No. 25-1497

United States Court of Appeals
for the Sixth Circuit

PAUL KREPS, DIANA BOUDRIE, ROBIN SHIPE, ISABELLA FOSTER, CHRISTINE HOLIFIELD, PATRICIA MYROLD, ANDREW MYROLD, RICHARD BRAINER, MARISSA QUIGG,

Plaintiffs – Appellants,

v.

MICHIGAN UNEMPLOYMENT INSURANCE AGENCY, JULIA DALE, KIMBERLY BERRY, TERESA BURNS, JOHN DOE 1-3,

Defendants – Appellees.

On Appeal from the United States District Court for the
Eastern District of Michigan, Southern Division
No. 22-cv-12020 (Hon. Mark A. Goldsmith)

BRIEF OF PLAINTIFFS-APPELLANTS

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: 25-1497

Case Name: Paul Kreps, et al. v. The Michigan Unemployment Insurance Agency, et al.

Name of counsel: David M. Blanchard, Cali N. Winslow

Pursuant to 6th Cir. R. 26.1, Diana Boudrie, Richard Brainer, Isabella Foster, Christine Holifield, Paul Kreps, Andrew Myrold, Patricia Myrold, Marissa Quigg, and Robin Shipe

Name of Party

make the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

CERTIFICATE OF SERVICE

I certify that on January 28, 2026 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ David M. Blanchard
Counsel for Plaintiffs-Appellants

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

At issue is whether procedural due process protections are required by the Fourteenth Amendment before a state may terminate or suspend unemployment compensation benefits authorized under two federal statutes. Given the significance of that issue, Plaintiffs request oral argument.

INTRODUCTION

This 42 U.S.C. § 1983 action involves nine plaintiffs, each determined by the Michigan Unemployment Insurance Agency ("Agency") to have been eligible for unemployment compensation during the COVID-19 pandemic. The Agency did so pursuant to two federal statutes—the Social Security Act of 1935 and the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act)—and one state statute, the Michigan Employment Security Act of 1936 (MESA). The Agency subsequently withheld or suspended each Plaintiff's payments without making an official determination that they were ineligible and without providing notice of any such determination or an opportunity to be heard before stopping the payments.

Those actions were unconstitutional. "Recipients of unemployment compensation have constitutionally-protected property interests in unemployment benefits." *Cahoo v. SAS Analytics Inc.*, 912 F.3d 887, 900 (6th Cir. 2019) ("*Cahoo I*"). The Agency was therefore required to provide adequate notice of an adverse

determination and an opportunity for a hearing "*before*" terminating the payments, *id*. at 901–02 (quoting *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985)). That did not happen. The Agency instead terminated the payments in large part based on computer-generated indicators of potentially fraudulent conduct or other indicators of ineligibility with no process at all prior to stopping the payments. The only process the Agency provided was after the stoppage of payments; and no Plaintiff has ever been determined by the Agency to have actually committed fraud or other misconduct.

None of this complied with the Fourteenth Amendment. The district court's conclusions to the contrary rest on a basic misinterpretation of the relevant statutes and on after-the-fact due process provided by the Agency, consideration of which in the context of unemployment compensation is foreclosed by Supreme Court and Sixth Circuit precedent.

STATEMENT OF JURISDICTION

The district court's jurisdiction arose under 28 U.S.C. § 1331. It entered final judgment on May 9, 2025. Judgment, RE 148, Page.ID#7106. A notice of appeal was timely filed on May 23, 2025. Notice, RE 149, Page.ID#7107. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF ISSUE

Whether Defendants deprived Plaintiffs of constitutionally protected property interests without due process when they withheld Plaintiffs' unemployment compensation payments prior to providing notice, an opportunity to be heard, and a final determination of ineligibility.

