

XXXXXXXX, AZ Bar. No. XXXXX  
ORGANIZATION  
Address  
City, State ZIP  
Phone Number

WELFARE LAW CENTER, INC.  
Attorney's Name  
275 Seventh Avenue, Suite 1205  
New York, New York 10001  
(212) 633-6967

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

Plaintiff B, on behalf of herself and all	)	
others similarly situated,	)	
	)	<b>No.</b>
Plaintiff,	)	
	)	
v.	)	<b>MEMORANDUM IN SUPPORT</b>
	)	<b>OF PLAINTIFF'S MOTION</b>
XXXXX, Director of the Arizona	)	<b>FOR PRELIMINARY</b>
Department of Economic Security,	)	<b>INJUNCTION</b>
	)	
Defendant.	)	
	)	
	)	

---

**INTRODUCTION**

Plaintiff and class members are low income Arizona residents who have applied and are waiting for a decision on their applications for food stamps, including expedited food stamps and recertifications, through the federal Food Stamp Program; but have not received a timely decision of eligibility and issuance of assistance to which they are

entitled. These persons are poor, often without significant resources except for the governmental program. These are persons who have little or no money for food or rent and other necessities of life. In Arizona, the Arizona Department of Economic Security (“DES”) is responsible for the processing of applications for food stamps. The federal Food Stamp Act has specific time frames in which the state must process applications. DES currently and for at least the last 20 months has not processed food stamp applications within the mandatory time periods in the federal Food Stamp Act. Plaintiff brings this action to enjoin Defendant’s historical violations of the Food Stamp Act.

As a result of DES’s failure to process food stamp applications in a timely manner, persons eligible for this program must make the difficult choice between paying for their food or other basic necessities, such as clothes and shelter. Others with no or limited income must forego food. As a result, their health and welfare is being adversely affected.

In this motion, Plaintiff asks the Court to issue a preliminary injunction enjoining Defendant from failing to process applications and determine eligibility for food stamp applications, including expedited food stamps and recertifications, within the time frames required by the federal Food Stamp Act and the implementing regulations.

## **ARGUMENT**

### **I. THIS COURT SHOULD ENTER A PRELIMINARY INJUNCTION**

In the Ninth Circuit, there are two sets of criteria for preliminary injunctive relief.

Under the “traditional” criteria, plaintiffs must show: (1) a strong likelihood of success on the merits; (2) the possibility of irreparable injury to the plaintiffs if injunctive relief is not granted; (3) a balance of hardships favoring the plaintiffs; and (4) in some cases, advancement of the public interest. *Earth Island Institute v. United States Forest Service*, 351 F.3d 1291, 1297 (9th Cir. 2003); *Textile Unlimited, Inc. v. A.BMH Co., Inc.*, 240 F.3d 781, 786 (9th Cir. 2001). *See also U.S. v. Odessa Union Warehouse Co-op.*, 833 F.2d 172, 174 (9th Cir. 1987).

In the alternative, these factors are applied on a sliding scale that balances the plaintiffs’ risk of possible harm and their probability of success on the merits. “[T]he moving party must show *either* (1) a combination of probable success on the merits and the possibility of irreparable harm, *or* (2) the existence of serious questions going to the merits and the balance of hardships tipping sharply in its favor.” *Johnson v. California State Board of Accountancy*, 72 F.3d 1427, 1430 (9th Cir. 1995) (emphasis in original). “These two formulations represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases.” *Miller v. California Pacific Medical Center*, 19 F.3d 449, 456 (9th Cir. 1994) (*en banc*) (quoting *Odessa Union*, 833 F.2d at 174). “Thus, the greater the relative hardship to [the party seeking the preliminary injunction,] the less probability of success must be shown.” *Earth Island*, 351 F.3d at 1298 (citation omitted). If the balance of harm tips decidedly in favor of plaintiffs, a “fair chance of success on the merits” is sufficient to warrant preliminary relief. *Johnson*, 72 F.3d at 1430. *See also, Beltran v. Meyers*, 677 F.2d 1317, 1319 (9<sup>th</sup>

Cir. 1982) (“the greater the relative hardship to the moving party, the less strong need be the showing of probable success.”); *Newton-Nations v. Rodgers*, 316 F. Supp. 2d 883 (D. Ariz. 2004) (same). These are not separate tests but the extremes of a single continuum. *Rodde v. Bonta*, 357 F.3d 988, 934 (9<sup>th</sup> Cir. 2003). As shown below, regardless of which set of criteria the Court applies, these factors strongly favor Plaintiff.

