No. 25-798

IN THE
Supreme Court of the United States

Rick Siegel,

Petitioner,

v.

Jude Salazar

Respondent.

On Petition for a Writ of Certiorari
to the Court of Appeal of California,
Second Appellate District, Division Five

SUPPLEMENTAL BRIEF PURSUANT TO RULE 15.8

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STANDING FOR SUBMISSION OF SUPPLEMENTAL BRIEF

Petitioner, as a party to this proceeding, submits this supplemental brief pursuant to Supreme Court Rule 15.8, calling attention to intervening matter not available at the time of Petitioner's last filing.

This brief calls attention to additional aspects of the exhibit attached to the amicus brief of Professor Kevin Jerome Greene, which bears directly on the California Labor Commissioner's "longstanding interpretation."

ARGUMENT

Professor Greene's brief identifies how the Commissioner, in his 1953 *Radin v. Laurie,* 120 Cal.App. 2d 778 (1953) amicus brief, informed the Court that it should apply Labor Code § 1648's criminal penalties of the General Employment Agencies Act to an artist manager, who was governed by the Artists' Managers Act which begins at § 1650. Further examination of that brief reveals another, equally significant misrepresentation.

The 1943 Artists' Managers Act, codified at Labor Code § 1650, defined an artists' manager as one who:

> "engages in the occupation of advising, counseling or directing artists in the development of their professional careers and who

> procures, offers, promises or attempts to procure employment or engagements for an artist only in connection with and as a part of the duties and obligations of such person . . . ." Stats. 1943, ch. 1025, § 1.

Though procurement was part of the statutory definition of what managers do, in the *Radin* brief, the Commissioner told the court:

> "The primary function of an artists' manager, defined in Labor Code, Section 1650, is to advise or counsel artists in the development or advancement of their professional careers, and is thus *distinguishable* from a theatrical employment agent... ." Greene Br. Exh. A, at 6.

The Commissioner's omission of the procurement language to use this truncated definition to argue that managers are "distinguishable" from agents—making it appear that only agents procure.

This is not interpretive ambiguity: the Commissioner knew § 1650 defined managers as professionals who procure. Excising that language to lead the court to believing managers do not procure was a powerful action, especially with courts deferring to agency interpretation.

Radin (at 781) read the statutes correctly; noting how a manager "both advises, counsels and directs artists in the development or advancement of their professional careers, and also procures, offers,

promises or attempts to procure employment ... only in connection with and as part of the duties and obligations of such person under a contract with such artist...".

However, the Commissioner has never wavered from the fabricated 'managers do not procure' interpretation, in defiance of the Legislature's memorializing that managers must procure to fulfill their professional responsibilities. *Cummins v. The Film Consortium,* CA Lab. Comm'n TAC 5-83 at 7, speaks to how, "Since 1953, the Labor Commissioner has consistently construed the Act and its predecessors to encompass any unlicensed procurement activity, regardless of the procuring entity's overall activities."

And this is how the Act has been enforced ever since—enforcement without statutory authority—and with deference, judicially unchallenged.

The administrative agency made it clear it was not characterizing the voidance as civil violation; rather, it characterized the ruling as a continuation of how "the Labor Commissioner has consistently construed the Act and its predecessors to encompass any unlicensed procurement activity," when it voided contracts as a criminal infraction.

Although the Commissioner labels TAA proceedings as civil/administrative, that defies logic – along with history. And the sanction imposed—total voidance of contracts and disgorgement of all earned

commissions—functions as a criminal penalty equivalent under the factors articulated in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168–69 (1963).

Those seven factors are:

1. **Does the sanction involve an affirmative disability or restraint**: The CLC's total forfeiture of property rights and commissions, and the disgorging of all paid commissions, imposes severe financial restraint.
2. **Whether the sanction has historically been regarded as punishment**: until 1982, the sanction–the forfeiture of earnings for regulatory violations–was classified as criminal. Despite the Legislature removing all criminal sanctions from the Act in 1982, the enforcement remained the same. *See* Pet, § B.5.
3. **Whether it comes into play only on a finding of scienter:** the CLC's finding turns on whether the representative knowingly procured without a license, which is a scienter-based inquiry characteristic of criminal proceedings.
4. **Whether its operation promotes traditional aims of punishment—retribution and deterrence**: The disgorgement punishes past conduct and deters future unlicensed activity;
5. **Whether the behavior to which it applies is already a crime**: Until 1982, when the Legislature removed all arguably-related criminal statutes, the conduct was characterized as criminal under the Act;

6. **Whether an alternative purpose may rationally be assigned**: As there is no violation of law, there is no rational purpose for any assigned remedy;
7. **Whether it appears excessive in relation to the alternative purpose**: the complete disgorgement of years of commissions far exceeds any non-punitive goal of preventing unlicensed procurement; and as there is no unlawful behavior, any remedy would be excessive.

These factors demonstrate that the TAA remedy is so punitive in purpose and effect that the only rational conclusion is that it constitutes criminal punishment. *See Hudson v. United States*, 522 U.S. 93, 99–100 (1997) (applying *Mendoza-Martinez* factors to determine if sanction is criminal despite legislative intent otherwise; only "clearest proof" transforms civil to criminal, but here the proof is clear from the sanction's severity and historical punitive treatment).

United States v. Ursery, 518 U.S. 267 (1996), which distinguishes civil in rem forfeitures from criminal penalties, cements the inability to consider the remedy civil. *Ursery* establishes that civil forfeiture can survive scrutiny when it is remedial—tied to the property's connection to illegal activity. The government is then taking the instrumentality or proceeds of a crime.

The regime imposes a criminal-equivalent forfeiture without the procedural protections of the Sixth Amendment—such as proof beyond a reasonable doubt, jury trial, confrontation of witnesses, compulsory process, and right to counsel.

Petitioner does not concede a violation occurred, but if the Court entertains the Commissioner's regime as valid, its penal character demands criminal-level safeguards rather than the preponderance standard and administrative process used by the CLC.

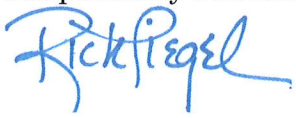
Requiring Petitioner to defend against this non-statutory, punitive regime without Sixth Amendment protections subjects him to a criminal prosecution in disguise, stripping fundamental rights while achieving the same ends as criminal forfeiture.

This directly relates to the questions presented: is this a good-faith agency interpretation of an ambiguous statute, or a deliberate misrepresentation of statutory text and an *ultra vires* regime—built on a 1953 brief that (1) applied a penalty statute that did not govern managers, and (2) falsified the statutory definition of the profession being regulated.

CONCLUSION

For these reasons, along with those stated in the Petition and supporting amicus briefs, Certiorari should be granted, or as Professor Greene suggested, the Court should summarily reverse.

Respectfully submitted,



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