

THIERMAN BUCK LLP
7287 Lakeside Drive
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com

1 Mark R. Thierman, Nev. Bar No. 8285
mark@thiermanbuck.com
2 Joshua D. Buck, Nev. Bar No. 12187
josh@thiermabuck.com
3 Leah L. Jones, Nev. Bar No. 13161
leah@thiermanbuck.com
4 Josh Hendrickson, Nev. No. 12225
THIERMAN BUCK LLP
7287 Lakeside Drive
5 Reno, Nevada 89511
Tel. (775) 284-1500
6 Fax. (775) 703-5027

7 *Attorneys for Appellants*

8
9 **IN THE SUPREME COURT OF NEVADA**

10
11 AMETHYST PAYNE, IRIS PODESTA-
12 MIRELES, ANTHONY NAPOLITANO,
13 ISAIAH PAVIA-CRUZ, VICTORIA
14 WAKED, CHARLES PLOSKI,
15 DARIUSH NAIMI, TABITHA ASARE,
16 SCOTT HOWARD, RALPH
17 WYNCOOP, ELAINA ABING, and
18 WILLIAM TURNLEY behalf of
19 themselves and all others similarly
20 situated,

21 **APPELLANTS,**

22 v.

23 STATE OF NEVADA *ex rel* NEVADA
24 DEPARTMENT OF EMPLOYMENT,
25 TRAINING AND REHABILITATION
26 (DETR) HEATHER KORBULIC in her
27 official capacity only as Nevada Director of
28 Employment, Training and Rehabilitation,
DENNIS PEREA in his official capacity as
Deputy Director of DETR, and KIMBERLY
GAA in her official capacity only as the
Administrator for the Employment Security
Division (ESD); and DOES 1-100, inclusive,

APPELLEES.

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Electronically Filed
Aug 10 2020 07:13 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court
Docket Number:81582

2nd Judicial District Court
Case No.: CV20-0075

**APPELLANTS' EMERGENCY
MOTION FOR IMMEDIATE RELIEF
OR, IN THE ALTERNATIVE, AN
EXPEDITED BRIEFING SCHEDULE**

**Emergency Motion
NRAP 27(e)**

**Relief Needed By:
Date: Monday August 24, 2020
Time: 9:00 a.m.**

1 **Emergency Motion Under NRAP 27(e)**

2 Pursuant to the Nevada Rules of Appellate Procedure (“NRAP”) Rule 27(e), Appellants
3 AMETHYST PAYNE, IRIS PODESTA-MIRELES, ANTHONY NAPOLITANO, ISIAH
4 PAVIA-CRUZ, VICTORIA WAKED, CHARLES PLOSKI, DARIUSH NAIMI, TABITHA
5 ASARE, SCOTT HOWARD, RALPH WYNCOOP, ELAINA ABING, and WILLIAM
6 TURNLEY (“Plaintiffs-Petitioners-Appellants”) on behalf of themselves and all others similarly
7 situated, hereby request immediate relief, or if such relief is not available, an expedited briefing
8 scheduled to obtain an Order from this Court commanding Appellees STATE OF NEVADA ex
9 rel NEVADA DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION
10 (DETR), HEATHER KORBULIC in her official capacity only as Nevada Director of
11 Employment, Training and Rehabilitation, DENNIS PEREA in his official capacity as Deputy
12 Director of DETR, and KIMBERLY GAA in her official capacity only as the Administrator for
13 the Employment Security Division (ESD) for the relief requested at paragraph 4 of Appellants’
14 Renewed Motion And Supplemental Argument In Support Of Writ Of Mandamus filed in the
15 District Court in this case. Appellants seek an expedited hearing to obtain an order by this court
16 commanding Appellees as follows:

17 1. For all individual claimants to whom DETR has issued a “PANDEMIC
18 UNEMPLOYMENT QUALIFYING DETERMINATION” letter which stated
19 “We have determined that your claim is APPROVED as you meet the qualifications
20 required by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of
21 2020 for Pandemic Unemployment assistance” (attached as Exhibit A hereto) or
22 words to that effect, DETR shall pay immediately the amount the individual would
23 have been entitled to receive as if DETR had paid pursuant to that initial
24 determination of eligibility, if DETR has not already done so. In addition, DETR
25 shall continue to pay the weekly benefits at the same or greater weekly rate
26 according to the terms of that prior program approval pursuant to which the funds
27 were determined to have been due initially, regardless of any prior or subsequent
28 determination by DETR, unless and until an impartial hearing officer or an

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1 administrative law judge determines after a fair hearing that such payment was not
2 initially due, or ceased to be due for some reason as provided by law.

