

24-6220
No. *[Handwritten signature]*

IN THE
Supreme Court of the United States

JOHN F. POLICASTRO,
Petitioners,

v.

NEVADA EMPLOYMENT SECURITY DIVISION
LYNDA PARVEN [NOW KRISTINE NELSON],
ADMINISTRATOR, ET AL.,
Respondent.

**On Petition for a Writ of Certiorari
to the Court of Appeals Nevada**

PETITION FOR A WRIT OF CERTIORARI

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Petitioner, In Proper Person

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QUESTION(S) PRESENTED

- I. Did the Clark County District Court, the Court of Appeals of the State of Nevada and The Nevada Supreme Court purposely ignore the facts of this case due to the Petitioner revealing a huge system over-payments and other improprieties by the State of Nevada of the federal CARES Act emergency pandemic benefits funds?
- II. Whether the Petitioner, as a “disabled person” as defined under Nevada Revised Statutes NRS 426.068 and 42 U.S. Code § 12102 is entitled to due process and equal protection under the CARES Act, Nevada Constitution and the U.S. Constitution?
- III. Does the decision of the Court of Appeals conflict with a prior decision of the Court of Appeals in *Popal v. The State Emp’t Sec. Div.*, No. 84291-COA (Nev. App. Oct. 20, 2022) and The Supreme Court Nevada in *Anderson v. State, Empl. Sec. Div.*, 130 Nev. 294, 300, 324 P.3d 362, 365-366 [368] (2014)?

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LIST OF PARTIES

Petitioner is John F. Policastro Appellant in the Supreme Court and Court of Appeal of Nevada.

Respondents are The State of Nevada Employment Security Division; Lynda Parven [Now Kristine Nelson], in her capacity as Administrator of the Employment Security Division; and J. Thomas Susich, in his capacity as Chair of the Employment Security Division Board of Review.

There are no related proceedings.

* All Case Records (Supreme Court of Nevada Case No. 86369); (Court of Appeals of Nevada Case No. 86369-COA); and, (Eighth District Court Clark County Nevada Case No. A-22-858369-J) Available Prior To Order of Transcript Through The Nevada Appellate Courts Appellate Case Management System: <https://caseinfo.nvsupremecourt.us/public/caseSearch.do>

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* All Case Records (Supreme Court of Nevada Case No. 86369); (Court of Appeals of Nevada Case No. 86369-COA); and, (Eighth District Court Clark County Nevada Case No. A-22-858369-J) Available Prior To Oder of Transcript Through The Nevada Appellate Courts Appellate Case Management System: <https://caseinfo.nvsupremecourt.us/public/caseSearch.do>

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PETITION FOR A WRIT OF CERTIORARI

John F. Policastro respectfully petition for a writ of certiorari to review the Order of Affirmance Opinion of the Court of Appeal Nevada and the Supreme Court Nevada denial of review.

OPINIONS BELOW

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

The Order Denying Petition For Review of the Supreme Court of Nevada
Case No. 86369 (Pet. App. A pp. 1a-2a) 24-34975 (September 23, 2024).

The Order Denying Petition For Rehearing of the Court of Appeals of Nevada
Case No. 86369-COA 24-30598 (Pet. App. C pp. 31a-32a) (August 26, 2024).

The Order of Affirmance Opinion of the Court of Appeals of Nevada
Case No. 86369-COA 24-21015 (Pet. App. E pp. 58a-67a) (June 17, 2024) is unreported.

The Eighth District Court Clark County Nevada Dept. IX Denial of Judicial Review
Case No. A-22-858369-J (Pet. App. F p. 68a) (March 17, 2023).

The Eighth District Court Clark County Nevada Dept. IX Denial of Judicial Review
Notice of Entry of Findings of Fact, Conclusions of Law and Order Denying Petition
For Judicial Review Case No. A-22-858369-J (Pet. App. G pp. 69a-83a) (March 30, 2023).

JURISDICTIONAL STATEMENT

The Order Denying Petition For Review of the Supreme Court of Nevada was entered on
September 23, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

RELEVANT STATUTORY PROVISIONS

42 U.S.C. § 1983 provides, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

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INTRODUCTION

This case presents the questions of whether the Nevada Employment Security Division (“ESD”) and its the Appeals Referee (“Referee”) and the Board of Review (“Board”) all under the Nevada Department of Employment Training and Rehabilitation (“DETR”) violated the Nevada Constitution and U.S. Constitution and its agreement with the federal government in its administration of the Coronavirus Aid, Relief, and Economic Security Act (hereinafter referred to as the “CARES Act,” Pub. L. No. 116-136, as Amended through P.L. 117-165, Enacted August 5, 2022 (15 U.S.C. § 9000 et seq). In addition the Clark County District Court; the Court of Appeals of Nevada and the Supreme Court of Nevada ignored the facts of the Petitioner’s case and dismissed the relevant evidence labeling the Petitioner as a maintenance worker in an attempt to cover up DETR and ESD improprieties and mismanagement of implementing the CARES Act and federal funds. In so doing so the aforesaid parties also violated the Petitioner’s due process and equal protect rights under the the Nevada and U.S. Constitutions in particularly 42 U.S. Code § 1983.

