

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
joshh@thiermanbuck.com
5 **THIERMAN BUCK LLP**
7287 Lakeside Drive
6 Reno, Nevada 89511
Tel. (775) 284-1500
7 Fax. (775) 703-5027

8 *Attorneys for Appellants*

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10 **IN THE SUPREME COURT OF NEVADA**

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

18 APPELLANTS,

19 v.

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

27 APPELLEES.
28

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Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 81763
(Related Supreme Court Case: 81582)

2nd Judicial District Court
Case No.: CV20-00755

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

**Emergency Motion
NRAP 27(e)**

**Relief Needed By:
Date: Friday, October 23, 2020
Time: 9:00 a.m.**

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

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EMERGENCY MOTION PURSUANT TO NRAP 27(e)

Pursuant to the Nevada Rules of Appellate Procedure (“NRAP”) Rule 27(e), Appellants AMETHYST PAYNE, IRIS PODESTA-MIRELES, ANTHONY NAPOLITANO, ISIAIAH PAVIA-CRUZ, VICTORIA WAKED, CHARLES PLOSKI, DARIUSH NAIMI, TABITHA ASARE, SCOTT HOWARD, RALPH WYNCOOP, ELAINA ABING, and WILLIAM TURNLEY (“Plaintiffs-Petitioners-Appellants”) on behalf of themselves and all others similarly situated, hereby request immediate relief, or if such relief is not available, an expedited briefing scheduled to obtain an Order from this Court commanding Appellees STATE OF NEVADA ex rel NEVADA DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION (DETR), HEATHER KORBULIC¹ in her official capacity only as Nevada Director of 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) for the relief requested at paragraph 4 of Appellants’ Renewed Motion And Supplemental Argument In Support Of Writ Of Mandamus filed in the District Court in this case. Defendant-Appellees have cross-appealed. Appellants seek an expedited hearing to obtain an order by this Court commanding Appellee DETR as follows:

1. No Timely Decision: For all individual claimants, whose claims were pending for over six months, and for whom DETR has not issued a final, appealable decision, DETR shall exercise its discretion by issuing a determination of benefit eligibility, and an amount, as long as the claimant’s application for benefits reveals a *prima facie* entitlement to benefits under any program of unemployment compensation, and DETR shall pay such sums retroactively to the date indicated on the initial application. Furthermore, DETR may not avoid the exercise of its discretion by issuing a mass denial without a reason for denial supported by actual evidence (i.e., as a way of avoiding processing the application and thus exercising its discretion in an arbitrary and capricious manner.)²

¹ DETR has had three different directors/acting directors, and three administrators; the original Complaint has yet to be amended to reflect this revolving door of personnel.

² For example, DETR issued over 50,000 mass denials for “fraud” automatically based upon “out of state” or “out of Country” IP addresses. Not only do federal Department of Labor guidelines prohibit automatic mass denials for fraud (UILP 01-16 change 1, supra), but all cell phones and tablets (Ipads, etc) use a dynamic IP address, randomly assigned, which typically shows an out of area location that is not related to the place where the phone is located. VPN’s installed for security (like for Zoom meetings) use a dynamic IP address as well.

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2. No Timey Appeal Mechanism: For all individual claimants whose claims were denied benefits for any reason and who were told to appeal within 11 days, (or any other appeal period specified by DETR³) but for which there was no method or functioning mechanism to appeal electronically, at all times during that same period, DETR shall consider that the claimant timely appealed any and all such adverse decision(s).⁴

3. Start/Stop Without Due Process: For all individual claimants to whom DETR began making payments but desisted or ceased making payments of unemployment benefits after any one payment started, DETR shall resume payments, including payments for weeks unpaid, UNLESS: (a) the applicant did not file a weekly claim (and only for those weeks, and if the claimant could not have filed such claim due to DETR’s failure to allow such a filing electronically, then the claimant shall be given notice and an opportunity to refile for those missing weeks); or (b) the applicant has earnings in excess of that which would otherwise qualify the applicant for benefits; or (c) until such time as the applicant is denied benefits by an impartial hearing officer after a fair hearing as required by due process.