**A. Plaintiff is Suffering Irreparable Harm**

This case concerns access to necessary food stamps, for the poorest persons in Arizona. Any delay in the receipt of benefits can wreak havoc in their lives. As the Supreme Court observed, denying welfare benefits to an eligible applicant may deprive the person “of the very means by which to live.” *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970). When a person lacks other resources, his or her situation becomes “immediately desperate.” *Id.*

The Ninth Circuit has recognized that “[n]umerous cases have held that reductions in [cash] benefits, even reductions of a relatively small magnitude, impose irreparable harm on recipient families.” *Beno v. Shalala*, 30 F.3d 1057, 1063 n.10 (9th Cir. 1994) (citations omitted). In *Beno*, the court noted that irreparable harm was established where cash assistance benefits were cut by 1.3%. *Beno*, 30 F.3d at 1062-63. *See also Paxton v. Secretary of Health and Human Services*, 856 F.2d 1352, 1354 (9th Cir. 1988) (“when a family is living at subsistence level, the subtraction of any benefit can make a significant difference to its budget and to its ability to survive.”). Significantly, actual harm is not required; rather only the “possibility of irreparable harm” if the injunction does not issue.

*Roe v. Anderson*, 134 F.3d 1400, 1404 (9<sup>th</sup> Cir. 1998) (inability to find housing on reduced grant constituted the “possibility” of harm).

Therefore, it is not surprising that there is a large body of cases finding that the delay in receipt or the improper denial of needed public assistance clearly causes irreparable harm. Courts frequently have granted preliminary injunctions when state actors have failed to process applications for public benefits timely. *See, e.g., Morel v. Guiliani*, 927 F. Supp. 622, 634 (S.D.N.Y. 1995) (food stamps and cash assistance) (“To indigent persons, the loss of even a portion of subsistence benefits constitutes irreparable injury.”) *Pratt v. Wilson*, 770 F. Supp. 539, 544 n.14 (E.D. Ca. 1991) (In the cash assistance context, the court noted that recipients depend on the benefits for the basic necessities of life and that “[v]irtually any delay in the payment of benefits poses a substantial threat of imminent hardship to recipients.”); *Reynolds v. Guiliani*, 35 F. Supp. 2d 331, 339-40 (S.D.N.Y. 1999) (same); *Brown v. Guiliani*, 158 F.R.D. 251, 265 (E.D.N.Y. 1994) (cash assistance) (“loss of even a small portion of welfare benefits can constitute irreparable injury warranting issuance of a preliminary injunction”). *See generally, Salazar v. District of Columbia*, 954 F. Supp. 278, 325 (D. D.C. 1996) (In granting judgment for the plaintiffs for the failure of the agency to process timely Medicaid applications the court noted that: “Defendants’ failure to process Medicaid applications within the requisite 45 days is not simply an abstract bureaucratic irregularity. Rather, it has concrete and often-times devastating effects on poor, sick, vulnerable people.”).

Similarly, in the context of medical care, courts have enjoined practices that adversely affected access to medical care. In *Beltran v. Meyers*, 677 F.2d 1317, 1322 (9th Cir. 1982), the Ninth Circuit held that irreparable injury is established when enforcement of a Medicaid rule “may deny [plaintiffs] needed medical care.” *See also, e.g., Massachusetts Association of Older Americans v. Sharp*, 700 F.2d 749, 753 (1st Cir. 1983) (“Termination of benefits that causes individuals to forego such necessary medical care is clearly irreparable harm.”); *Caldwell v. Blum*, 621 F.2d 491, 498 (2nd Cir. 1980), *cert. denied*, 452 U.S. 909 (1981) (Medicaid applicants' harm established where they would “absent relief, be exposed to the hardship of being denied essential medical benefits.”); *McMillan v. McCrimon*, 807 F. Supp. 475, 479 (C.D. Ill. 1982) (“The nature of the claim - a claim against the state for medical services - makes it impossible to say that any remedy at law could compensate them.”); *National Association of Psychiatric Treatment Centers v. Weinberger*, 661 F. Supp. 76, 81 (D. Colo. 1986) (placing conditions on payment for residential treatment that might interrupt medical care is irreparable harm).