3 2. For all individual claimants to whom DETR has issued a “PANDEMIC
4 UNEMPLOYMENT DISQUALIFYING DETERMINATION” in which DETR
5 states the only disqualifying event is that “We have determined that you have other
6 program eligibility available” (attached hereto as Exhibit B) DETR shall pay
7 immediately the amount the individual would have been entitled to receive as if
8 DETR had paid pursuant to that initial determination of other program eligibility,
9 if DETR has not already done so.¹ In addition, DETR shall continue to pay the
10 weekly benefits at the same or greater weekly rate according to the terms of the
11 prior program approval pursuant to which the funds were determined to have been
12 due initially, regardless of any prior or subsequent determination by DETR, unless
13 and until an impartial hearing officer or an administrative law judge determines
14 after a fair hearing that such payment was not initially due, or ceased to be due for
15 some reason as provided by law.

16 In addition, DETR refuses to pay the \$600 per week required under the Federal Pandemic
17 Unemployment Compensation (“FPUC”) program (the only requirement for qualification is that
18 the claimant be eligible for at least \$1.00 pursuant to any other program), even though DETR
19 has determined eligibility in at least one program, because DETR does not know which program
20 the claimant is eligible for.

21 _____
22 ¹ The vast majority of such letters refer to eligibility in the regular Unemployment Compensation
23 program (“UC” also known as regular “Unemployment Insurance” or regular “UI”) but it is
24 possible a few letters address eligibility in one of the following unemployment compensation
25 programs instead: Pandemic Emergency Compensation under Section 2107 of CARES
26 (“PEUC”), Extended Benefits (“EB”), Short-Time Compensation (“STC,”) Trade Readjustment
27 Allowances (TRA), Disaster Unemployment Assistance (DUA), or Unemployment
28 Compensation for Federal Employees (UCFE). Unemployment Compensation for Ex-
Servicemembers (UCX)), and/or the Self Employment Assistance (SEA) program. All of these
programs are administered by DETR and upon information and belief, they all pay weekly based
upon the same formulae, so that there is no difference in the eyes of the claimant which program
pays.

1 The purpose of this motion is to expedite a decision by this Court whether or not DETR
2 must pay between 45,000 and 70,000 Nevadans a total weekly benefit of between \$818 and
3 \$1064 each, for 22 weeks, and continuing until an impartial hearing officer or an administrative
4 law judge determines after notice and a fair hearing, that such payment was not due initially. The
5 reasons for this request are set forth herein, and are based upon the record in the District Court
6 in this case, including the Special Master’s report to the district court, and facts set forth in the
7 NRAP Rule 27(e) Certificate of Counsel filed herewith. Appeal from a denial of a writ is an
8 interlocutory appeal as of right although the decision to grant emergency relief is within the
9 discretion of this Court.

10 **A. INTRODUCTION**

11 In Appellants’ NRAP Rule 27(e) Certificate of Counsel, Appellants certify that based upon
12 the testimony of Appellees, DETR has issued between 45,000 and 70,000 Nevada claimants
13 either a letter entitled “PANDEMIC UNEMPLOYMENT CLAIM QUALIFYING
14 DETERMINATION” in the form attached hereto as Exhibit A and/or a letter entitled
15 “PANDEMIC UNEMPLOYMENT CLAIM DISQUALIFYING DETERMINATION” in the
16 form attached to herein as Exhibit B. Each of these letters state that the claimant is eligible for
17 weekly payments under one or another program of unemployment compensation administered
18 by DETR, the exact amount of such benefits being the same no matter which program applies.
19 At the point DETR sent these letters of determination of program eligibility, DETR was legally
20 obligated to begin paying weekly unemployment compensation benefits to claimant. DETR was
21 legally obligated to continue paying until after a decision by an impartial hearing officer or
22 administrative law judge following a hearing with sufficient due process. The weekly
23 unemployment compensation amount “due” is determined according to the program formulae,
24 and payment must be made as soon as it is mechanically possible to effectuate payment of the
25 money to claimants.