On March 11, 2021, the President Biden signed American Rescue Plan Act of 2021 (ARPA, PL 117-2) into law. In addition, on December 27, 2020, President Trump signed into law the Consolidated Appropriations Act, 2021 (PL 112-260), which includes Division N, Title II, Subtitle A, the Continued Assistance Act. Both further amended the Coronavirus Aid, CARES. These enactments have created and extended the Pandemic Unemployment Assistance (“PUA”) and Federal Pandemic Unemployment Compensation (“FPUC”) programs up to their end, in Nevada, on September 4, 2021, with a maximum Unemployment Insurance (UI) benefit entitlements of up to 79 weeks, in total, for PUA, FPUC, and other unemployment benefit programs.

All under the regulation and auspices of the U.S. Department of Labor (“DOL”) through publishing of DOL Employment and Training Administration (“ETA”) Unemployment Insurance

Program Letters (“UIPL”) guidelines. The CARES Act created new statutes, regulations, guidelines, that required by law the State of Nevada, DETR and ESD to follow.

On March 28, 2020, the DOL entered into an agreement with the State of Nevada, DETR pursuant to 15 U.S.C. § 9025(a), which mandates DETR to make pandemic emergency unemployment benefits payable to qualifying individuals under the extremely liberal CARES Act guidelines. These (new) UI programs are 100 percent federally funded.

The Nevada COVID-19 pandemic unemployment crisis has been well studied and reviewed by means of a Court directed “SPECIAL MASTER’S REPORT(s),” ¹ ordered by Honorable Judge Barry L. Breslow, in 2020, that was performed by the Jason D. Guninasso, Hutchison & Steffen, PLLC, in the “Class Action lawsuit” against DETR and the ESD, *Payne v. Dep’t of Emp’t, Training and Rehab.*, 2021 Westlaw 4167928, p.3 (Nev. 2021) (unpublished).

Also, there were actions by the Executive Branch of the United States government referenced in a recent decision by the Court of Appeals of Nevada:

PUA was a temporary federal unemployment assistance program offered to claimants who were not eligible for traditional unemployment benefits, but who were nevertheless unemployed or underemployed as a result of the COVID-19 pandemic. See 15 U.S.C. § 9021. To effectuate the legislative purpose of the CARES Act, President Biden directed administrative agencies by executive order, long before the referee’s decision in this case, to “specifically consider actions that ... improve access to, reduce unnecessary barriers to, and improve coordination among programs funded ... by the Federal Government ... [and] should prioritize actions that provide the greatest relief to individuals.” Exec. Order No. 14002, Fed. Reg. 7229 (Jan. 22, 2021), reprinted in 15 U.S.C.A. § 9001, 86.

Popal v. The State Emp’t Sec. Div., No. 84291-COA (Nev. App. Oct. 20, 2022)

¹ JASON D. GUINASSO, HUTCHISON & STEFFEN, PLLC, SPECIAL MASTER’S REPORTs, *Amethyst Payne, et al. v. State of Nevada, et al.* Second Judicial District Court of the State of Nevada Case No. CV20-00755.

<https://hutchlegal.com/press-and-publications/special-master-report-and-appendices/>

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional substantive rights under the Fourteenth Amendment to the United States Constitution commands that no state shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. See, e.g. *State ex rel. List v. County of Douglas*, 90 Nev. 272, 279 (Nev. 1974). Article I, Section 8 of the Nevada State Constitution provides the same. DETR and the ESD are all departments of the State of Nevada. As stated by the Nevada Supreme Court in *Glaser v. Emp't Sec. Div.*, 373 P.3d 917 (Nev. 2011):

Due process protections of the Fourteenth Amendment of the U.S. Constitution and Article I, Section 8 of the Nevada State Constitution apply to unemployment benefit hearings. *Whitney v. State, Employment Security Dep't*, 105 Nev. 810, 813, 783 P.2d 459, 460 (1989). It also requires that one have the opportunity to establish any fact which, “according to the usages of common law or the provisions of the constitution would be a protection to himself or property.” *Wright v. Cradlebaugh*, 3 Nev. 341, 349 (1867).

