generally without specifying that its beneficiaries may include undocumented aliens." *Id.* at 1296.

A review of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRA") shows that Congress used the phrases "State agency" and "State or political subdivision of a State" multiple times, but not in the language

that became Section 1621. This distinction further demonstrates that Congress intended Section 1621 to require enactments of state legislatures – statutes – not executive orders or proclamations. Section 1621 may not be read to include such orders or proclamations when interpreting its language "only through the enactment of a State law." *See Sale v. Haitian Centers Council, Inc.*, 509 U.S. 155, 168 n.16 (1993) ("To supply omissions transcends the judicial function."), *quoting Iselin v. United States*, 270 U.S. 245, 250 (1926) (Brandeis, J.)); *see also In re Miller*, 31 Cal. 2d 191, 199 (1947) ("Words may not be inserted in a statute under the guise of 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 the federal government. Specifically, Congress decided to allow states to extend eligibility for state and local public benefits to unlawfully present aliens, but only if the highest and most visible, democratically accountable levels of state government do so affirmatively. Section 1621 is a "stand up and be counted" law designed to ensure political accountability in the event states wish to enter an area otherwise reserved to the federal government. *See Martinez v. Regents of University of California*, 16 Cal. App. 4th 1121 (2008) ("It is a matter of democratic accountability, forcing state legislators to take public responsibility for their actions."), *rev'd on other grounds*, 50 Cal. 4th 1277 (2010).

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

> No current State law, State constitutional provision, State executive order or decision of any State or Federal court shall provide a sufficient basis for a State to be relieved of the 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.

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

Respondents claimed that *Kaider v. Hamos*, 975 N.E. 2d 667 (Ill. App. Ct. 2012) supports their attempt to piggyback Section 36 in SB 89 onto SB 80's opt-out provision in Welf. & Inst. Code § 13403, but they clearly misapprehend the case. In *Kaider*, where two state laws were examined, the one statute that plainly opted out of section 1621(a) and provided coverage for

unlawful aliens (section 12-4.35 of the Illinois Public Aid Code) expressly referenced the other statute that did not (section 1-11 of the same Code), and the statute that did not explicitly referenced the PRA, which enacted section 1621. *See id*. at 676 ("we note that section 1-11 (which is also referenced in section 12-4.35) became effective just one year after PRA and explicitly references [the PRA]").

Here, unlike *Kaider*, not only are the two statutes not part of the same state code, but Welf. & Inst. Code § 13403 is not referenced in Section 36, and Section 36 further does not explicitly reference the PRA or section 1621. In addition, in *Kaider*, the Illinois appeals court expressly noted its agreement with *Martinez* "insofar as it holds that conferring a benefit generally, without any indication that the legislature intends to opt out of section 1621(d) and extend coverage to unlawful aliens, would not satisfy that statute." *Id*. at 675. Thus, *Kaider* is both inapposite and supportive of Petitioners' position that the law at issue must "affirmatively" authorize provision of the cash benefits to unlawfully present aliens. Section 36 plainly does not.

4. Because The Legislature Has Not Expressly Authorized The Direct Cash Benefits, The Expenditure of Funds To Administer The Program Also Is Unlawful.

Included in the $79.8 million discussed above is an estimated $4.8 million of taxpayers' funds to be used for program administration. These funds are drawn from the same sources discussed above. Because the direct cash benefit is illegal under Section 1621, any expenditure of funds to administer the illegal program is unlawful as well. *See Blair*, 5 Cal. 3d at 268-269; *see also Ames v. Hermosa Beach*, 16 Cal. App. 3d 146, 150-151 (1971) ("In other cases, courts have held that where government funds were employed . . . to enforce laws which are themselves unconstitutional and therefore void . . . this use constitutes an 'illegal expenditure' in the context of Code of Civil Procedure, section 526a and may be remedied under that section by an injunction sought in a taxpayer's suit.").

Accordingly, the issues raised in Petitioners' appeal are substantial and meet the first factor for a stay.

C. Failure To Issue A Stay Is More Likely To Injure Petitioners And The Public At Large Than Issuance Of A Stay Is Likely To Injure The State.

Petitioners also meet the second criteria for a stay because, as taxpayers, Petitioners have a statutory right to permanent injunctive relief, a right that will be irrevocably lost if this Court ultimately reverses the trial court's order. *See* Code Civ. Proc. § 526a. Because this appeal is from an order denying a temporary restraining order, a writ of supersedeas is Petitioners' only

remedy to preserve that right. *See People ex rel. S.F. Bay etc.*, 69 Cal. 2d at 536-537 (once trial court had dissolved its restraining order, writ was required to prevent town from resuming its fill operations and rendering appeal moot).