4. Determination No Payment: For all individual claimants to whom DETR has issued a “PANDEMIC UNEMPLOYMENT QUALIFYING DETERMINATION” letter which stated “We have determined that your claim is APPROVED as you meet the qualifications required by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 for Pandemic Unemployment assistance” (attached as Exhibit A hereto) or words to that effect, DETR shall pay immediately the amount the individual would have been entitled to receive as if DETR had paid pursuant to that initial determination of eligibility, if DETR has not already done so. In addition, DETR shall continue to pay the weekly benefits at the same or greater weekly rate according to the terms of that prior program approval pursuant to which the funds were determined to have been due initially, regardless of any prior or subsequent determination by DETR, unless and until an impartial hearing officer or an administrative law judge determines after a fair hearing that such payment was not initially due, or ceased to be due for some reason as provided by law.

5. Other Program Eligibility: For all individual claimants to whom DETR has issued a “PANDEMIC UNEMPLOYMENT DISQUALIFYING DETERMINATION” in which DETR states the only disqualifying event is that “We have determined that you have other program eligibility available” (attached hereto as Exhibit B), DETR shall pay immediately the amount the individual would have been entitled to receive as if DETR had paid pursuant to that initial determination of other program eligibility, if DETR has not already done so. In addition, DETR shall continue to pay the weekly benefits at the same or greater weekly rate according to the terms of the prior program

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³ There was not a way to internally appeal any decision or non-decision to DETR until after July 18, 2020. Even today, the appeal mechanism is not completely functional and does not produce an actual hearing date with estimates of hearings not commencing until late October/early November.

⁴ The District Court granted this request in substance although it was qualified by claims of clear and convincing fraud, which are not allowed under both the DOL guidance letters and *Java*.

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

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approval pursuant to which the funds were determined to have been due initially, regardless of any prior or subsequent determination by DETR, unless and until an impartial hearing officer or an administrative law judge determines after a fair hearing that such payment was not initially due, or ceased to be due for some reason as provided by law.

6. *FPUC and Lost Wages Payments*: In addition, for any claimant denied eligibility in one program because of eligibility in another, or who has been determinate to be eligible in any program at all, whether or not such eligibly is said to be conditional on re-evaluation or re-determination, DETR shall pay the \$600 per week required under the Federal Pandemic Unemployment Compensation (“FPUC”) program (for which the only requirement for qualification is that the claimant be eligible for at least \$1.00 pursuant to any other program), or any subsequent continuation program amount (now set at \$300 per week).

BRIEF STATEMENT IN SUPPORT OF MOTION

The purpose of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act of 2020, Public Law No: 116-136, is to provide immediate relief to all American workers adversely impacted by the Covid-19 Pandemic. The Social Security Act, 42 U.S.C. § 503(a)(1)(3), requires payment “when due.” Payments must be “made with the greatest promptness that is administratively feasible.” 20 C.F.R. § 625.9(e). DETR entered into an agreement to pay CARES Act benefits and federal Pandemic Unemployment Compensation (“FPUC”) with the United States Department of Labor (“DOL”) on March 31, 2020 but has yet to pay a significant number of claimants even one dollar. DETR’s breach of duty has caused some 46,293 individual gig worker claimants, and some 48,479 other claimants to needlessly suffer loss of dignity and hope through loss of housing, loss of savings, having to give up children and pets, car repossessions, going without food and medical care, loss of respect for and confidence in government and the judicial process, and ultimately causing immeasurable long-term harm to Nevada’s economy, through a flood of homelessness, bankruptcies, evictions, and divorces. All of which will cause added backlog and pressure on the courts, relentless strain on social services, as well as drive even more threatened suicides, domestic violence, and potential for self-harm.

The purpose of this motion is to expedite a decision by this Court whether or not DETR must pay between 45,000 and 70,000 Nevadans a total weekly benefit of between \$818 and \$1,064 each, for 22 weeks, and continuing until an impartial hearing officer or an administrative law judge determines after notice and a fair hearing, that such payment was not due initially. The reasons for

1 this request are set forth herein, and are based upon the record in the District Court in this case,
2 including the Special Master’s report to the District Court, and facts set forth in the NRAP Rule 27(e)
3 Certificate of Counsel filed herewith. Appeal from a denial of a writ is an interlocutory appeal as of
4 right especially after a lower Court has issued a written order pursuant to NRCP Rule 54(b).