A statutory scheme providing for the receipt of government benefits may give rise to a property interests protected by the due process clause. *Mathews v. Eldridge*, 424 U.S. 319 (1976). In that case, entitlement to social security payment was considered a property right. Property interests in a benefit was defined by the United States Supreme Court in *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 33 L. Ed. 2d 548 (1972):

To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. It is a purpose of the ancient institution of property to protect those claims upon which people rely in their daily lives, reliance that must not be arbitrarily undermined.

A. PUA COVERED INDIVIDUALS

The Petitioner definitively qualified as a COVERED INDIVIDUAL under the CARES Act because:

- (1) he is a part-time (banquet) bartender/apprentice bartender (bar back) and has a work history as such dating back to 2003 in Las Vegas (15 U.S.C. § 9021(a)(3)(A)(ii)(II));

(2) he was not eligible for regular unemployment compensation (15 U.S.C. § 9021(a)(3)(A)(i));

(3) he self-certified that he was unemployed, partially unemployed, or unable or unavailable to work because his place of employment (the Las Vegas Banquet Industry) was closed due to the COVID-19 public health emergency (15 U.S.C. § 9021(a)(3)(A)(ii)(I)(jj))
“[c]ategories under items (aa) through (jj) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act are not an exhaustive list of all examples within each category.” (UIPL 16-20, Change 6 at I-1.);

(4) due to the fact he has potential multiple sources of income and falls into several categories, he is self-employed, was seeking additional part-time banquet work (partially unemployed), did not have (presently) a sufficient work history because of a medical condition in 2019, and because he was formerly on Social Security Disability (SSD) in 2018 (15 U.S.C. § 9021(a)(3)(A)(ii)(II));

(5) he was presently attached to the workforce performing part-time work for his landlord in both 2019 and 2020 (15 U.S.C. § 9021(a)(3)(A)(ii)(II)); returned to work during the COVID-19 public health emergency as an apprentice bartender at the Westgate Las Vegas Resort & Casino (“Westgate”) in August of 2021;

(6) provided documentation to substantiate employment or self employment or the planned commencement of employment or self employment not later than 21 days after the later of the date on which the individual submits an application for pandemic unemployment assistance (15 U.S.C. § 9021(a)(3)(A)(iii)); and,

(7) he was de facto approved by DETR and the ESD and started to receive electronic PUA and FPUC benefits payments on May 15, 2021:

(3) COVERED INDIVIDUAL.—The term “covered individual”—

(A) means an individual who—

(i) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107;

CARES Act Section 2102(a)(3)(A)(i)

(ii) provides self-certification that the individual—

CARES Act Section 2102(a)(3)(A)(ii)

(I) is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because—

CARES Act Section 2102(a)(3)(A)(ii)(I)

(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or

CARES Act Section 2102(a)(3)(A)(ii)(I)(jj)

(II) is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107 and meets the requirements of subclause (I); and

CARES Act Section 2102(a)(3)(A)(ii)(II)

(iii) provides documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment not later than 21 days after the later of the date on which the individual submits an application for pandemic unemployment assistance under this section or the date on which an individual is directed by the State Agency to submit such documentation in accordance with section 625.6(e) of title 20, Code of Federal Regulations, or any successor thereto, except that such deadline may be extended if the individual has shown good cause under applicable State law for failing to submit such documentation; . . .”

CARES Act Section 2102(a)(3)(A)(iii)

STATEMENT OF THE CASE

A. QUESTION(S) PRESENTED

I. Did the Clark County District Court, the Court of Appeals of the State of Nevada and The Nevada Supreme Court purposely ignore the facts of this case due to the Petitioner revealing a huge system over-payments and other improprieties by the State of Nevada of the federal CARES Act emergency pandemic benefits funds?

II. Whether the Petitioner, as a “disabled person” as defined under Nevada Revised Statutes NRS 426.068 and 42 U.S. Code § 12102 is entitled to due process and equal protection under the CARES Act, Nevada Constitution and the U.S. Constitution?

III. Does the decision of the Court of Appeals conflict with a prior decision of the Court of Appeals in *Popal v. The State Emp’t Sec. Div.*, No. 84291-COA (Nev. App. Oct. 20, 2022) and The Supreme Court Nevada in *Anderson v. State, Empl. Sec. Div.*, 130 Nev. 294, 300, 324 P.3d 362, 365-366 [368] (2014)?

B. FACTS OF THE CASE

On May 10, 2021, the Petitioner filed a claim for Pandemic Unemployment Assistance (“PUA”) benefits under the **CARES Act. 15 U.S.C. § 9000 et seq.**

The Petitioner started to receive electronic PUA benefit payments on May 15, 2021 to July 3, 2021.