STATEMENT OF THE CASE

I. The Parties

Plaintiffs are Diana Boudrie, Richard Brainer, Isabella Foster, Christine Holifield, Paul Kreps, Andrew and Patricia Myrold, Marissa Quigg, and Robin Shipe. Each applied to the Agency for unemployment compensation during the COVID-19 pandemic and was deemed eligible for such compensation. Each was thereafter subject to a suspension of benefits on suspicion of fraud or other basis for ineligibility that was either later determined to have been erroneous or that, to date, has never been substantiated by the Agency.

Defendant Michigan Unemployment Insurance Agency is the state agency responsible for administering MESA consistent with the Social Security Act, the CARES Act, and the Fourteenth Amendment. The Agency sets policy and oversees the distribution of federal funding under those statutes to eligible recipients.

Defendant Kimberly Berry was the Deputy Director of the Agency from December 2018 through March 2022, Berry Dep., RE 134-11, Page.ID#6092 (Tr.

at 17:13). She was responsible for approving Agency policy and practice related to suspending benefits. As Deputy Director, Defendant Berry authorized the Agency's protocols that triggered the withholding of the unemployment compensation payments at issue. Dec. 2, 2020 Berry Email, RE 134-10, Page.ID#6088 ("This is Approved.").

Defendant Teresa Burns has been Administrator for Internal Controls and supervisor of the Compliance and Legal departments for the Agency at all relevant times. Burns Dep., RE 134-27, Page.ID#6171 (Tr. at 7:10–8:8). She reported directly to Defendant Berry. Defs.' Exs. Mot. Summ. J., RE 118, Page.ID#4561–4562 (Tr. at 23:8–24:9). She is responsible for ensuring that the Agency's internal procedures comply with the law.

Defendant Julia Dale was the Director of the Agency from October 2021 to the end of 2024. Dale Dep., RE 118 Page.ID#4586. She was the ultimate decision-maker regarding payment stoppages and canceled the Agency's proposed plans to release withheld payments. *See* Mar. 20, 2023 Bayes Email, RE 134-35, Page.ID#6213 ("Director Dale has approved cancelling[.]"); Pls' Resp. Summ. J., RE 129, Page.ID#5445–5448 (discussing record evidence of same); Payment Release Team Meeting Minutes, RE 134-34, Page.ID#6210 (discussing same).[1]

[1] To the extent Director Dale was sued in her official capacity, current Agency Director Jason Palmer was automatically substituted as a Defendant in his official

II. Constitutional and Statutory Context

A. The Due Process Clause of the Fourteenth Amendment

The Fourteenth Amendment mandates that no state shall "deprive any person of life, liberty, or property, without due process of law[.]" U.S. Const. amend. XIV, § 1. "Recipients of unemployment compensation have constitutionally-protected property interests" within the meaning of that mandate. *Cahoo I*, 912 F.3d at 900. Accordingly, once individuals are deemed eligible for unemployment benefits, they must be afforded "notice" and "opportunity for a hearing *before* [being] deprived of" such benefits, *id*. at 903 (quotation marks omitted). Providing such protections only after the deprivation has occurred "violate[s] the Constitution." *Cahoo v. SAS Inst., Inc.*, 71 F.4th 401, 409 (6th Cir. 2023) ("*Cahoo II*") (citation omitted). Thus, in the context of unemployment compensation, where pre-deprivation process has not occurred, post-deprivation process is "immaterial to the question of whether the Individual Agency Defendants violated Plaintiffs' due process rights." *Cahoo I*, 912 F.3d at 903.

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capacity when he assumed the role on or about January 2025. Fed. R. Civ. P. 25(d). Dale remains a Defendant in her individual capacity based on alleged constitutional violations during her tenure.

B. The Social Security Act

The federal unemployment compensation insurance program ("UI"), set forth in the Social Security Act, 42 U.S.C. §§ 501–506, is administered by states under the oversight of the United States Department of Labor (the "Department"). Under the UI program, the federal government provides states with funding for unemployment compensation for individuals, conditioned on the requirement that a participating state's laws and procedures are "reasonably calculated to insure full payment of unemployment compensation when due," 42 U.S.C. § 503(a)(1), and that states provide an "[o]pportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied," *id.* § 503(a)(3).

