

No. 23-

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IN THE  
**Supreme Court of the United States**

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SALOOJAS, INC.,

*Petitioner,*

*v.*

AETNA HEALTH OF CALIFORNIA, INC.,

*Respondent.*

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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT

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**MOTION DIRECTING CLERK TO FILE PETITION**

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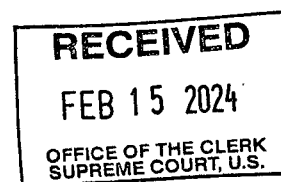
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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1, the undersigned counsel of record for Petitioner SALOOJAS, INC., hereby certifies that SALOOJAS, INC., is incorporated and does not have any parent companies, subsidiaries, or affiliates that have issued shares to the public.

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The Petitioner respectfully moves pursuant to Supreme Court Rule, 21 for an order, directing the Clerk of the Court to accept for filing the Petition for Certiorari in this action, which was timely electronically filed on January 17, 2024 and involves issues of exceptional importance.

As explained in the Petition, this writ presents a question of **exceptional national importance** and an issue of first impression – whether an implied private right of exists to enforce a federal statute primarily enacted for public safety and to save lives by ensuring adequate Covid testing services to all Americans.

### STATEMENT

On September 7, 2023 in *Saloojas, Inc. v. Aetna Health of California, Inc.*, Nos. 22-16034, 22-16035, 22-16036, 22-16037, 22-16038 (9th Cir. Sep. 7, 2023), the Ninth Circuit held there is no private cause of action under The Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136 (2020) (“CARES Act”), enacted by Congress.

**After** the Ninth Circuit heard oral arguments but **before** it issued the opinion, this Court rendered its decision, in *Health and Hospital Corporation of Marion County v. Talevski* (“*Talevski*”), 599 U.S. 166 (2023). In *Talevski*, this Court addressed the same issue presented by this Petition – whether a private right of action exists to enforce a federal right when the federal law’s primary goal is health and safety.

Based on *Talevski*, Petitioner filed a Petition for Rehearing En Banc, asking the Ninth Circuit to reconsider its opinion.

The Ninth Circuit denied the Petition for Rehearing without considering *Talevski*

Petitioner timely filed the Petition for Certiorari electronically on January 17, 2024.

Due to a clerical oversight, the booklets did not go out when the Petition was filed.

As the booklets were not postmarked on January 17<sup>th</sup>, the Clerk deemed the Petition late and did not accept it for filing,

By this Motion, Petitioner seeks an order directing the Clerk to File the Petition.

### ARGUMENT

Petitioner timely-filed the Petition electronically.

Through a clerical error, the mechanical submission in paper form of the 40 booklets was not postmarked, at that time.

This motion is filed to cure that mistaken oversight and direct the Clerk to file the Petition upon receipt of the booklets.

While simply equity is a good reason for granting the Motion, a much better reason for granting the Motion is the actual merits of the case and its effect on the developing law in the United States. To wit:

1. Not hearing the Petition would permit the Ninth District Court's decision to stand, though it conflicts with the holding and rationale expressed in *Talevski*.

In *Talevski*, this Court addressed the same issue presented here – whether a private right of action exists to enforce a federal right when the federal law’s primary goal is health and safety. *Talevski* considered the Federal Nursing Home Reform Act (“FNHRA”) which ensures that nursing homes that receive Medicaid funding respect and protect their residents’ health, safety, and dignity. The FNHRA provides nursing-home residents with: (1) the right to be free from unnecessary physical or chemical restraints; and (2) the right to be discharged or transferred only when certain preconditions are satisfied. The Court held that these two FNHRA provisions unambiguously create rights enforceable under 42 U.S.C. § 1983. *Id.* at 172. Thus, *Talevski* unequivocally supports the conclusion that an implied private right of exists to enforce the Cares Act.

This Petition seeks to clarify for lower courts as to when an implied private right of action exists under a federal law. This guidance is especially needed in that area where the law in question was enacted to promote primarily safety (and not primarily to address payment concerns).

The Ninth Circuit, applying this Court’s test in *Cort v. Ash*, 422 U.S. 66, 78 (1975) found no implied private right of action. But the Ninth Circuit did not consider *Talevski* because that decision issued after the Ninth Circuit held oral arguments in this case which presented an issue of first impression to the Ninth Circuit i.e. whether there is an implied way to sue on a federal law designed primarily for safety.