The Petitioner first filed an appeal to DETR on May 22, 2021 to stop any possible erroneous retroactive over-payments of PUA and FPUC benefits. Petitioner appealed regarding the monetary requirements of the law under **Section 2102 of the CARES Act**, to qualify for Pandemic Unemployment Assistance (PUA) benefits.

DETR issued the Petitioner a disqualifying determination dated July 12, 2021. The Petitioner appealed the disqualification from an overpayment notification that required the refund of benefits under **20 C.F.R. §625.14 and Sections 2102 and 2104 of CARES Act.**

On April 6, 2022, a hearing was held by the Respondents’ Appeals Tribunal. During the hearing the Petitioner explained to Referee that there could be mistakes in paying retroactive PUA and FPUC benefits and this could be a systemic problem, informing the Referee of the possibility of systemic over-payments.

The Appeals Tribunal denied PUA benefits to the Petitioner on September 12, 2022 **AFFIRMING** DETR’s disqualification decision.

The Petitioner appealed the Referee’s decision to the PUA ESD Board of Review Office of Appeals on August 25, 2022. The Board declined to review the Petitioner’s appeal for review

under Nevada law. NRS 612.530. It declined further review pursuant to NRS 612.515 and, thereby, adopted the decision of the Appeals Tribunal by the Referee.

The Petitioner appealed the Board decision to the District Court Clark County of Nevada for Judicial review pursuant to Case No. A-22-858369-J on September 14, 2022

The District Court Clark County Nevada issued issued a DENIAL on March 17, 2023 Case No. A-22-858369-J.

The District Court Clark County Nevada Department No. 9 directed the Respondent's attorney to prepare a Notice of Entry of Finding of Fact, Conclusions of Law and Order Denying Petition For Judicial Review recorded April 3, 2023.

The Petitioner Appeal The District Court decision to the Supreme Court of Nevada on April 3, 2023.

The case was transferred to the Court of Appeals Nevada December 12, 2023.

An Order of Affirmance of the District Court decision was issued by the Court of Appeals Nevada on June 17, 2024.

The Petitioner filed a Petition For Rehearing From Order of Affirmance of the Court of Appeals Nevada recorded on July 5, 2024.

The Court of Appeals Nevada issued a Order Denying Rehearing date recorded on August 26th 2024.

The Petitioner filed a Petition For Review date recorded on September 6, 2024.

The Supreme Court Nevada issued an Order Denied Petition of Review recorded on September 23, 2024.

C. FORMULA FOR CALCULATING PUA AND FPUC BENEFITS

On May 10, 2021, effective May 9, 2021, Petitioner filed a claim for PUA benefits under the CARES Act. 15 U.S.C. § 9000 et seq. He started to receive electronic PUA benefit payments on May 15, 2021 to July 3, 2021. PUA benefit payments are set amount, for the Petitioner, and the

Wage Benefit Amount (“WBA”) is \$181.00 per week. UIPLs 16-20 (April 5, 2020) and UIPL 16-20, Changes 1-6 and UIPL 15-20 (April 4, 2020) and UIPL 15-20 Change 1-4. However, FPUC benefits are not paid at a set or steady weekly benefit amounts as PUA WBA payments are throughout the 79 week Pandemic Assistance Period (“PAP”). There is a \$600.00 weekly benefit period and a \$300.00 weekly benefit period. Basically the \$600.00 benefit period began with the week ending April 4, 2020 and expiring the last week ending July 25, 2020 (total 24 weeks). UIPL 15-20 (April 4, 2020) Changes 1-4. However the \$300.00 benefit period is much more complicate, basically, it was initiated by Presidential Memorandum on August 8, 2020 and expires on December 25, 2021 (UIPL 27-20 (August 12, 2020)) and then renewed by Continued Assistance act on December 27, 2020 and again by the American Rescue Plan Act of 2021, on March 11, 2021, expiring, in Nevada, on September 4, 2021. UIPL 15-20 (April 4, 2020) and Changes 1-4.

DETR was required to meet Section 303 of the Social Security Act, 49 Stat. 626, as amended, 42 U.S.C. § 503(a)(1) “[t]o be reasonably calculated to insure full payment of unemployment compensation when due. . . .” and 42 U.S.C. § 503(a)(3) to provide an “Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied. . . .” In the Petitioner case DETR failed to meet these requirements.