26 In this case, DETR has not paid at least 45,000, and closer to 70,000, Nevadans
27 unemployment compensation despite having determined that they are eligible. After 22 weeks
28 of no income, these unpaid claimants need immediate relief to prevent irreparable harm. To wait

1 until this Court hears this case in the normal course, would effectively deny claimants the benefit
2 of speedy payment guaranteed by statute. 42 U.S.C. § 503, *California Human Resources Dept.*
3 *v. Java*, 402 U.S. 121, 130-133 (1971), *Glaser v. Emp't Sec. Div.*, 373 P.3d 917 (Nev. 2011).

4 **B. IRREPARABLE HARM**

5 Of the thousands of emails received by this office and the Special Master concerning this
6 case, the majority are from claimants who has endured five months or more without a paycheck
7 and are in imminent danger of being homeless, loosing child custody for failure to provide
8 adequate housing, unable to pay credit card bills, have lost their means of making a living should
9 they be allowed to return to work because they are unable to make car payments, and are
10 descending into poverty so great that they may never rebound. Many say they are suffering
11 severe depression, loss of self-esteem, and even suicidal ideation. The Las Vegas area alone lost
12 214,500 jobs. Unemployment in Nevada is causing hardship for the unemployed and businesses
13 who depend on consumer spending alike. According to DETR's Research and Analysis Bureau,
14 Nevada has highest unemployment rate in the nation.² As Subheading C on pages 18 through 23
15 of the July 27, 2020 Special Master's Report entitled "Impact on jobs and economy" states:

16 In fact, Nevada Department of Employment, Training & Rehabilitation
17 (DETR) chief economist David Schmidt said that the State's April
18 unemployment rate was 30.1 %, which is the highest unemployment rate
ever recorded for any state in any month, including in the Great Depression.

19 On or about March 15, 2020, Nevada Governor Sisolak issued an Executive Order under
20 his "state of emergency" powers closing most of Nevada's non-essential industries. The State of
21 Nevada unemployment compensation insurance trust fund has less than four weeks of reserves
22 remaining. There is a resurgence of Covid-19 cases in Nevada. Most business as well as the
23 Courts remain closed to normal visitation as a matter of public safety. According to the Nevada
24 Independent, and based upon DETR's own figures, as of July 25, 2020, DETR has paid just
25 122,624 out of 382,152 gig workers, slightly less than one third of the applicants, and not all of

26 _____
27 ² Nevada Department of Employment, Training, and Rehabilitation (May 27, 2020)
28 <https://cms.detr.nv.gov/Content/Media/April%202020%20Sub-State%20PR.pdf> last visited
August 4, 2020

1 them are getting the full amount they claim due for all the weeks that they claimed. And the rate
2 of claim payment for traditional W-2 wage earners is not more than 50%. DETR is paying new
3 gig workers claims at the rate of less than 1,000 per week, and there are an estimated 259,528
4 outstanding new gig worker claims pending. At the current rate, DETR will not resolve this
5 backlog for at least another 2.5 years, assuming no new claims are filed (which is an unlikely
6 assumption).

7 At the July 7, hearing, Appellees DETR presented a table which grouped the claim status
8 of 247,030 initial claims, of which 139,107 or 56%, remain unpaid. The average amount of
9 money per claim paid was \$3,178.61, which means DETR has \$442,166,303.16, or
10 approximately half a billion dollars, in pending claims unpaid.³ DETR stated that 45,328 claims
11 were denied PUA coverage on the grounds that the claimant had UI program eligibility, but
12 DETR would not start paying claimants under that other program despite this statement of
13 eligibility.⁴ Appellants estimate that about one third of the 93,779 unpaid claims remaining were
14 sent a “PANDEMIC UNEMPLOYMENT CLAIM QUALIFYING DETERMINATION” which
15 is another 31,260 unpaid claims with favorable eligibility determinations.⁵

16 In addition, despite DETR’s written decision that the claimant was eligible for payment
17 under either another program or the PUA program, DETR will not pay a claimant the \$600 per
18 week under Federal Pandemic Unemployment Insurance Program or FPUC which is due to every
19 person who qualifies for any program of unemployment compensation during this time. But
20 because DETR could not decide which of two programs to pay under, despite having declared
21 the reason for not paying PUA was eligibility for UI, DETR pays nothing—no PUA, no UI and
22 no FPUC. DETR represents approximately 45,000 claimants have not received in excess of half
23 a billion dollars because of this PUA/UI “whirlpool” as the District Court called it.

