In the Supreme Court of the State of California

RICARDO BENITEZ and JESSICA MARTINEZ,

Petitioners,

v.

GAVIN NEWSOM, in His Official Capacity as Governor of the State of California, and KEELY MARTIN BOSLER, in Her Official Capacity as Director of the California Department of Finance,

Respondents.

Case No. S261804

PRELIMINARY OPPOSITION OF RESPONDENTS GOVERNOR GAVIN NEWSOM AND DIRECTOR KEELY MARTIN BOSLER TO EMERGENCY PETITION FOR WRIT OF MANDATE

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Case Name: *RICARDO BENITEZ and JESSICA MARTINEZ v. GAVIN NEWSOM, in His Official Capacity as Governor of the State of California, and KEELY MARTIN BOSLER, in Her Official Capacity as Director of the California Department of Finance.*

Court Case Number: S261804

CERTIFICATE OF INTERESTED PARTIES OR ENTITIES OR PERSONS
(Cal. Rules of Court, Rule 8.208)

(Check One) **INITIAL CERTIFICATE** [ ] **SUPPLEMENTAL CERTIFICATE** [ ]

Please check the applicable box:

[X] There are no interested entities or persons to list in this Certificate per California Rules of Court, rule 8.208(d).

[ ] Interested entities or persons are listed below:

Full Name of Interested Entity or Party	Party *Check One*	Non-Party *Check One*	Nature of Interest *(Explain)*
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	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	

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 (i) an ownership interest of 10 percent or more in the party if an entity; or (ii) 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).

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April 28, 2020
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INTRODUCTION

In an effort to block the State from distributing one-time, $500 cash benefit payments to 150,000 undocumented Californians who are suffering as a result of the COVID-19 pandemic, Petitioners argue the payments constitute a prohibited gift of public funds. (Cal. Const. art. XI, § 3.) Their claim—that no valid statutory authorization supports these expenditures—is incorrect as a matter of law, and the Petition should be summarily denied.

First, Petitioners contend that, because state law prohibits the payment of unemployment benefits to undocumented immigrants (Unemp. Ins. Code, § 1264), these badly needed, one-time cash payments constitute an unlawful gift of public funds. The argument fails for the simple reason that the emergency disaster relief payments are not unemployment benefits as that term is defined in state law. In contrast to state unemployment benefits, eligibility for this program is not tied to loss of employment, and the benefit amount is not tied to wages earned or services performed.

Second, Petitioners argue that a federal welfare reform statute renders the program invalid. That statute permits States to provide public benefits to undocumented persons through an enactment which "affirmatively provides" for such eligibility. (8 U.S.C. § 1621(a), (d).) Contrary to Petitioners' arguments, the State has made such an enactment on two prior occasions. In June 2019, the Legislature passed Senate Bill 80 (SB 80), which established an emergency rapid response program to provide

emergency benefits to "undocumented persons within the meaning of Section 1621(d) of Title 8 of the United States Code." (Welf. & Inst. Code, § 13403; see also *id.*, §§ 13400, 13401, subd. (a).) A significant portion of the funds being challenged here—$16.5 million—derive from the same rapid response program. And in March 2020, the Legislature passed Senate Bill 89 (SB 89), which appropriated up to $1 billion in COVID-19 relief funds and delegated spending authority to Director of Finance Keely Martin Bosler. Pursuant to her delegated authority, Director Bosler determined and provided notice to the Joint Legislative Budget Committee (which responded by letter concurring in the proposed use of funds) that $63.3 million of the SB 89 relief funds would be made available to provide one-time cash payments to undocumented Californians. Each of these enactments independently affirms the State's intent to provide emergency benefits to undocumented Californians.

The purpose of this program is to ensure that *all* Californians impacted by COVID-19, including those ineligible for federal emergency response benefits because of their immigration status, can weather the crisis safely. These funds are also needed to ensure that all Californians are able to heed public health orders, thereby protecting public health statewide, and to support the State's recovery from the economic harms of the COVID-19 pandemic. As such, they indisputably serve a valid, indeed compelling, public purpose.

STATEMENT OF FACTS

I. THE LEGISLATURE ENACTS A RAPID RESPONSE PROGRAM WHICH "AFFIRMATIVELY PROVIDES" CRITICAL ASSISTANCE BENEFITS TO UNDOCUMENTED CALIFORNIANS.

In 2019, the Legislature passed SB 80 (Stats. 2019, ch. 27), which enacted certain emergency human services provisions as part of the Budget Act of 2019. Among other things, SB 80 added section 13400 et seq. to the Welfare and Institutions Code, 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." (Welf. & Inst. Code, § 13400.) The Legislature expressly declared that these enabling statutes for the rapid response program are "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." (*Id.*, § 13403.)