These protections apply to both the initial eligibility determination as well as after an individual has been "ruled eligible for benefits," *Cal. Dep't of Hum. Res. Dev. v. Java*, 402 U.S. 121, 123 (1971) ("*Java*"). Thus, once an individual is ruled eligible, "a pretermination hearing" is required before states may suspend benefit payments, *id*. at 124. To suspend payments *pending* due process would "constitute[] a failure to pay unemployment compensation 'when due' within the meaning of [Section 503(a)(1)] of the Social Security Act," *id*.

In sum, where an individual's eligibility is called into question, states must provide due process and "[c]ontinue to make timely [UI] payments" during the

pendency of that process "until an official determination of ineligibility is made." U.S. Dep't of Lab., Unemp. Ins. Program Letter ("UIPL") 01-16, RE 75-30, Page.ID#2115. "If a determination of ineligibility has not yet been made …. there is a presumption of continued eligibility and benefit payments must be issued timely," which means "by the end of the week following the week in which the issue is detected." UIPL 01-16 Change 1, RE 75-33, Page.ID#2146–2147.[2]

C. The Michigan Employment Security Act

The Michigan Legislature enacted MESA in 1936 to implement the unemployment compensation funding authorized by the Social Security Act. *See* Mich. Comp. Laws §§ 421.1–71. Like the Social Security Act, MESA contemplates that, after an individual is determined eligible, "[t]he Agency can … review [that] prior determination" of eligibility. *Dep't of Licensing & Regul. Affs./Unemp. Ins. Agency v. Lucente*, 508 Mich. 209, 224–25 (2021). When the Agency has done so, it must "either (i) issue a 'redetermination' that affirms, modifies, or reverses the [prior] determination, or (ii) transfer the matter for an administrative hearing." *Id*. at 225 (quoting Mich. Comp. Laws § 421.32a(1)).

The Agency may not withhold payments pending the exhaustion of these processes. In 1971, *Java* held that a state violates the Social Security Act if it

[2] The Department's UIPL directives are binding on participating states. *See* UIPL 01-96, RE 23-4, Page.ID#1080.

"suspends payments … pending appeal, after an initial determination of eligibility," *Java*, 402 U.S. at 133. Prior to *Java*, MESA provided that when a beneficiary's eligibility was challenged, "*payments … shall be withheld* pending the (final) disposition of such matter on redetermination or (o)n appeal therefrom." *Gen. Motors Corp. v. Mich. Emp. Sec. Comm'n*, 82 Mich. App. 99–100, 103 (1978) (emphasis added) (quoting Mich. Stat. Ann. § 17.534(c)).[3] That provision allowed for "suspending payment of benefits" upon a claimant's eligibility being called into question, *id*., which "was clearly contrary to … the Social Security Act," and was therefore "unenforceable," *id*.

"The Michigan legislature responded immediately" to *Java* by eliminating that provision. *Id*. at 104. Thereafter, if a claimant's eligibility is challenged, "benefit payments continue uninterrupted," *id*. at 105, while due process is exhausted. As Defendant Burns has acknowledged, "[t]he requirement to pay when due is federal," and therefore, "[i]f the state has already approved payment before the suspicion arose, then payment is due and cannot be stopped … until the suspicion (issue) is investigated and a determination issued," Feb. 1, 2021 Burns Email, RE 134-21, Page.ID#6130–6131.

[3] The court of appeals adopted the opinion of the circuit judge, and all quotations are from the circuit judge's opinion. *Id.* at 100.