24 ³ The exact amount unpaid has now more than doubled due to the passage of time.

25 ⁴ By law, the PUA program weekly payments are the same as the UI program payments.

26 ⁵ In open Court, DETR estimated that 3,000 claimants fell in the group of people to whom
27 payment begun but stopped before any determination was made by an impartial neutral after a
28 due process hearing.

1 **C. DETR’S CLEAR DUTY and APPELLANTS’ VESTED RIGHT TO BENEFITS**

2 Section 303(a)(1) of the federal Social Security Act, 42 U.S.C. § 503(a)(1) (3) requires “a
3 method of administration ‘reasonably calculated to insure full payment of unemployment
4 compensation when due.’” *California Department of Human Resources Development v. Java*,
5 402 U.S. 121 (1971). In that case, the Supreme Court held that a seven week delay in the payment
6 of benefits violated the statutory mandate of prompt payment when due, noting that four weeks
7 was the longest waiting period for benefits mentioned as tolerable in the legislative history of 42
8 U.S.C. § 503(a)(1) (3). As the United States Supreme Court explained, “Early payment of
9 insurance benefits serves to prevent a decline in the purchasing power of the unemployed, which
10 in turn serves to aid industries producing goods and services.” *Java*, 402 U.S. 121, 131-32 (1971).
11 The adjective “early” was deliberate since the case involved the delay in payment as much as it
12 involved the right to payment eventually.⁶

13 As subsequent cases hold, the initial determination of eligibility must be made in a timely
14 manner. *Fusari v. Steinberg*, 419 U.S. 379, 387-88 (1975) (“Both the statutory and constitutional
15 questions are significantly affected by the length of the period of deprivation of benefits. The
16 basic thrust of the statutory ‘when due’ requirement is timeliness.” (footnotes omitted)). It is
17 unconstitutional for DETR to issue an “open” letter of eligibility, constantly re-considering the
18 initial eligibility determination, and making a post determination decision retroactive just to
19 avoid the constitutional due process hearing requirements. A decision needs to be made quickly,
20 which was done in this case by either of the two letters of eligibility in this case. As stated in
21 *Fusari v. Steinberg*, 419 U.S. 379, 389 (1975):

22 In this context, the possible length of wrongful deprivation of
23 unemployment benefits is an important factor in assessing the impact of
24 official action on the private interests. Cf. *Arnett v. Kennedy*, 416 U.S. 134,
25 168-169 (1974) (opinion of POWELL, J.); *id.*, at 190, 192 (WHITE, J.,
26 concurring in part and dissenting in part). Prompt and adequate
administrative review provides an opportunity for consideration and

27 ⁶ The fact that one of the employers in *Java* won their case with the agency on appeal, while the
28 other lost, proves that even if DETR wins on appeal that the claimant wasn’t eligible, DETR
cannot retroactively apply that decision *ab initio* to justify not paying all claimants with an
eligibility determination in UI or PUA immediately.

correction of errors made in initial eligibility determinations. Thus, the rapidity of administrative review is a significant factor in assessing the sufficiency of the entire process.