SB 80 authorizes the Department of Social Services to award grants or contracts to non-state entities, including nonprofit organizations, in order to deliver "critical assistance to immigrants, as determined necessary by the department," including, among other things, food, shelter, medical treatment, clothing, and transportation. (*Id.*, § 13401, subd. (a).)

II. THE LEGISLATURE AUTHORIZES DIRECTOR BOSLER TO DIRECT EMERGENCY SPENDING IN RESPONSE TO COVID-19 WHILE THE STATE SHELTERS IN PLACE.

On March 4, 2020, Governor Newsom proclaimed a state of emergency in California due to the spread of the novel coronavirus and the associated disease known as COVID-19. (Petn, Ex. 1.) The emergency proclamation provides, among other things, that the State must prepare for, respond to, and implement measures to mitigate the spread of coronavirus and prepare for increasing numbers of individuals requiring care.

On March 16, 2020, the Senate and Assembly voted unanimously to enact SB 89 (Stats. 2020, ch. 2), as an emergency amendment to the Budget Act of 2019. SB 89 appropriated $500 million, and authorized additional disbursements not to exceed $1 billion in total, "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." (*Id.*, § 36.) Funds appropriated under SB 89, which Governor Newsom signed on March 17, 2020, "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." (*Ibid.*)

On the same day the Legislature passed SB 89, it voted to suspend all legislative activities through April 13, 2020. The legislative recess has since been extended and remains in effect.

Two days later, on March 19, 2020, Governor Newsom released Executive Order N-33-20 directing all residents to immediately heed current State public health directives to stay in their residences for the "preservation of public health and safety

throughout the entire State of California."[1] (See Governor's Exec. Order No. N-33-20 (Mar. 19, 2020) (Ex. A to index filed concurrently ("Index"), p. 4).)

III. DIRECTOR BOSLER ALLOCATES ADDITIONAL FUNDING FOR CRITICAL ASSISTANCE BENEFITS FOR UNDOCUMENTED CALIFORNIANS.

On April 15, 2020, Governor Newsom announced that California would provide up to $75 million to support the Disaster Relief Assistance for Immigrants Project (the "Project"), which will provide one-time cash disaster relief benefits to undocumented Californians impacted by COVID-19. (Petn., Ex. 3; Cal. Dept. of Soc. Services, Disaster Relief Assistance for Immigrants Fact Sheet (Index, Ex. B, p. 7).) The Project is administered by the Department of Social Services and supported by two funding allocations: $16.5 million under SB 80, and $63.3 million in emergency disbursements under SB 89. (*Id.*, fn. 1.) Of the $79.8 million in total funding, "[$75 million] will support direct assistance and an estimated $4.8 million will support program administration through qualified nonprofit organizations." (*Ibid.*)

In accordance with SB 89, on April 15, 2020, Director Bosler notified the Joint Legislative Budget Committee of the allocation of "$63,300,000 to Item 5180-151-0001 to award grants or contracts to community-based nonprofit organizations to provide

[1] The order made exceptions as needed to maintain continuity of operations of the "federal critical infrastructure sectors." (Index, Ex. A, p. 4.)

a one-time disaster cash benefit to assist undocumented immigrants negatively impacted by COVID-19 to deal with the specific needs arising from the COVID-19 pandemic. Services will include but not be limited to outreach, benefit eligibility determination, and benefit distribution." (Dir. Keely Martin Bosler, Letter to J. Legis. Budget Com., Apr. 15, 2020 (Index, Ex. C, p. 10).)

On April 18, 2020, Holly J. Mitchell, Chair of the Joint Legislative Budget Committee, acknowledged the April 15 notification letter from Director Bosler and concurred in its expenditures. (Chair Holly J. Mitchell, Letter to Dir. Keely Martin Bosler, Apr. 18, 2020 (Index, Ex. D, p. 14).) In her response, Chair Mitchell noted the public necessity for the disaster relief assistance, stating, "[t]he COVID-19 outbreak is a public health crisis that has caused a significant downturn in California's economy, increasing demand on our social safety net system." The Chair's response also observed that "[t]he economic fallout from the COVID-19 epidemic is hitting the undocumented community particularly hard and a one-time disaster cash benefit will help lessen the impact on these families." (*Id.*, p. 15.)

Governor Newsom's stay-at-home order remains in effect as of the date of this submission.