This accords with the Department's binding directive that "the state may not suspend or delay payment before the individual is notified of the issue and has an opportunity to be heard, and the state makes an official determination that the payment was improper." UIPL 01-16, RE 75-30, Page.ID#2118. It accords with the Agency's directive that "benefits may not be withheld during the protest or appeal period." UIA Manual Section 7902, RE 134-40, Page.ID#6290. To the contrary, when a claimant's eligibility is challenged, "benefit payment(s) shall continue …. until due process [is] exhausted," Jan. 22, 2020, Mem. Director Gray, Director of Mich. Unemp. Ins. Agency at 4 n.9 (citing *Java*, 402 U.S. at 121).[4]

D. The CARES Act

Congress enacted the CARES Act in 2020 in part to address widespread unemployment during the COVID-19 pandemic. *See* 15 U.S.C. §§ 9001–132. The Act, which expired in 2021, established the Pandemic Unemployment Assistance ("PUA") program, a federal-state program to provide unemployment benefits for individuals whose ability to work had been impacted by the pandemic. *Id*. at § 9021. The PUA program required the Secretary of Labor to provide unemployment compensation to eligible individuals through participating states pursuant to binding agreements between the state and the Secretary, *id*. at

[4] PA_225_of_2017_Sec_54_g1_Identity_Theft_Annual_Report_2019_12220.pdf *See Sierra Club v. U.S. Env't Prot. Agency*, 60 F.4th 1008, 1014 n.2 (6th Cir. 2023) ("We may take judicial notice of public and government documents.").

§ 9021(b), (f). Michigan entered such an agreement in April 2020. *See* Agreement Between State of Mich. and Sec. of Lab., U.S. Dep't of Lab., RE 134-44, Page.ID#6333–6336.

State implementation of the CARES Act PUA program was governed by the terms of 20 C.F.R Part 625, which were expressly incorporated as part of the CARES Act's PUA requirements, *see* 15 U.S.C. § 9021(h). Under those terms, PUA recipients were entitled to the same due process protections required by the Fourteenth Amendment, MESA, and the Social Security Act described above. *See* 20 C.F.R. § 625.15 ("[T]he right of individuals to [PUA benefits] shall be protected in the same manner and to the same extent as the rights of persons to regular unemployment compensation are protected under the applicable State law."); *id*. at § 625.10(e)(2) ("The provisions on right of appeal and opportunity for hearing and review with respect to applications for [PUA benefits] shall be consistent with … the Social Security Act, 42 U.S.C. 503(a)(1) and 503(a)(3)."). *See also* UIPL 16-20 Attachment I, RE 134-45, Page.ID#6353 ("The provisions of the applicable state law that apply to claims for PUA include … Due Process to individuals … [and] [d]eterminations, redeterminations, appeals, and hearings[.]").

III. Defendants' Deprivation of Plaintiffs' Unemployment Benefits

The Agency uses an automated program called MiDAS to administer Michigan's unemployment benefits system. *See Cahoo I*, 912 F.3d at 892. This Court explained in 2019 that "[t]he Agency designed … MiDAS to render automated determinations of fraudulent conduct." *Id*. It further explained that MiDAS's rate of error was "staggeringly high" and that the program could terminate benefits without "notice or an opportunity to be heard," *id*. at 904.

The Agency's inability to resolve the problems with MiDAS since *Cahoo I* has led to plans to abandon the system.[5] But MiDAS remained operational at all times relevant to this suit and its potential for due process problems persisted. The Agency programmed MiDAS to place "indicators" or "holds" that stopped payment on claimant accounts. Those indicators included:

- Benefit Payment Review (BPR).[6]
- Stop Payment Indicator (SPI).[7]

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[5] *See, e.g.,* Rachael Kohl, *Automated Stategraft: Faulty Programming and Improper Collections in Michigan's Unemp. Ins. Program*, 2024 Wis. L. Rev. Forward 43, 46 (2024) (MiDAS "is to this day still causing significant issues for the state's general administration of benefit claims – so much so that Michigan is abandoning … [MiDAS] for a completely new program[.]").

[6] *See* UIA Common Scenarios with Resps., RE 75-5, Page.ID#1934 (instructing chat agents to inform claimants that BPRs "must be completed before your payment can be issued").