D. DETR’S PUA AND FPUC BENEFIT ERRORS

1. The Petitioner Uncovered And Notified The State of Nevada Of Over-payments And Processing Improprieties.

Under the federal Social Security Act, (42 U.S.C. § 503(a)(1)), DETR had a clear duty to calculated and explain full payment of PUA and FPUC unemployment compensation when due. UIPL 15-20 Attachment I at I-4 (April 4, 2020). DETR failed to meet these requirements. UIPL 15-20 Attachment I at I-4 (April 4, 2020). This alerted the Petitioner of systemic processing errors by DETR:

D. Processing Payments for FPUC.

1. Notification to Claimants. The state must notify a potentially eligible individual of his or her entitlement to FPUC. Such notification should include both the beginning and ending dates for the FPUC program. As noted above, in states where the week of unemployment ends on a Saturday, the last week that FPUC is payable is the week ending July 25, 2020. For states where the week of unemployment ends on a Sunday, the [last] week that FPUC is payable is the week ending July 26, 2020. States have flexibility in the method of providing this notification. States will decide eligibility for FPUC based on eligibility for the underlying program eligibility; individuals do not have to separately apply for FPUC.

UIPL 15-20 Attachment I at I-4 (April 4, 2020).

The Respondents have continued down a path to a “chain of errors” in logic, fact and law resulting in the misapprehension of the facts of this case. In addition, the interpretation of facts of this case and application of the governing statutes the Court of Appeals used in the Affirmance Opinion of the Court of Appeals of Nevada (“ORDER”) are in error. (Pet. App. 65a)

2. DETR Discriminate Against The Petitioner Because Of His Disability.

The foundational premise in this case is the Petitioner is legally categorized as a “disabled person” under both State and Federal law:

42 U.S.C. § 12102 Definition of disability

As used in this chapter:

- (1) Disability. - The term "disability" means, with respect to an individual-
 - (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
 - (B) a record of such an impairment; or
 - (C) being regarded as having such an impairment”

42 U.S.C. § 12101 et seq. (1990)

and,

NRS 426.068 “Disability” defined.

“Disability” means, with respect to a person:

- 1. A physical or mental impairment that substantially limits one or more of the major life activities of the person;
- 2. A record of such an impairment; or
- 3. Being regarded as having such an impairment.

NRS 426.068.

Thus treating the Petitioner “the same as others” or as the ORDER states, “nothing in the record establishes that Policastro was treated differently from others with whom he was similarly situated” (Pet. App. 66a). However, it would be virtual impossible to find “similarly situated” persons; and, treating the Petitioner “the same as others” is a *de facto* act of discrimination against a “disabled person” as defined by the ADA and NRS 426.068 *Id.*

The Petitioner’s situation is totally “unique.” In reality DETR, the ESD, the Referee, the Board, the District Court, the Court of Appeals and the Supreme Court Nevada should have recognized and addressed the needs of “disabled persons” with totally unique medical and employment histories.

Unintended precedents may be set that could effect “disabled persons” and the Order of Affirmance Opinion of the Court of Appeals of Nevada may in fact, in and of its self, violate Title II of the Americans with Disabilities Act (“ADA”), as amended (42 U.S.C. § 12101 et seq (1990)) and be discriminatory. In addition, the logic, reasoning, and citations referring to the eligibility and documentation requirements used in the ORDER are faulty and mistaken.

E. THE SUPREME COURT AND THE COURT OF APPEALS NEVADA IGNORED EVIDENCE AND PRIOR CASE DECISIONS IN POPAL AND ANDERSON

1. Petitioner Is Eligible For PUA Benefits

The Petitioner lost income from February 2020 to September 2021 due to the COVID-19 public health emergency and the Governor’s Emergency Declaration shutting down the Las Vegas hospitality industry. Virtually, all available (banquet) bartender work disappeared from the employment market place in Las Vegas. Thus the Petitioner was separated from employment opportunities due to the closure of the hospitality industry that provided part-time banquet workers with “on-call” banquet work, that was available through the union dispatching services at the time of the COVID-19 public health emergency. In reality the Petitioner’s place of business(es) was “definitively closed” by the pandemic. The ORDER fails to recognize that COVERED INDIVIDUALS include a wide tranche of workers, that in particular include part-

time (banquet) workers and persons with (potential) multiple income streams as well as “disabled persons.”

The eligibility requirements are documented “in plain language” in the CARES Act and UIPLs, in particular, UIPL 16-20 Change 4 (C)(2) at p. I-10 states, “This documentation demonstrates a recent attachment to the labor force. . . .” The Petitioner did supply such documentation within 21 days and met these “plain language” requirements. *Anderson v. State, Emp't Sec. Div.*, 130 Nev. 294, 304, 324 P.3d 362, 368 (2014) and *Branch Banking v. Windhaven & Tollway, LLC*, 131 Nev. 155, 158, 347 P.3d 1038, 1040 (2015). Part-time workers can be attached to the labor force and still be affected by the pandemic and qualify for PUA and FPUC benefit.