Plaintiff B declaration shows the harm that Defendant's policies and practices are causing. Plaintiff B Declaration in Support of Plaintiff's Motion for Preliminary Injunction and Motion for Class Certification (“Dec.”). For Plaintiff and class members, food stamps benefits are an essential source of support that permits them to survive at the barest edge of poverty. Without this meager subsistence benefit, they are unable to purchase food, clothing, shelter and other necessities of life for themselves and their

families. None can suffer the loss of food stamps without experiencing serious harm and, indeed, such harm has already begun to disrupt Plaintiff's life and threaten her family's health.

Plaintiff already has suffered harm as a direct consequence of Defendant's policy and practice of failing to provide food stamps in a timely manner. Plaintiff B Dec. ¶¶ 14-17. Plaintiff's application for recertification has been pending for almost 60 days. Plaintiff B Dec. ¶ 4. While she received \$478 in food stamps in July, she has received no food stamps in August 2004. Plaintiff B Dec. ¶ 14. Plaintiff B is a working poor mother of three children. Two children have special dietary requirements, including one who has severe medical conditions. Plaintiff B Dec. ¶ 2, 16-17. Plaintiff often must take time off from work to care for her ill child. She typically only nets \$150-200 every week from her employment. Plaintiff B Dec. ¶ 11. Thus, her food stamps represent almost 40 percent of her resources each month, except for some money her step-father pays for part of the rent and utilities so that her family will not be homeless. Without the needed food stamps, Plaintiff is not able to purchase the nourishing food her children need. Plaintiff B Dec. ¶¶ 15-17. She has had to use clothes money to buy food. Plaintiff B Dec. ¶ 18.

Plaintiff has established not just the possibility of harm, but the existence of it. Plaintiff has shown that she and her children are going without needed food and Defendant's actions are causing them irreparable harm. This clearly is a case of preventable human suffering where "[r]etroactive restoration of benefits would be inadequate to remedy these hardships." *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir.

1983), *stay granted on other grounds*, 463 U.S. 1328 (1983); *Leschniok v. Heckler*, 713 F.2d 520, 524 (9<sup>th</sup> Cir. 1983) (where termination of federal benefits meant families pursued other state support programs, court held that financial compensation at future date did not mitigate the hardship caused by the termination of benefits.); *National Association*, 661 F. Supp. at 81 (no adequate remedy at law for the denial of health care); *see also, McMillan*, 807 F. Supp. at 479 (same). *Brown*, 158 F.R.D. at 265. (“For plaintiffs and members of the plaintiff class, public assistance benefits are the essential source of support that permit them to survive. The affidavits submitted from the named plaintiffs vividly portray the irreparable consequences to them and their families and infant children when welfare moneys are not forthcoming in a timely fashion: going without food and clothing, lack of medicine for sick family members, risk of fire from candles used to replace electric light, and fears of eviction and foreclosure.”). Only the issuance of a preliminary injunction ordering Defendant to comply with the processing time frames for applications in the federal Food Stamp Act program can end the harm experienced by Plaintiff and the class.

**B. Plaintiff is Likely to Succeed on the Merits of Her Case**

It is highly probable that the Plaintiff will succeed on the merits of her case. The time periods established in the federal Food Stamp program for the processing of applications are mandatory and undisputed. Nor is it disputed that Defendant both historically and currently has failed to meet those mandatory time frames. Katz Declaration in Support of Plaintiff’s Motion for Preliminary Injunction and Motion for



Class Certification, Exhibits 1-4.

**1. Defendant has Failed to Process Food Stamp Applications within Federal Time Limits**

Congress established the federally funded, state-administered Food Stamp program in 1964 in order to “safeguard the health and well-being of the nation’s populations by raising levels of nutrition among low-income households.” 7 U.S.C. § 2011; 7 C.F.R. § 271.1. The purpose of the Food Stamp Act is to encourage the very poor to apply for basic nutritional assistance. Food stamps are targeted to the low-income population because Congress found that the limited purchasing power of these households contributes to hunger and malnutrition among members of these households. 7 U.S.C. § 2011; 7 C.F.R. § 271.1.