5 Although the decision to grant emergency relief is within the discretion of this Court, denial
6 of subsistence benefits constitutes irreparable harm *per se*. See *Morel v. Giuliani*, 927 F. Supp. 622,
7 635 (S.D.N.Y. 1995) (finding irreparable harm where New York City regularly failed to provide “aid
8 continuing” benefits, in violation of federal and state law), amended, 94-CV-4415, 1996 WL 627730
9 (S.D.N.Y. Mar. 15, 1996). To indigent persons, the loss of even a portion of subsistence benefits
10 results in injury that cannot be rectified through the payment of benefits at a later date. See *id.*
11 (collecting cases). “That unemployment insurance benefits fall into the category of subsistence
12 benefits cannot be credibly disputed.” *Islam v. Cuomo*, 20-CV-2328 (LDH), at *12-13 (E.D.N.Y.
13 July 28, 2020) Accordingly, this Court should grant emergency relief for the reasons stated herein.

14 **A. INTRODUCTION**

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

1 In addition, DETR admits that approximately 25,000 individuals are covered by the July 22,
2 2020 “Order” of the District Court compelling resumption of payment for all those who were being
3 paid, but whose payment ceased prior to a fair hearing, or without a claim of earning excess interim
4 wages, or clear and convincing evidence of fraud. Of this 25,000, DETR admits it has failed to pay
5 “20,158 Unique Applications With Weeks Claimed Not Excess Earnings” Exhibit 1 of the August
6 31, 2020 Declaration of DETR employee David Schmidt to DETR’s Opposition to Appellants’
7 Second Motion for Contempt.⁵ Therefore, more than 100,000 Nevadans who are in desperate need
8 of help, cannot wait until this Court hears this case in the normal course, because to do so would
9 effectively deny claimants the benefit of speedy payment guaranteed by statute. *See e.g.*, 42 U.S.C.
10 § 503; *California Human Resources Dept. v. Java*, 402 U.S. 121, 130-133 (1971); *Glaser v. Emp’t*
11 *Sec. Div.*, 373 P.3d 917 (Nev. 2011).

12 **B. IRREPARABLE HARM**

13 This office and the court appointed Special Master have received over 4,000 e-messages,
14 phone messages, and in person pleas from claimants who have endured five to eight months or more
15 without a paycheck, are in imminent danger of being homeless or have become homeless,
16 lost/loosing child custody for failure to provide adequate housing, unable to pay credit card
17 bills/credit scores ruined, depleted savings and retirement savings, lost their means of making a living
18 should they be allowed to return to work because they were unable to make car
19 payments/repossessions, and are descending into poverty so great that they may never rebound.
20 Many say they are suffering severe depression, loss of self-esteem, and even suicidal ideation. The
21 Las Vegas area alone lost 214,500 jobs. Unemployment in Nevada is causing hardship for the
22 unemployed and businesses who depend on consumer spending alike. As states in Subheading C on
23 pages 18 through 23 of the July 27, 2020 Special Master’s Report entitled “Impact on jobs and
24 economy” Nevada’s April unemployment rate was 30.1 %, which is the highest unemployment rate
25 ever recorded for any state, in any month, including during the Great Depression.

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28 ⁵ DETR’s reasons for failure to pay these people are the same reasons that DETR already argued and
lost to the District Court in opposing the grant of the Order initially. Perhaps at most 500 people are
in categories that have any hint of a reason that might be stretched to include mere suspicion of fraud.

1 At the July 7, 2020 hearing, Appellees DETR presented a table which grouped the claim
2 status of 247,030 initial claims, of which 139,107 or 56%, remain unpaid.⁶ This large number of
3 unresolved claims has been, and remains, unacceptable. The average time from filing to payment
4 appears to be increasing, not decreasing. According to an October 2, 2020 article in the Nevada
5 Independent, Barbara Buckley, head of a strike force is trying to address the hang-ups, and said there
6 were “about 80,000 in the backlog as of Aug. 1, 2020 and only about 18,000 had been resolved as of
7 that week.” The average amount of money per claim paid was \$3,178.61, which means, as of the
8 beginning of July DETR had \$442,166,303.16, or approximately half a billion dollars, in pending
9 claims unpaid. DETR stated that 45,328 claims were denied PUA coverage on the grounds that the
10 claimant had UI program eligibility, but DETR does not start paying claimants under that program
11 despite this statement of eligibility. Appellants estimate that about one-third of the 93,779 unpaid
12 claims remaining were sent a “PANDEMIC UNEMPLOYMENT CLAIM QUALIFYING
13 DETERMINATION” which is another 31,260 unpaid claims with favorable eligibility determinations.