[7] *See* UIA Request for MiDAS Automation Servs., RE 75-6, Page.ID#1949 (noting "certifications are not payable because of a Stop Payment indicator"); Mich. Talent Inv. Agency request for MiDAS Automation Servs., RE 75-8, Page.ID#1961 ("Please put a Stop Payment Indicator on each of these accounts and a note that says: '…do not pay.'").

- Additional Claim Required (AC).[8]

Defendants acknowledge that these indicators triggered "an *immediate halt* in benefit payments," Defs.' Resp. to Interrog. 11, RE 134-18, Page.ID#6123 (emphasis added), despite Defendant Burns' acknowledgement that "[i]f the state has already approved payment before the suspicion arose, then payment … cannot be stopped … until the suspicion (issue) is investigated and a determination issued," Feb. 1, 2021 Burns Email, RE 134-21, Page.ID#6130–6131.

These "immediate halt[s] in benefit payments" happened with no notice of an initial determination of ineligibility, no opportunity to be heard, and no official redetermination of ineligibility. In fact, Agency phone and chat agents were instructed that there was "No Need to call" claimants whose accounts had a "Do Not Release Payment" indicator. UIA Do Not Release Payment Indicator, RE 75-11, Page.ID#1977. If a claimant called inquiring about withheld payments, the agents were instructed to tell them, "[t]here is a pending review" of their eligibility, which "must be completed before [their] payment can be issued," UIA Common Scenarios with Resps., RE 75-5, Page.ID#1934.

The Agency's practice of suspending payments absent basic due process notice requirements was widespread. During discovery, Defendants were asked:

[8] *See* Kratz Dep., RE 139-15, Page.ID#7005 (Kristine Kratz, testifying on behalf of Agency pursuant to Fed. R. Civ. P. 30(b)(6), stating that "additional claim required" is among indicators that prevent payment).

> [F]rom March 1, 2020 to present, how many UI claimants experienced a suspension of weekly benefits in a continuing claim series for over 21 days *without being issued a determination or redetermination regarding the reason for the suspension*?

Pls.' Reply Supp. Mot. Summ. J., RE 88, Page.ID#2660 (emphasis omitted). In response, they acknowledged that 920,752 claimants (about 832,000 when de-duplicated), were subject to such a suspension, including Plaintiffs Brainer, Foster, Andrew and Patricia Myrold, Quigg, and Shipe. *Id*.

The scale of the payment stoppages was enormous. Defendants acknowledged that, between March 1, 2020 and August 3, 2023:

- 470,231 claim files were placed on indefinite hold;
- 920,752 claimants had their benefits suspended more than 21 days without a determination or an explanation for the suspension;
- 265,000 claimants' benefits remained suspended after all determinations were resolved in their favor; and
- 1,370,534 claimants had one or more benefit weeks that remained unpaid at the end of 2020 due to a stop payment indicator or other hold.

Pls.' Mot. Summ. J., RE 71, Page.ID#1837–1839 (referencing Defendants' Interrogatory Responses).

The Agency continued to rely on MiDAS's stop payment indicators, despite Director Dale's acknowledgment that "the Midas system is inconsistent when it comes to the indicators," which "cannot be used with any level of reliability

because they've been bastardized from their initial intent by Midas." Dale Dep. RE 92-11, Page.ID#2838 (Tr. at 141:7–14).

As demonstrated below, *see infra* pp. 34–45, after applying for unemployment benefits, each Plaintiff received a letter from the Agency informing them of their eligibility for either UI or PUA benefits. The Agency thereafter either withheld, suspended, or terminated each Plaintiff's benefits in response to a MiDAS "flag" placed on each Plaintiff's file. In each case, it was not until months or years later (if at all) that the Agency informed Plaintiffs that the Agency had now determined that they were, in fact, ineligible for payments. Those letters informed the Plaintiffs of their due process rights, including an opportunity to be heard. However, in each case, when such letters were sent, the Agency had *already* withheld the payments—and it had done so without notice of an initial determination of ineligibility, an opportunity to be heard, or a final determination of ineligibility as is required by the Fourteenth Amendment, the Social Security Act, the CARES Act, and MESA.