And once a claimant is determined to be eligible, then payment must continue without reduction unless and until an impartial hearing officer reverses that the initial determination of eligibility after a full and fair hearing. *Jenkins v. Bowling*, 691 F.2d 1225 (7th Cir. 1982) (Illinois' practice of postponing payment of benefits to applicants who are in legal custody or on bail for a work-related felony or theft, even if likelihood of recovery is small is still unconstitutional because state must make a determination on facts known at time of application in order to meet the "with the greatest promptness that is administratively feasible," test in *Java*.) *See also*, *Pennington v. Didrickson*, 22 F.3d 1376 (7th Cir. 1994). Moreover, 20 C.F.R. §640.1(a)-(b) states in part:

. . . The standard in this part is issued to implement section 303(a)(1) in regard to promptness in the payment of unemployment benefits to eligible claimants. [¶] (2) Although the standard applies to the promptness of all benefit payments and the criteria apply directly to the promptness of first benefit payments, it is recognized that adequate performance is contingent upon the prompt determination of eligibility by the State as a condition for the payment or denial of benefits. Accordingly, implicit in prompt performance with respect to benefit payments is the corresponding need for promptness by the State in making determinations of eligibility.

"There can be no doubt that unemployment benefits are a species of property protected by the Fifth and Fourteenth Amendment due process clauses, regardless of whether the claimant wishes to establish or retain benefits." *Cuellar v. Texas Employment Com'n*, 825 F.2d 930 (5th Cir. 1987): *see also* *Sherbert v. Verner*, 374 U.S. 398, 405, 83 S.Ct. 1790, 1794-95, 10 L.Ed.2d 965 (1963). The property right vested the moment DETR made a favorable eligibility determination. DETR confirmed that eligibility determination in writing. *See* Exhibit A and Exhibit B. For DETR to say Exhibit A and Exhibit B are not truly eligibility determinations, means that for five months, DETR has made no eligibility determinant at all, which it had a clear duty to do. As the stated in *Jenkins v. Bowling*, 691 F.2d 1225, 1229 (7th Cir. 1982):

Under this view a state could take all the time in the world to decide that an unemployed person was entitled to compensation, provided that it got the check to him promptly when it did decide. [¶] We think Congress had larger objects in view than the ministerial competence of state comptrollers. Both

1 the humane (or redistributive) objectives of unemployment insurance and
2 its macroeconomic objective (dampening the business cycle by keeping up
3 the purchasing power of people laid off in a recession) require that
4 unemployment compensation be paid as promptly as possible after the
5 worker is laid off. Of course he must meet the state's eligibility criteria but
6 if the state delays indefinitely in deciding whether he has met them it defeats
7 the objectives behind requiring prompt payment. It is true that section
8 303(a) is in Title III of the Social Security Act, which provides for federal
9 financing of just the administrative expenses of unemployment
10 compensation. *See* 42 U.S.C. § 502. But it does not follow that the concern
11 behind section 303(a) is limited to administrative efficiency in a narrow
12 sense. In fact the legislative history suggests that the purpose of Title III in
13 general and section 303(a) in particular was to furnish federal money for the
14 administrative expenses of state unemployment compensation programs as
15 an inducement to the states to adopt programs that would achieve the larger
16 objects suggested above. *See* H.R. Rep. No. 615, 74th Cong., 1st Sess. 7, 9,
17 23 (1935).

18 On July 21, 2020, the United States Department of Labor published Change 2 to its
19 Unemployment Insurance Program Letter ("UILP") No. 16-20⁷, which reiterated the importance
20 of prompt payment as a property right protected by the Fourteenth Amendment in investigation
21 for fraud under the CARES Act and cited to UIPL No. 01-16, Federal Requirements to Protect
22 Individual Rights in State Unemployment Compensation Overpayment Prevention and Recovery
23 Procedures, issued October 1, 2015.⁸ The basic thrust of UIPL No. 01-16 is due process requires
24 prompt benefit eligibility determination. If the informal process leads to a determination of
25 eligibility payment must commence within the time it takes to issue a check, or direct deposit,
26 but not more than two weeks. The weekly benefit payments must continue until an impartial
27 hearing officer's decision rendered after a due process fair hearing says the initial determination
28 was incorrect. Even when considering a potentially fraudulent claim, due process requires the
state agency to contact the claimant for the claimant's side of the story before determining that
the claimant is not entitled to unemployment compensation benefits. The presumption is that the
claimant is eligible, and benefits are due, until and unless, due process produces a contrary result
in the individual case. As the DOL UIPL 01-16 states at 3:

In *California Department of Human Resources v. Java*, 402 U.S. 121
(1971), (Java) the U.S. Supreme Court held that a state's law and procedures

⁷ https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5479 (last visited August 4, 2020).