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

22 From moment to moment, the numbers of DETR’s retro-active claims denial or extended
23 periods of non-processing based upon unconstitutional criteria changes. DETR started paying
24 unemployment compensation to most, but not all the named Plaintiffs, only after they filed this
25 lawsuit. Plaintiffs-Appellants can amend to include by name, seriatim, thousands of individuals to
26 represent each of the proposed orders for relief they seek, and each time DETR can avoid resolution
27 by simply paying that one claim to the detriment of thousands of others. In the District Court, DETR

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⁶ The exact amount unpaid has now more than doubled due to the passage of time.

1 has argued mootness, but the District Court found to the contrary. It is undisputed that “(1) the
2 duration of the challenged action is relatively short, (2) there is a likelihood that a similar issue will
3 arise in the future, and (3) the matter is important.” *Bisch v. Las Vegas Metro. Police Dep’t*, 129 Nev.
4 328, 334-35, 302 P.3d 1108, 1113 (2013). Here, the Court should consider the merits of this appeal
5 because it “involves a matter of widespread importance that is capable of repetition, yet evading
6 review.” *Valdez-Jimenez v. Eighth Judicial Dist. Court*, 460 P.3d 976, 982 (Nev. 2020).

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

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

18 And once a claimant is determined to be eligible, then payment must continue without
19 reduction unless and until an impartial hearing officer reverses that the initial determination of
20 eligibility after a full and fair hearing. *Jenkins v. Bowling*, 691 F.2d 1225 (7th Cir. 1982) (Illinois’
21 practice of postponing payment of benefits to applicants who are in legal custody or on bail for a
22 work-related felony or theft is still unconstitutional, even if likelihood of recovery is small because
23 state must make a determination on facts known at time of application in order to meet the “with the
24 greatest promptness that is administratively feasible,” test in *Java*.) “There can be no doubt that
25 unemployment benefits are a species of property protected by the Fifth and Fourteenth Amendment
26 due process clauses, regardless of whether the claimant wishes to establish or retain benefits.”
27 *Cuellar v. Texas Employment Com’n*, 825 F.2d 930 (5th Cir. 1987): *see also Sherbert v. Verner*, 374
28 U.S. 398, 405, 83 S.Ct. 1790, 1794-95, 10 L.Ed.2d 965 (1963). The property right vested the moment

1 DETR made a favorable eligibility determination. DETR confirmed that eligibility determination in
2 writing. *See* Exhibit A and Exhibit B. For DETR to say Exhibit A and Exhibit B are not truly
3 eligibility determinations, means that for five months, DETR has made no eligibility determinant at
4 all, which it had a clear duty to do.

5 On July 21, 2020, the United States Department of Labor published Change 2 to its
6 Unemployment Insurance Program Letter (“UILP”) No. 16-20⁷, which reiterated the importance of
7 prompt payment as a property right protected by the Fourteenth Amendment in investigation for
8 fraud under the CARES Act and cited to UIPL No. 01-16, Federal Requirements to Protect Individual
9 Rights in State Unemployment Compensation Overpayment Prevention and Recovery Procedures,
10 issued October 1, 2015.⁸ The basic thrust of UIPL No. 01-16 is due process requires prompt benefit
11 eligibility determination. If the informal process leads to a determination of eligibility, payment
12 must commence within the time it takes to issue a check, or direct deposit, but not more than 7 to 10
13 days. The weekly benefit payments must continue until an impartial hearing officer’s decision
14 rendered after a due process fair hearing says the initial determination was incorrect

15 DETR’s claims of fraud are no exception to the statutory and constitutional mandates of prompt
16 payment and due process prior to re-determination. Even when considering a potentially fraudulent
17 claim, due process requires the state agency to contact the claimant for the claimant’s side of the story
18 before determining that the claimant is not entitled to unemployment compensation benefits. The
19 presumption is that the claimant is eligible, and benefits are due, until and unless, due process produces
20 a contrary result in the individual case. Although the state may not automate the denial process, even
21 for fraud, the state may and should automate the approval process, thus rebutting DETR’s argument
22 that it cannot grant benefits *en mass* to large groups of applicants who share common characteristics.