JURISDICTION

The Supreme Court of California has original jurisdiction in proceedings for extraordinary relief in the nature of mandamus. (Cal. Const., art. VI, § 10.) In response to Petitioners' request for immediate relief on or before April 30, 2020, Governor Newsom

and Director Bosler represent that the Department of Social Services does not presently intend to distribute benefits under the Project before May 18, 2020.

ARGUMENT

I. THE PROJECT DOES NOT VIOLATE THE STATUTORY PROHIBITION ON PROVIDING UNEMPLOYMENT BENEFITS TO UNDOCUMENTED PERSONS.

Petitioners argue that the Project's purpose is necessarily foreign to State interests because undocumented immigrants are statutorily ineligible to receive unemployment insurance benefits. (Petn., p. 16.) The purpose of the Project, however, is not to provide unemployment insurance benefits, but to provide emergency aid to individuals and families to further the public health aims of the Governor's stay-at-home order and mitigate the economic impact of the pandemic, especially as it applies to those who are not eligible for other emergency relief programs available under federal law. (Index, Ex. B, p. 7.)

Unemployment insurance benefits, in comparison, are intended to "cushion the impact of . . . industrial blights" (*Chrysler Corp. v. California Employment Stabilization Com.* (1953) 116 Cal.App.2d 8, 16), and are "payable on the basis of services performed." (Unemp. Ins. Code, § 1264, subd. (a)(1); see also *id.*, § 1275 ["Unemployment compensation benefit award computations shall be based on wages paid in the base period."].) The one-time payments provided by the Project are not based on wages earned or services performed. Further, the eligibility criteria for Project benefits do not require job loss. (Index, Ex. B, p. 7.) Thus, section 1264 of the Unemployment Insurance Code,

on which Petitioners rely, is irrelevant here, and sheds no light on whether the Project serves a lawful public purpose.[2]

Petitioners' cited cases blocking the appropriation of funds to non-public purposes—*People v. Honig*, (1996) 48 Cal.App.4th 289, and *Lertora v. Riley*, (1936) 6 Cal.2d 171, 179 (see Petn., pp. 15-16)—are likewise inapposite. Neither case is instructive here because the expenditures challenged by Petitioners have been expressly authorized by statute (and subsequently affirmed by the Chair of the Joint Legislative Budget Committee). (See Section II.A, *post*.)

In sum, the Project plainly serves a lawful public purpose that does not conflict with any statutory prohibition on unemployment insurance.

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[2] To the extent Petitioners contend that the Project unlawfully benefits the nonprofit organizations that will be engaged to assist with benefit outreach and delivery, this argument is frivolous. The involvement of nonprofit organizations will be essential to the Project's success given their expertise in assisting the target population. (Index, Ex. B, p. 7.) Although Petitioners speculate that $50 million in privately-raised funds will support the Project's administrative costs (Petn. 17, 18), at present, the Department of Social Services has budgeted only $4.8 million in public funds for this necessary purpose. (Index, Ex. B, p. 7, fn. 1.) This reimbursement serves the public purpose and is "merely incidental" to the provision of the cash assistance itself. (*California Assn. of Retail Tobacconists v. California* (2003) 109 Cal.App.4th 792, 816; see also *California Housing Finance Agency v. Elliott* (1976) 17 Cal.3d 575, 586.)

II. THE PROJECT DOES NOT VIOLATE SECTION 1621'S OPT-OUT PROVISION.

A. The Statutes Creating and Funding the Project Affirmatively Provide that Undocumented Californians Will Receive Critical Assistance Benefits.

The Petition contends incorrectly that allocations funding the Project are contrary to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub.L. No. 104-193 (Aug. 22, 1996), 110 Stat. 2105), a federal welfare reform statute. (Petn., p. 1.) As relevant here, PRWORA leaves it to the States to decide whether to make undocumented persons eligible for various public benefits, but provides that such benefits may be made available "only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility." (8 U.S.C. § 1621(d) ("section 1621(d)").) Section 1621(d) is sometimes referred to as the "opt-out provision" because it permits states to opt out of federal restrictions on benefits to undocumented residents that might otherwise attach. (8 U.S.C. § 1621(a), (c).)