⁸ https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5763 (last visited August 4, 2020).

1 must provide for paying benefits “at the earliest stage of unemployment that
2 such payments [are] administratively feasible after giving both the worker
3 and the employer an opportunity to be heard.” This case is further explained
4 in UIPL No. 1145. In order to give individuals an opportunity to be heard,
5 as required by *Java*, the state must contact the individual before an
6 overpayment is established. The requirements of Section 303(a)(1), SSA, as
7 interpreted by *Java*, mean that when a state identifies a potential
8 overpayment via a cross-match “hit,” such as from a state prisoner database
9 or other source, the state must take the initiative to gather all relevant
10 information through fact-finding and provide the individual an opportunity
11 to be heard before making an overpayment determination or initiating
12 recovery. In addition, when there is a factual conflict between the
13 information received from an individual and other information received by
14 the agency, from any source, it is incumbent upon a state to make further
15 contact with the individual, inform him or her of the conflict, and allow an
16 opportunity for rebuttal. The State should determine that the conflicting
17 information appears valid and relevant to the eligibility determination prior
18 to contacting the individual and requesting additional information.

12 **D. THESE POINTS WERE ARGUED IN THE DISTRICT COURT**

13 All these points were argued in the District Court. Ironically, the District Court must
14 have agreed with Appellants to some extent because it ordered DETR to continue making
15 payments once payments had begun. But for some reason, that same logic did not extend to
16 when DETR expressed its decision in favor of eligibility in a letter, a letter which gave notice of
17 appeal rights and deadlines, indicating it was a final decision. This distinction by the District
18 Court was arbitrary and capacious. None of the cases distinguished between stating eligibility in
19 a written determination and actually making a payment. And to the extent that these initial
20 eligibility decisions were not really eligibility decisions, then claimants have had no eligibility
21 decision at all for months⁹ which itself is a violation the claimants due process.¹⁰

22 **E. TIME IS OF THE ESSENCE**

23
24 ⁹DETR cannot waive by unilaterally declaring its eligibility determination less than what it says
25 it is simply to avoid the restrictions of the due process clause of the Fifth and Fourteenth
26 Amendment to the United States Constitution. There is no such thing as a “conditional”
27 eligibility determination for purposes of due process because if there were, *Java* would have
28 been decided in favor of the State rather than the claimant.

¹⁰ There was not a way to internally appeal any decision or non-decision to DETR until after July
18, 2020, about two weeks ago. Even today, the appeal mechanism is not completely functional
and does not produce an actual hearing date.

1 Denial of unemployment compensation benefits is almost per se irreparable harm that
2 requires immediate, interlocutory relief. To most, unemployment compensation is the only
3 lawful source of money to pay to buy food, shelter, and the necessities of life. “That
4 unemployment insurance benefits fall into the category of subsistence benefits cannot be credibly
5 disputed.” *Islam v. Cuomo*, 20-CV-2328 (LDH), at *13 (E.D.N.Y. July 28, 2020). When the
6 outright denial or undue delay in the provision of subsistence benefits is at issue, courts have not
7 hesitated to utilize the extraordinary remedy of preliminary injunctive relief. *See, e.g., Willis v.*
8 *Lascaris*, 499 F. Supp. 749, 759-60 (N.D.N.Y. 1980) (enjoining reduction in food stamp
9 allowances); *Hurley v. Toia*, 432 F. Supp. 1170, 1176-78 (S.D.N.Y. 1977) (granting preliminary
10 injunction and staying enforcement regulation authorizing termination or reduction of public
11 assistance benefits prior to affording hearing), *aff’d*, 573 F.2d 1291 (2d Cir. 1977); *Boddie v.*
12 *Wyman*, 323 F. Supp. 1189, 1193 (N.D.N.Y. 1970) (“There is no doubt . . . that the differences
13 sought in payments by the plaintiff are extremely important in respect to these things daily and
14 in that sense when the day passes the injury or harm that may occur is irreparable.”), *aff’d*, 434
15 F.2d 1207 (2d Cir. 1970), *aff’d*, 402 U.S. 991, 91 S.Ct. 2168, 29 L. Ed. 2d 157 (1971).