2. Petitioner Provided Appropriate Documentation In Compliance With The CARES Act And DOL Guidance UIPLs

Contrary to what is presented in the ORDER, the Petitioner provided DETR documentation of his eligibility and attachment to the labor force and his disability on 05/12/21 shortly after his PUA application on 05/10/21. Clearly with in the 21 day time limit required by 15 U.S.C. 9021(a)(3)(A)(iii)) along with other support documentation to verify: The Petitioner holds a classification as a “certified union bartender” with Local 165.

This in and of itself has employment value due to the fact it is required to preform bartender work in all Las Vegas hospitality properties with union collective bargaining agreements with Local 165 that are substantial in number. The Petitioner has never claimed that he was a maintenance work as categorized throughout the ORDER. Pet. App. 59a, 64a, and 65a. The Petitioner stated on his 2020 tax returns that he had self-employed income from helping his landlord. This per se does NOT classify the Petitioner as a “maintenance worker.” Thus the Petitioner had “no maintenance work” available to him. The significant of the Petitioner “helping his landlord” from time to time provides “relevant evidence” that he was attached to the labor force. Attachment to the labor force is all that is required in under 15 U.S.C. 9021(a)(3)(A)(iii)

and UIPL 16-20, Change 4 (C)(2) at p. I-10. The requirements are, “[d]ocumentation to substantiate employment or self-employment need only demonstrate the existence of employment or self-employment at some point between the start of the applicable tax year and the date of filing.” UIPL 16-20, Change 4 (C)(2)(a), at p. I-10. DETR and the ESD required income verification for 2019 and 2020, which the Petitioner provided meeting these requirements. Being there was no (banquet) bar work available through the dispatching services of Local 165 because of the emergency declaration by the State of Nevada, “by extension” and in reality, it was virtually impossible for the Petitioner to obtain any union (banquet) bar work in 2020. However, he took the first employment opportunity in August 2021.

If, as in *Popal* “[r]equired the appeals referee to consider the reasonableness of a break that the appellant took from gig work prior to the pandemic for medical reasons. . . .” ORDER Footnote 3, Pet. App. 64a. It would be a “dangerous precedent” to exclude the Petitioner (as a disabled person) for a break in his employment due to continuing medical issues. The Petitioner did keep attached to the labor force and provided “relevant evidence” of such to DETR. Thus, *Popal* DOES apply to the Petitioner in this case. It is not conceivable nor reasonable that the Supreme Court of Nevada would refuse to “Review” (Cert Pet. App. 1a-2a) this case.

Also, this ORDER undermines the purpose of the CARES Act and is out of context with the liberal directive of Presidential Executive 14002 and qualifying criteria reference in *Popal* (*Popal v. State, Employment Security Division*, No. 84291-COA, 2022 WL 12455235, at *2 n.4, *4 and *5 (Nev. Ct. App. Oct. 20, 2022)) and the spirit of *Anderson* by searching for a basis to disqualify the Petitioner despite the plain meaning of a regulations and the CARES Act. 15 U.S.C. § 9021(a)(3)(A)(i) and (ii). The Court of Appeals is in reality reversing its decision in *Popal Id.*

In fact, both *Popal*’s break in work and the Petitioner’s break in (banquet work) “gig work” were due to medical reasons. The Petitioner is still defined as a “disabled person” under the ADA

and NRS Chapter 426. Therefore, the significance of all the documentation that the Petitioner provided to DETR and the ESD, the Referee, the Board, the District Court, and the Court of Appeals, and is essential “relevant evidence” to accurately adjudicate this case and not irrelevant evidence as presented in the ORDER:

[P]olicastro did not produce any such documents. Instead, Policastro produced largely irrelevant documents, such as paystubs from Caesars Palace from 2003 and 2004, paystubs from Westgate Las Vegas from August and September 2021, and a 2021 letter from the Unitehere Bartenders' and Beverage Dispensers' Union Local 165 stating that Policastro had been registered with the Union since 2007. See NRS 48.015 (defining "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence").

ORDER Pet. App. 64a.

Footnote 4:

Moreover, Policastro specifically testified that, with the exception of \$250 in maintenance work that he performed for his landlord, he did not work in 2020. To the extent Policastro attempts to demonstrate that he satisfied the document production requirement by directing our attention to a copy of his 2020 tax return that he produced to substantiate that he received \$250 in income during the 2020 tax year, he has not demonstrated a basis for relief. Indeed, Policastro has never alleged, either below or on appeal, that the pandemic prevented him from doing maintenance work at any point, and he has not directed this court's attention to any legal authority to demonstrate that his de minimis attachment to the workforce in one field during a given tax year may be used to establish eligibility for PUA benefits based on an inability to secure employment in a completely unrelated field. Consequently, we decline to consider that issue. *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (declining to consider issues unsupported by citation to relevant legal authority).

ORDER FOOTNOTE Pet. App. 64a-65a.