The United States Department of Agriculture (“USDA”) is in charge of the program. The USDA contracts with state agencies to operate the food stamp program. 7 C.F.R. §§ 271.4, 271.2. In Arizona, the Department of Economic Security (“DES”) operates the food stamp program, Arizona Administrative Code, (“Ariz. Admin. Code”) R6-14-101 *et seq.* DES must follow the Food Stamp Act and the implementing regulations. 7 U.S.C. § 2020(a), (d) and (e). Under the federal Food Stamp Act, households must be permitted to file an application on the first day that they contact the state agency office. 7 U.S.C. § 2020 (e)(2)(b)(iii); 7 C.F.R. § 273.2 (c)(1), 2(i). An initial

application by an individual or household seeking to apply for food stamps need only include the applicant's name, address, and signature. 7 C.F.R. § 273.2 (c)(2).

The State agency must act promptly on all applications for food stamps and give applicants an opportunity to participate in the Food Stamp program. 7 U.S.C. § 2020 (e)(3); 7 C.F.R. § 273.2 (a), (g)(1). The State agency must provide food stamps to eligible applicants no later than 30 days after initial application. 7 U.S.C. § 2020(e)(3); 7 C.F.R. § 273.2 (a), (g)(1).

Furthermore, the implementing food stamp regulation, C.F.R. § 273.2(i)(2), requires a state to affirmatively “identify households eligible for expedited service at the time the household requests assistance. For example, a receptionist, volunteer, or other employee shall be responsible for screening applications as they are filed *or as individuals come in to apply.*” 7 C.F.R. § 273.2(i)(2) (emphasis added); 7 U.S.C. § 2020 (e)(9). The State agency must provide expedited food stamps to: (1) households with \$100 or less in liquid resources (cash) and less than \$150 in gross monthly income; (2) households with shelter costs that are more than the total gross income and liquid resources; and (3) certain migrant and seasonal work households. 7 U.S.C. § 2020(e)(9); 7 C.F.R. § 273.2(i)(1). Under federal law, expedited food stamps service must be provided to eligible households no later than the seventh calendar day following the date an application is filed. 7 U.S.C. § 2020(3)(9); 7 C.F.R. § 273.2(i)(3)(i).

The Food Stamp Act requires that state agencies certify households for a specified

period of time. 7 U.S.C. § 2020(e)(4); 8 C.F.R. § 273.10(f). The State agency must establish procedures to notify households of expiration dates, provide applications, schedule interviews and “recertify eligible households prior to the expiration of the certification periods.” 7 C.F.R. § 273.14(a) (emphasis added). This requirement is to insure that no individual or family goes without their food stamps because of a recertification.

The duty to comply with the mandates of the Food Stamp Program is unequivocal. Arizona “is not legally obligated to participate in [federally funded public assistance programs]; if it does, it must comply with federal requirements. . . .” *Rothstein v. Wyman*, 467 F.2d 226, 232 (2d Cir. 1972). *See also Burns v. Alcada*, 420 U.S. 575 (1975); *Rosado v. Wyman*, 397 U.S. 397 (1970); *Viverito v. Smith*, 474 F. Supp. 1122 (S.D.N.Y. 1979).

Despite the Food Stamp Act’s requirement of strict compliance with the processing time frames, Defendant has for at least 20 months continually failed to meet his statutory obligations. The failure by Defendant to process food stamp applications, including applications seeking expedited food stamps and recertifications, is a clear violation of federal law. When faced with the specter of an improper deprivation of food stamps, courts have promptly provided preliminary relief to prevent the harm that flows from the lost benefits. *Reynolds*, 35 F.Supp. 2d at 231; *Morel*, 927 F. Supp. at 634.