The Project complies fully with section 1621(d) because it was created by a state law after August 22, 1996, that "affirmatively provides" that undocumented residents will be eligible to apply for benefits. (8 U.S.C. § 1621(d).) SB 80, which became effective June 27, 2019, authorizes the Department of Social Services to award grants or contracts to non-state entities, including nonprofit organizations, in order to deliver "critical assistance to immigrants, as determined necessary by the

department." (Welf. & Inst. Code, § 13401, subd. (a).) In enacting SB 80, the Legislature declared its intent that the rapid response fund provisions are "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." (*Id.*, § 13403.) Thus, SB 80, which provides a major component of the funding at issue here, "expressly state[s] that it applies to undocumented aliens . . . and thus 'affirmatively provides' that undocumented immigrants may obtain [benefits] so as to satisfy the requirements of section 1621(d)." (*Martinez v. Regents of Univ. of California* (2010) 50 Cal.4th 1277, 1296 [holding state statute exempting certain "undocumented immigrant students" from nonresident tuition at California public colleges and universities complied with 8 U.S.C. § 1621(d)]; *In re Garcia* (2014) 58 Cal.4th 440, 458 [state statute making an applicant "who is not lawfully present in the United States" eligible for admission to the California Bar complied with § 1621(d)].) Petitioner's assertion that "no such law has been passed in California" is therefore incorrect. (Petn., p. 1.)

The additional funding established by SB 89 also satisfies section 1621(d)'s opt-out requirement. An urgency measure responding to the COVID-19 pandemic, SB 89 employs a different structure than SB 80 to authorize Project funding, but the $63.3 million in additional funding under SB 89 is for the same purpose already expressly authorized by SB 80—the provision of support to undocumented immigrants in a public emergency.

The Legislature, on the eve of its own unscheduled recess caused by the pandemic, delegated authority to Director Bosler to allocate funds to any item for any purpose related to Governor Newsom's emergency proclamation. (Stats. 2019, ch. 27, § 2.) Four weeks later, with the Legislature still in recess, Director Bosler allocated $63.3 million to the Department of Social Services to fund the Project, in addition to $16.5 million in funds already authorized under SB 80. In a notification letter to the Joint Legislative Budget Committee, Director Bosler stated that the $63.3 million allocation would support direct, one-time cash assistance to undocumented Californians (Petn., Ex. 4), and the Chair concurred in the funding. (Index, Exs. C, D.) Because the Legislature expressly delegated its authority to determine the spending of Section 36 emergency funds to the Department of Finance, and Director Bosler allocated those funds to support the same purpose explicitly stated in SB 80—relief for undocumented immigrants in an emergency—SB 89 and Director Bosler's notification letter together satisfy the requirements of section 1621(d). (See *In re Garcia*, *supra*, 58 Cal.4th at 458 [rejecting "contention that in order to satisfy section 1621(d) a state law was required to explicitly refer to section 1621(d) itself"].)

PRWORA cannot fairly be read to require that a subsequent allocation of funding for an already-existing statutory purpose must be supported by a separate statute reiterating the Legislature's intent. *Kaider v. Hamos*, (Il. Ct. App. 2012) 975 N.E.2d 667, confirms this. It involved a challenge to Illinois' "All Kids" medical insurance program, which intended "to provide

access to affordable health insurance to all uninsured children in Illinois." (*Id.* at p. 678.) Although the enabling statute for "All Kids" did not specifically reference its application to undocumented children, the court found that its "unlimited and broad" application to "all kids," read in connection with a separate, earlier statutory enactment expressly extending Medicaid benefits to undocumented children, "conveys the legislature's unambiguous and positive expression of intent to cover children who otherwise meet the income requirements of that act, regardless of immigration status." (*Ibid.*; see also *id.* at p. 674 [holding that "section 1621(d) is satisfied by *any* state law that conveys a positive expression of legislative intent to opt out of section 1621(a)," emphasis added].)

So here. SB 80 and SB 89, as confirmed by Director Bosler's letter and the Joint Legislative Budget Committee's concurrence, make clear the Legislature's intent to provide support to undocumented immigrants during the crisis; section 1621(d) does not require more.

B. Petitioners Provide No Reason to Conclude Congress Intended Section 1621 to Bar the State From Enacting Critical Crisis-Response Benefits Pursuant to a Lawful Appropriations Process.

As explained above, a significant portion of the funds supporting the Project were appropriated under a statute that expressly invoked section 1621(d)'s opt-out provision. And after the COVID-19 outbreak, Director Bosler affirmatively stated by letter to the Joint Legislative Budget Committee that, pursuant

to the appropriations process established by the Legislature, additional funds would be allocated for critical assistance benefits to undocumented Californians. There is no dispute that federal law expressly permits the State's policy decision to provide these benefits to undocumented residents. (8 U.S.C. § 1621(d).) Rather, Petitioners argue that an express, statutory delegation of authority from the Legislature to the Director of Finance to make pandemic-necessary allocations, with the concurrence of the committee designated by the Legislature to receive notice, fails to comply with section 1621(d). They are incorrect. Nothing in the plain language of section 1621(d) requires a separate statute affirmatively providing eligibility for undocumented persons, especially when the decision to allocate funds was fully consistent with a pre-existing statute authorizing disaster relief benefits for undocumented immigrants that expressly invokes section 1621(d) and that provided a portion of the funding to be used to support the disaster relief benefits. Moreover, such a requirement would also raise serious federalism concerns.