If this Court ultimately reverses the trial court's order, then the distribution of cash benefits to unlawfully present aliens during the pendency of this appeal also will bring irreparable harm to Petitioners and the public at large – an estimated 40 million Californians, especially during this time of unprecedented need. Indisputably, the $79.8 million expenditure is an enormous, unprecedented grant of taxpayers' funds – the lawfulness of which is the very question of the underlying action.

In fact, it is over 17% of reported budget cuts that the Governor is now proposing, which anger even state lawmakers because the cuts target seniors who are among the most at risk for the coronavirus, including, for example, $119 million from two programs which have until now enabled 45,200 older adults to stay at home and out of nursing homes, and $205 million from a program that provides in-home assistance to 600,500 older, blind, and disabled adults.[7] If this Court ultimately reverses the trial court's order, then Petitioners and the public will have suffered through a substantial unlawful expenditure that at the very least

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[7] Other cuts include $8.4 million from a nutrition program that offers meals to older adults in group settings and $135 million that leaves fewer older adults eligible for Medicaid. *See Budget Cuts Aimed at Older Adults Anger California Lawmakers*, NBC Bay Area (May 20, 2020), available at https://www.nbcbayarea.com/news/california/budget-cuts-aimed-at-older-adults-anger-california-lawmakers-2/2293309/

will have directly adversely affected 645,700 of the State's most vulnerable adult population. Permitting 150,000 unlawfully present aliens to use the trial court's erroneous order to receive cash benefits at the expense of the State's vulnerable adult population would cause irreparable injustice to them, to Petitioners, and to the public at large.

On the other hand, the most hardship that Respondents might claim from maintaining the status quo is delay in making the expenditure. However, any hardship in postponing the expenditure is certainly mitigated by the fact that it would necessarily be of short duration – the time required to dispose of this appeal. Moreover, the State is continuing to provide a great deal of ongoing, critical assistance and resources to unlawfully present aliens, and its philanthropic partners have committed to raising at least $50 million to provide cash benefits to unlawfully present aliens. (Ex. A) Respondents have provided no reason why those partners cannot raise the entire sum.

Finally, any hardship from delay can be greatly mitigated, if not eliminated, by the Legislature. As SB 80, and, in particular, Welf. & Inst. Code § 13403 plainly demonstrates, the Legislature knows how to satisfy section 1621(d) when it wants to do so.[8] One would think that the Legislature and the Governor would have already dotted that "i" and crossed that "t" before announcing this enormous, unprecedented, and controversial $79.8 million illegal expenditure of taxpayers' funds, especially during the present crisis in which it was foreseeable that

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[8] See *supra* note 5.

unemployment in California would soar to 15.5% in April, when over 2.3 million Californians lost their jobs due to the Governor's stay-at-home order.[9]

In sum, even if Respondents might suffer any harm from a stay, it does not compare with the harms that Petitioners, our vulnerable adult population, our unemployed and the general public will suffer absent a stay.

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9 *See In a heartbeat, California unemployment quadruples. COVID-19 erases millions of jobs*, The Sacramento Bee (May 22, 2020), https://www.sacbee.com/news/california/article242899551.html

CONCLUSION

For the foregoing reasons, this Court should grant the petition and issue a writ of supersedeas, staying (1) the trial court's order dated May 5, 2020, and (2) the Governor's April 15, 2020 initiative (DRAIP) insofar as it provides for making expenditures totaling an estimated $79.8 million of taxpayers' funds on cash benefits to unlawfully present aliens and on program administration through nonprofit organizations, pending resolution of this appeal.

The Court should further grant a temporary stay of the trial court's order and the Governor's initiative pending determination of this petition, to preserve the status quo in aid of this court's jurisdiction, to ensure the subject matter of the appeal is still in existence at the time the appeal is decided, and to avoid the loss of Petitioners' statutory right to permanent injunctive relief and other irreparable harm.

Dated: May 29, 2020

JUDICIAL WATCH, INC.

By:

ROBERT PATRICK STICHT

Attorneys for Petitioners-Plaintiffs and Appellants, Cynthia Cerletti and Howard A. Myers

CERTIFICATE OF COMPLIANCE

I certify that the foregoing PETITION FOR WRIT OF SUPERSEDEAS uses a 13-point Century Schoolbook font and contains 9,006 words.

Dated: May 29, 2020

Respectfully submitted,

JUDICIAL WATCH, INC.

By:

ROBERT PATRICK STICHT

Attorneys for Petitioners-Plaintiffs and Appellants, Cynthia Cerletti and Howard A. Myers