16 Here, any delay is too long. The foreseeable consequences of a state agency not following
17 the federal mandate to pay benefits leads to a sequence of defaults and penalties, the destruction
18 of the family unit, the lowering of the economy in general. When it comes to state
19 implementation of federal programs, like unemployment compensation and welfare, there is a
20 non-monetary right to make sure the state follows the federal program’s directives. *Mothers and*
21 *Childrens Rights Org., Inc. v. Stanton*, 371 F. Supp. 298, 306 (N.D. Ind. 1973) (“The granting of
22 retroactive relief is within the sound discretion of the court.”) Even *Kelly v. Goldberg* itself was
23 an injunction forcing the government to continuing paying money as a matter of due process. As
24 is stated in *Moore v. Miller*, 579 F. Supp. 1188, 1191-92 (N.D. Ill. 1983):

25 In Illinois the level of welfare benefits is designed to aid those requiring
26 help ‘in meeting basic maintenance requirements for a livelihood
27 compatible with health and well-being.’ Ill.Rev.Stat., ch. 23, § 4-1. “For
28 qualified recipients, welfare provides the means to obtain essential food,
clothing, housing, and medical care.” *Goldberg v. Kelly*, 397 U.S. 254, 264,
90 S.Ct. 1011, 1018, 25 L.Ed.2d 287 (1970). An unjustified decrease in

1 welfare payments could deprive a recipient and the recipient's family of
2 essential food, clothing, shelter and health care. A subsequent payment by
3 the state cannot adequately compensate a recipient for being required to
4 subsist for a period in a manner incompatible with health and well-being.
5 For those in the “grip of poverty,” living on the financial edge, even a small
6 decrease in payments can cause irreparable harm. This court is unable to
7 hold otherwise. Findings of irreparable harm in the reduction of welfare
8 benefits have been upheld by the circuit courts. *See Banks v. Trainor*, 525
9 F.2d 837, 842 (7th Cir. 1975), *cert. denied*, 424 U.S. 978, 96 S.Ct. 1484, 47
10 L.Ed.2d 748 (1976); *Chu Drua Cha v. Noot*, 696 F.2d 594, 599 (8th Cir.
11 1982), *mod. on denial of reh.*, 701 F.2d 750 (8th Cir. 1983).

8 **F. NOTICE**

9 The contents of this motion as well as the fact that it would be made shortly were discussed
10 in open court at a hearing with all parties’ representatives present on August 7, 2020 and a copy
11 was delivered via email that day. A subsequent discussion with opposing counsel occurred that
12 afternoon. For the reasons stated herein, Appellants request the Court to grant this emergency
13 motion or, if not so inclined, to order an expedited briefing schedule on this issue on appeal.

14 **AFFIRMATION**

15 *The undersigned does hereby affirm that the proceeding document to be filed in the*
16 *Second Judicial District Court in the State of Nevada, County of Washoe, does not contain the*
17 *social security number of any person.*

18
19
20 DATED: August 10, 2020

Respectfully Submitted,
THIERMAN BUCK LLP

21
22 /s/Mark R. Thierman
23 Mark R. Thierman
24 Joshua D. Buck
25 Leah L. Jones
26 Attorneys for Plaintiffs-Petitioners
27
28

CERTIFICATE OF SERVICE

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I certify that on this 10th day of August, 2020, I certify that I electronically filed **APPELLANTS’ EMERGENCY MOTION OF IMMEDIATE RELIEF OR, IN THE ALTERNATIVE, AN EXPEDITED BRIEFING SCHEDULE** with the Clerk of the Court by using the eflex filing system upon the following parties

The Honorable Barry L. Breslow
Second Judicial District Court Judge
75 Court Street
Reno, NV 89501

Robert A. Whitney
Gregory Ott
100 North Carson Street
Carson City, NV 89701
Attorneys for Appellees

/s/ Jennifer Edison-Strekal

Jennifer Edison-Strekal
An Employee of Thierman Buck, LLP

THIERMAN BUCK LLP
7287 Lakeside Drive
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email info@thiermanbuck.com www.thiermanbuck.com