DES maintains records of the time it took to process applications for food stamps. For at least the previous 20 months DES has failed to process all applications for food stamps timely. Katz Dec., Exhibits 1-4. From July 2003 until June 2004, the percentage

of cases where DES failed to meet the federal time frames steadily increased. Katz Dec., Exhibit 1. For the months April, May and June 2004, Defendant processed over 20% of the food stamp applications in an untimely manner. Katz Dec., Exhibit 1. For May 2004, Defendant failed to act on over 11,000 food stamp applications, or over 21% of the household applications within the time frames required by federal law. Katz Dec., Exhibit 1. For June 2004, Defendant failed to act on almost 12,000 food stamp applications, or almost 21% of the household applications within the time frames mandated by federal law. Katz Dec., Exhibit 1. For April 2004, more than 80% of the untimely initial applications were untimely by more than three days. For March 2004, more than 82% of the untimely initial applications were untimely by more than three days. For April and March 2004, DES was untimely in the processing of over 15% of the expedited food stamp applications and over 71% of those applications in each month were untimely by more than three days. Katz Dec., Exhibits 2 and 3.

These numbers actually underrepresent the timeliness problems at DES, because on information and belief, Defendant XXXXX counts as timely, any application where he attributes, correctly or incorrectly, the delay in processing to the applicant. Thus, many more applications are processed outside the federal time frames each month.

Defendant's pattern of noncompliance violates the Food Stamp Act's unequivocal command to provide "prompt assistance to persons in dire need." *Withrow v. Concannon*, 942 F.2d 1385, 1387 (9<sup>th</sup> Cir. 1991). In *Withrow*, the Ninth Circuit reversed the district court's grant of summary judgment to the state holding the act required actual

compliance, not just substantial compliance. *Id.* at 1389. Under this statutory standard, Defendant has not complied with the act and an injunction must issue.

For the food stamp program there is no dispute that Defendant continuously has failed to process applications pursuant to federal law. Therefore, Plaintiff has established “probable success on the merits.” *Earth Island*, 351 F.3d at 308. The standard for issuance of a preliminary injunction has been met.

**C. The Balance of Hardships and Public Interest Strongly Favor Plaintiff**

The potential injury to Plaintiff and the class members outweighs any potential injury to Defendant. The Ninth Circuit has concluded that some financial loss to the government does not outweigh human suffering of assistance-eligible persons.

The physical and emotional suffering shown by plaintiffs . . . is far more compelling than the possibility of some administrative inconvenience or monetary loss to the government . . . Faced with such a conflict between financial concerns and preventable human suffering, we have little difficulty concluding the balance of hardships tips decidedly in plaintiffs’ favor.

*Lopez*, 713 F.2d at 1437. Thus, the balance of hardship strongly favors Plaintiff.

The public interest also favors Plaintiff. In the context of public benefits, the court makes an independent judgment as to the public interest. *Lopez*, 713 F.2d at 1437. As the Ninth Circuit has noted in the similar context of disability benefits:

It is not only the harm to the individuals involved that we must consider in assessing the public interest. Our society as a whole suffers when we neglect the poor, the hungry, the disabled, or when we deprive them of their rights or privileges. Society's interest lies on the side of affording fair procedures

to all persons, even though the expenditure of governmental funds is required. It would be tragic, not only from the standpoint of the individuals involved but also from the standpoint of society, were poor, elderly, disabled people to be wrongfully deprived of essential benefits for any period of time.

*Id.* As in *Lopez*, the public interest is served by Plaintiff and the class receiving the food stamps they need to survive. As the Seventh Circuit has held:

Because the defendants are required to comply with the Food Stamp Act under the terms of the Act, we do not see how enforcing compliance imposes any burden on them. The Act itself imposes the burden; this injunction merely seeks to prevent the defendants from shirking their responsibilities under it.

*Haskins v. Stanton*, 794 F.2d 1273, 1277 (7th Cir. 1986) (granting preliminary injunction requiring defendant's compliance with federal timeliness standards for processing food stamp applications); *see also*

For all the above reasons, Plaintiff requests issuance of a preliminary injunction. Plaintiff and the class are suffering or soon will suffer irreparable harm from Defendant's unlawful failure to process applications for food stamps within the required federal time limits. Until the issues can be finally resolved, she asks the Court to issue a preliminary injunction enjoining Defendant from failing to process applications for food stamps, including expedited food stamps and recertifications, within the time frames required by the federal Food Stamp Act and the implementing regulations.

Respectfully submitted this \_\_\_ day of August, 2004.

WELFARE LAW CENTER, INC.

## ORGANIZATION

---

Name

Organization

Address

City, State ZIP

Attorneys for Plaintiff