Because *Talevski* dealt with an implied right to enforce a federal law enacted primarily for safety, it should grant the instant Motion directing the Clerk to file the Petition. Doing so would allow this Court to be able to determine if the decision of the Ninth Circuit is correct under this developing line of cases.

2. Not hearing the Petition also virtually guarantees that this issue will come before this Court in a Third Petition with a different Petitioner. The Ninth Circuit's decision does not fully settle the issue because it did not consider the effect if any of the *Talevski* decision on the issue. Plaintiff's attorney has another client with the same set of facts which would not be covered by the Ninth Circuit's decision for that reason.

Plaintiff has another client Trovato Medical Group, Inc which like the Petitioner is an out of network provider which has claims for Covid Treatment that were not fully paid under the CARES Act. If Petitioner sues the insurance company, the case will be thrown out based on the Ninth Circuit's decision. An appeal would then be made arguing that when *Talevski* is applied there should be found a private right of action under the CARES ACT.

Regardless of how the Ninth Circuit would rule, the decision will be brought to the Supreme Court for review by the loser in a Petition for Certiorari, The issue remains the same: whether there is an implied right of action to enforce a federal law enacted primarily to promote safety not enacted primarily for the payment of money.



So if the Court does not grant the motion, the issue will most likely be coming before the court again within the next year with a different Petitioner. That means going through the entire legal procedure to get back to this point. Doing this will involve a large amount of judicial time which would be avoided if the Motion is granted now and the Petition heard.

3. This Petition is also affected and could both influence and be influenced by Court's future decision in the case, *Loper Bright Enterprises v. Raimondo* ("*Loper*") Case No: 22-451 argued January 17, 2024.

The Petitioner's case arose because of a federal agency's decision not to enforce the CARES Act utilizing its perceived power not to do so under the Chevron Doctrine. As a result, the case deals with the same issue now before this Court in *Loper*.

The question simply put is what remedy do persons affected by a federal law have when the federal agency ordered to enforce a law designed for safety chooses not to do so. In *Loper*, is there an implied right of the persons affected to be able to sue to enforce the federal law?

The issue is rather straightforward. If a federal agency does not enforce the law, relying on the Chevron Doctrine, is there an implied right to sue for the individual affected to be able to do so.

In *Loper*, a federal agency is ordering fishermen to carry regulators for free on their boats, something which is not set forth in the law. In that case, the federal agency is trying to enforce the law to a greater extent than stated by Congress.

In *Loper*, the issue is whether the fishermen have a right to sue to stop the expansion of the law and enforcement of such expanded laws thereof by the administrative agency

Here, the Petition presents the opposite position. The federal agency, here, in utilizing the Chevron Doctrine has elected not to enforce the law. In essence, the administrative agency has, on its own, stopped the enforcement and application of the law passed by Congress. For all intents and purposes, the agency has, in utilizing the Chevron Doctrine, revoked a federal law without judicial or Congressional consent.

Petitioner is asserting in its action that when the government agency does not enforce the law, there is an implied right to sue, at least when the law in question is one that was enacted to promote safety not primarily enacted to assure the payment of money.

If the Court rules in *Loper* for the fisherman and finds that the administrative agency does not have the authority to write new laws and regulations that have the force of a law, as if passed by Congress, then the fisherman have an implied right to sue to stop such actions.

Based on *Loper*, this Court should find the same for the other half of the argument: When an administrative agency passes rules regulations with the force of law to avoid the enforcement of federal laws passed by Congress, those affected have an implied right of action to sue for enforcement.

It makes sense to grant the motion to allow the Petition to be filed late: not for the reason that it benefits the petitioner, which of course it does but for the greater reasons that this case touches upon other important legal issues which has been before this Court within the last year.

### CONCLUSION

It is based upon the foregoing that Petitioner asks the Court to grant the motion directing the Clerk to file the action Petition. In this way, the Court can provide further guidance on the legal issues which have already been and presently are before the court:

1. Is there an implied right to sue to enforce a federal law enacted primarily for safety by those affected?
2. If a federal agency refuses to enforce a federal law under the Chevron Doctrine, does that give those affected persons the right to sue to enforce the activities?

These issues arise in the action and are of sufficient importance so as to justify granting the Motion to file the Petition so that the issues can be properly decided for the parties and for settling unresolved legal issues.

Respectfully Submitted,

February 7, 2024

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