23 DETR’s practice of constantly reviewing *ab initio* prior determinations of eligibility is
24 unnecessary and creates the burden DETR complains about so much. After 8 months of waiting,
25 claimants whom DETR has not specified a logical, fact specific reason for benefit denial, should be
26 paid benefits, which means over 100,000 claimants with no identified issues and results still

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28 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 “pending” after 4 months or more, ought to be paid by ordering DETR to simply write a check.
2 Using a check instead of a wire, direct deposit or debit card eliminates the claims of fraud since the
3 bank or cash checking service must verify identity, and the bank undertakes the risk of identity fraud
4 by accepting the signature of the endorsement. NRS 104.3201 *et seq.*

5 The State may not use a conditional approval letters to meet its requirement to make a prompt
6 determination, or to avoid its constitutional obligation to provide due process ***before*** a decrease or
7 denial of benefits once approved, thus the approval letters must be a final determination no matter
8 what qualification language they contain. DETR has a clear duty to make a determination and either
9 pay, or provide an expeditious internal appeal mechanism, and to not stop paying until and unless an
10 impartial hearing officer so ordered after a fair hearing. DETR breached that duty for each and every
11 claimant within the categories listed above.

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 have
14 agreed with Appellants to some extent because it ordered DETR to continue making payments once
15 payments had begun. But for some reason, that same logic did not extend to when DETR expressed
16 its decision in favor of eligibility in a letter, a letter which gave notice of appeal rights and deadlines,
17 indicating it was a final decision. This distinction by the District Court was arbitrary and capacious.
18 Case law does not distinguish between stating eligibility in a written determination and actually
19 making a payment. And to the extent that these initial eligibility decisions were not really eligibility
20 decisions, then claimants have had no eligibility decision at all for months which itself is a violation
21 the claimants due process.

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

23 Denial of unemployment compensation benefits is almost *per se* irreparable harm that
24 requires immediate, interlocutory relief. To most, unemployment compensation is the only lawful
25 source of money to pay to buy food, shelter, and the necessities of life. “That unemployment
26 insurance benefits fall into the category of subsistence benefits cannot be credibly disputed.” *Islam*
27 *v. Cuomo*, 20-CV-2328 (LDH), at *13 (E.D.N.Y. July 28, 2020). When the outright denial or undue
28 delay in the provision of subsistence benefits is at issue, courts have not hesitated to utilize the

1 extraordinary remedy of preliminary injunctive relief. *See, e.g., Willis v. Lascaris*, 499 F. Supp. 749,
 2 759-60 (N.D.N.Y. 1980) (enjoining reduction in food stamp allowances); *Hurley v. Toia*, 432 F.
 3 Supp. 1170, 1176-78 (S.D.N.Y. 1977) (granting preliminary injunction and staying enforcement
 4 regulation authorizing termination or reduction of public assistance benefits prior to affording
 5 hearing), *aff'd*, 573 F.2d 1291 (2d Cir. 1977); *Boddie v. Wyman*, 323 F. Supp. 1189, 1193 (N.D.N.Y.
 6 1970) (“There is no doubt . . . that the differences sought in payments by the plaintiff are extremely
 7 important in respect to these things daily and in that sense when the day passes the injury or harm
 8 that may occur is irreparable.”), *aff'd*, 434 F.2d 1207 (2d Cir. 1970), *aff'd*, 402 U.S. 991, 91 S.Ct.
 9 2168, 29 L. Ed. 2d 157 (1971).

10 Here, any delay is too long. The foreseeable consequences of a state agency not following
 11 the federal mandate to pay benefits leads to a sequence of defaults and penalties, the destruction of
 12 the family unit, the lowering of the economy in general. When it comes to state implementation of
 13 federal programs, like unemployment compensation and welfare, there is a non-monetary right to
 14 make sure the state follows the federal program’s directives. *Mothers and Children’s’ Rights Org.,*
 15 *Inc. v. Stanton*, 371 F. Supp. 298, 306 (N.D. Ind. 1973) (“The granting of retroactive relief is within
 16 the sound discretion of the court.”) Even *Kelly v. Goldberg* itself was an injunction forcing the
 17 government to continuing paying money as a matter of due process.

18 **F. NOTICE**

19 The contents of this motion as well as the fact that it would be made shortly were discussed
 20 with opposing counsel. The motion is also similar to, although not identical to, the emergency
 21 motion filed in the previous appeal, Supreme Court case No. 81582. For the reasons stated herein,
 22 Appellants request the Court to grant this emergency motion or, if not so inclined, to order an
 23 expedited briefing schedule on this issue on appeal.

24 DATED: October 9, 2020

Respectfully Submitted,
 TIERMAN BUCK LLP
/s/Mark R. Thierman
 Mark R. Thierman
 Leah L. Jones
Attorneys for Appellants

CERTIFICATE OF SERVICE

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I certify that on this 9th day of October, 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

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