The federal government "has broad, undoubted power over the subject of immigration and the status of aliens" that derives from its power to "establish an uniform Rule of Naturalization" (U.S. Const., art. I, § 8, cl. 4), and its inherent power to control and conduct foreign relations. (*Arizona v. United States* (2012) 567 U.S. 387, 394-95.) But even when Congress is acting pursuant to its constitutional powers, courts assume that it does not intend to "upset the usual constitutional balance of federal and state power" unless that intent is "unmistakably clear."

(*Gregory v. Ashcroft* (1991) 501 U.S. 452, 460, internal quotation marks omitted.) Absent such an indication, federal statutes should be construed so as to avoid interference with a State's internal decision-making about how to structure and manage its own government. (*Ibid.*)

The same principle applies here: Petitioners assert that Congress intended to interfere in the internal decision-making process of California and other States, requiring the State to utilize a particular legislative process that is not required under state law. There is, however, nothing in the statute unambiguously indicating that Congress intended to do so. And even if section 1621(d) could plausibly be read as Petitioners contend, it would still fail to provide the "unmistakably clear" indication necessary to conclude that Congress intended to disrupt the internal machinery of California state governance. (*Ibid.*; cf. *Arizona State Legis. v. Arizona Independent Redistricting Com.* (2015) 135 S. Ct. 2652, 2673 [recognizing that "States retain autonomy to establish their own governmental processes"]; see also *In re Vargas* (N.Y. App. 2015) 131 A.D.3d 4, 25 [identifying serious federalism concerns with section 1621(d) because, while "Congress has left the ultimate determination whether to extend public benefits . . . to the states, it has, at the same time, prescribed the mechanism by which the states may exercise that authority"].)[3]

[3] This Court has never construed section 1621(d) to require, as Petitioners suggest (Petn., p. 17), a *statutory enactment* by the Legislature, as opposed to other means of enacting state law, or (continued…)

The invasion of state sovereignty that would result from Petitioners' argument would be particularly acute because the Project is an exercise of the State's core authority to protect its residents in the midst of a global public health and economic crisis. (See, e.g., *Compagnie Francaise de Navigation a Vapeur v. La. State Bd. of Health* (1902) 186 U.S. 380, 387 ["[T]he power of States to enact and enforce quarantine laws for the safety and the protection of the health of their inhabitants . . . is beyond question."].)

In sum, section 1621 should not be construed to limit the State's authority to administer critical crisis-response benefits pursuant to an appropriations process provided for by state law. PRWORA contains no plain statement that Congress intended that result.

(…continued)
to limit the authority of the Legislature to delegate authority through legislation such that action under the delegated authority has the force and effect of law. Both *Martinez*, *supra*, 50 Cal.4th at 1296, and *In re Garcia, supra*, 58 Cal.4th at 458, involved legislative enactments that authorized a benefit for undocumented immigrants, so this Court had no reason to weigh the federalism implications of reading section 1621(d) as dictating a singular form of official action by a branch of state government. (*Alden v. Maine* (1999) 527 U.S. 706, 752 [a "State is entitled to order the processes of its own governance," and "displac[ing] a State's allocation of governmental power and responsibility" would blur the "distinct responsibilities of the State and National Governments"]; cf. *Murphy v. Nat. Collegiate Athletic Assn.* (2018) 138 S.Ct. 1461, 1478 ["That provision unequivocally dictates what a state legislature may and may not do. . . . A more direct affront to state sovereignty is not easy to imagine."].)

CONCLUSION

For the foregoing reasons, Petitioners are not entitled to the relief they request, and the Petition should be summarily dismissed.

Dated: April 28, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached PRELIMINARY OPPOSITION OF GOVERNOR GAVIN NEWSOM AND DIRECTOR KEELY MARTIN BOSLER TO EMERGENCY PETITION FOR WRIT OF MANDATE uses a 13 point Century Schoolbook font and contains 3,264 words.

Dated: April 28, 2020

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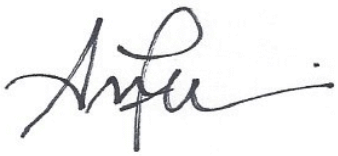
Attorney General of California



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