The Court of Appeals has completely misapprehended the facts of this cases and ignored the Petitioner's disability and work obstacles that restricted his return to (banquet) bar work in 2019 and the essential nature of relevant evidence presented in the Petitioner documentation. The Petitioner “is not a maintenance worker” but a certified union bartender. His landlord lives out of town and the Petitioner only helps him out from time to time. The landlord does much of the

repair work himself. DC1 p. 133. Also, the ORDER *Id.* references that the Petitioner did not do any banquet work in 2020. ORDER FOOTNOTE Pet. App. 64a-65a. This is unintelligible. This statement is totally illogical and irrelevant. How could the Petitioner work in his “certified profession” as a bartender in 2020 when the entire Las Vegas hospitality industry was shutdown due to the COVID-19 public health emergency. The statement in a “non fact” and totally illogical and the ORDER presents an irrational conclusion.

To a clarify: the Petitioner helped his landlord in both 2019 and 2020 and earned approximately \$250 in each year. Therefore securing his attachment to the labor force satisfying the CARES Act and UIPL’s eligibility requirement. 15 U.S.C. 9021(a)(3)(A)(iii) and UIPL 16-20, Change 4 (C)(1) I-4 and (C)(2) at I-1

The Petitioner did not work in 2019 as a “certified union bartender” due to his continuing medical issues contributing to his disable. In 2020. The Petitioner was “ready willing, able and available” to commence work again in February of 2020 in his “certified profession” as a union bartender after completion of major dental work that helped improve his medical issues. The Petitioner did definitively qualified for PUA and FPUC benefits under CARES Act and UIPLs. 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(jj). Also, the Petitioner had the legal right to self-certification. 15 U.S.C. § 9021(a)(3)(A)(ii).

The ORDER has made a requirement of “document production” that is NOT supported under the CARES Act 15 U.S.C. § 9021(a)(3)(A)(iii) nor UIPL 16-20, Change 4 (C)(1) I-4 and (C)(2) at I-10. This ORDER citations falsely presents that the Petitioner had to produce specific documentation and work requirements he simply was not required to produce or perform. Such documentation is not required as stated in the ORDER “[h]e needed to produce documents showing that he performed such gig work at some point between the start of 2020 and the date that he filed his application—May 10, 2021.” ORDER Pet. App. 64a. The actual requirement the ORDER is citing is:

An individual who has not submitted documentation in support of a higher WBA must still provide documentation substantiating employment or self-employment. While documentation to support a higher WBA must demonstrate earnings during the entire look-back period, documentation to substantiate employment or self-employment need only demonstrate the existence of employment or self-employment at some point between the start of the applicable tax year and the date of filing.

UIPL 16-20, Change 4 (C)(2)(a) at p. I-10.

The ORDER's statement *Id.* is illogical and irrational, and virtually impossible to satisfy. If "gig" banquet workers were out of work because of the COVID-19 public health emergency that virtual shutdown the entire Las Vegas hospitality industry. How could the Petitioner return to part-time "gig" banquet work? The ORDER requirement and stipulation is a complete "Double Bind and Catch 22" making the Petitioner and "all part-time banquet workers" liable for PUA and FPUC overpayments. In addition the ORDER undermines *Popal*, Presidential Executive Order 14002, and *Anderson*:

The Nevada Supreme Court has consistently ruled that "unemployment statutes should be liberally construed in order to advance the protective purposes of Nevada's unemployment compensation system of providing temporary assistance and economic security to individuals who become involuntarily unemployed." *Anderson v. State, Empl. Sec. Div.*, 130 Nev. 294, 300, 324 P.3d 362, 365-366 (2014) (citation omitted).

Thus the relevance of the documents filed with DETR on 05/12/21 and onward are all definitive "relevant evidence" defined under NRS 48.015. ORDER Pet. App. 64.a The documentation provided by the Petitioner is "relevant evidence" that substantiates the Petitioner did meet the requirements of being attached to the labor force (15 U.S.C. 9021(a)(3)(A)(iii) and UIPL 16-20, Change 4 (C)(2)(a) at p. I-10) at the time of this application for PUA benefits on 05/10/21 and throughout 2019 and 2020. The Petitioner did provided that "proof and evidence"

to DETR and the ESD, the Referee, the Board, the District Court, and the Court of Appeals. In addition, the Petitioner was and always will be designated a “disabled person” under both federal and state statutes.

It is a fact of this case that DETR and the ESD never requested any additional documentation from the Petitioner after his initial uploading of documentations within two (2) days after his initial application on 05/10/21 for PUA benefits. There are no written requests for additional documentation in the entire record. There are only two internal DETR case notes that appeared on 07/09/21. The first indicates contact with the Governor, and two more in January and February just before the Appeals Hearing in 04/06/22. The whole document issues are a made up farce created by DETR. And, DETR and the ESD’s denial letter on 07/12/21 was in fact initiated by the Petitioner because he filed an “Appeal for a Monetary Determination” dated 05/22/21, his calls to the Governor’s office, and his personal (emails) requesting DETR and the ESD to “stop all payments because the Petitioner discovered processing errors. After these events, DETR stated it needed the Petitioner’s IRS Schedule C for self-employment income. However, as the Petitioner stated and attested to the Petitioner was not required to file a IRS Schedule C because his self-employed income was under four hundred (\$400) dollars. The Petitioner listed his self-employment income on his 1040 tax return and upload the tax return to DETR and the ESD on 05/12/21. The tax return does quality as evidence as defined under NRS 48.015 (ORDER Pet. App. 64a.) and UIPLs. UIPL 16-20 Change 4 (C)(2)(a) at p. I-10. The “substantive and relevant evidence” supports that the Petitioner is eligibility for PUA and FPUC benefits and he provided proof of his attachment to the labor force in his documentation presented to DETR and the ESD on 05/12/21 and thereafter. The cited case *Edwards v. Emperor's Garden Rest.* (ORDER Pet. App. 65a.) does not apply. Tax returns and affidavits are acceptable documents. The case law and statutes all support the Petitioner in this case.

In general, proof of employment includes, but is not limited to, paycheck stubs, earnings and leave statements showing the employer's name and address, and W-2 forms when available. Proof of self-employment includes, but is not limited to, state or Federal employer identification numbers, business licenses, tax returns, business receipts, and signed affidavits from persons verifying the individual's self-employment. . . ." UIPL No. 16-20, Change 4 (C)(2)(a) at p. I-10.

Clarification of required documentation, "[d]ocumentation must demonstrate proof of employment or self-employment (or the planned commencement of such employment or self-employment) at some point between the start of the applicable taxable year and the date of filing." UIPL No. 16-20, Change 4 (C)(2)(b) at p. I-10.

The Petitioner was successfully able to return to banquet bar work in August of 2021. The Petitioner did file documentation showing he was attached to the labor force in both 2019 and 2020, by an affidavit from his landlord and by submitting his 2020 IRS 1040 tax returns. The Petitioner has the absolute legal right to self-certification (UIPL No. 16-20, Change 4 (C)(2)(b) at p. I-10.) and his "planned return" to banquet work was successful. 15 U.S.C. § 9021(a)(3)(A) (ii). He cannot be stripped of his self-certification rights. No contradictory evidence exists challenging the Petitioner's self-certifications and relevant documentation. Being the Petitioner is a "disabled person" and due to medical issues, as in *Popal*, he had a legitimate reason for a break in employment. Thus *Popal* applies in the same way to the Petitioner. *Popal* at *4 and *5. The Petitioner and *Popal* were both out of work due to medical issues. The Petitioner recovered enough to return to his (banquet) bar work after completion of his major dental work in 2019 and self-certified that he was now able and available for work. Thus qualifying him for PUA and FPUC benefits. The court cannot discriminate against the Petitioner as a "disabled person" for his break in (banquet) bar work because he had more severe medical issues than *Popal*. In

February of 2020 the Petitioner was ready will and able to work, however, could not return to his (banquet) bar work due to the COVID-19 public health emergency.

REASONS FOR GRANTING THE PETITION

1. While the this U.S. Supreme Court is currently under review of *Williams v. Washington*, No. 23-191 this present case shows the systemic nature of State abuses of due process and equal protection rights guaranteed under 42 U.S.C. § 1983. In this case it is particularly important to protect the Petitioner's rights under the Title II of the Americans with Disabilities Act ("ADA"), as amended (42 U.S.C. § 12101 et seq. (1990) and the Petitioner's rights under Fourteenth Amendment of the U.S. Constitution and Article I, Section 8 of the Nevada State Constitution.
2. The issues of this case were was clearly pressed before DETR, the ESD Appeals Office Referee, the ESD Board of Review, the District Court, the Court of Appeals Nevada, and the Supreme Court Nevada. All refuse to recognize the rights of the Petitioner as a "disabled person." None of the aforesaid parties recognized and addressed the processing and over-payment errors brought to light by the Petitioner. Such failure by State agencies and the judiciary must be acknowledge, addressed, and rectified by this Court. Thus this case presents questions of great legal importance of the protection of civil-right of the general public that state courts and administrative legal bodies are entrusted to protect from violations by state or local officials acting under color of state law." *Haywood*, 556 U.S. at 735; see also *Testa v. Katt*, 330 U.S. 386, 389-90 (1947).

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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Executed on DECEMBER 20, 2024

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