The Defendants did not contend below that they provided these due process protections to Plaintiffs prior to withholding or terminating their benefits. They instead disputed the existence of any "authority that claimants are entitled to a pre-deprivation hearing when it comes to unemployment benefits." Defs.' Mot. Summ. J., RE 110, Page.ID#3340; *see also* Op. & Order Mot. Dismiss, RE 33,

Page.ID#1210 (stating Defendants' argument that the law "does not require a pre-deprivation hearing" before terminating benefits (citing Defs.' Br. Supp. Mot. Dismiss, RE 19, Page.ID#861).[9]

IV. The District Court Decision

Plaintiffs filed a putative class action against Defendants on August 26, 2022, Compl., RE 1, alleging that the absence of pre-deprivation due process violated their Fourteenth Amendment rights. 2d Am. Compl., RE 36. Plaintiffs then moved for partial summary judgment on that issue. Pls.' Mot. for Partial Summ. J., RE 71. Defendants cross-moved for summary judgment, asserting, *inter alia*, that PUA benefits are not protected property interests, that Plaintiffs received constitutionally adequate due process, and that the individual Defendants are entitled to qualified immunity. Defs.' Mot. Summ. J., RE 110. On March 24, 2025, the district court denied Plaintiffs' motion for partial summary judgment and granted in relevant part Defendants' cross-motion. Op. & Order Mots. Summ. J., RE 142 ("Op. & Order"). It declined to hear oral argument. *Id*. at Page.ID#7074 n.3.

[9] To be clear, Plaintiffs do not contend that a full trial is required. *See Cahoo I*, 912 F.3d at 902 ("the Constitution requires *some kind of a hearing* before the State deprives a person of liberty or property" (emphasis added) (citation omitted)). The precise nature of the pre-deprivation opportunity to be heard required by the Fourteenth Amendment is not at issue here because Plaintiffs received no such opportunity at all.

On Plaintiffs' CARES Act claims, the district court ruled that because state participation in that federal program is discretionary, Plaintiffs had no property interest in PUA benefits on which to base a due process claim:

> This authority to continue or end participation makes the nature of the benefits under the CARES Act entirely discretionary. The Supreme Court has long held that "a benefit is not a protected entitlement if government officials may grant or deny it in their discretion."

Id. at Page.ID#7079 (quoting *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005)). The district court therefore declined to address whether Plaintiffs had been afforded due process with respect to PUA claims. *See id*. at Page.ID#7082 n.6.

On Plaintiffs' UI claims under the Social Security Act, the district court agreed with the parties that "Plaintiffs have a constitutionally-protected property interest in receiving those benefits." *Id*. at Page.ID#7084. However, it held that Defendants "provided Plaintiffs with adequate notice and an opportunity to be heard regarding each step of the way in the Agency's determination process." *Id*.

Finally, Defendants asserted qualified immunity, which the district court rejected at the motion to dismiss stage, finding Plaintiffs' constitutional rights to pre-deprivation due process to be "clearly established" and that Plaintiffs had adequately alleged that Defendants violated that right, Op. & Order Mot. Dismiss, RE 33, Page.ID#1211 (quoting *Cahoo I*, 912 F.3d at 903). It reserved for summary judgment the factual question of whether the Defendants had, in fact, violated that right, *see id*. Page.ID#1212. The court then declined to address qualified immunity

at summary judgment, *see* Op. & Order, RE 142, Page.ID#7088 n.10, and did not address class certification.

This appeal followed.

SUMMARY OF THE ARGUMENT

1. "Plaintiffs must establish … (1) that they have a property interest protected by the Due Process Clause; (2) that they were deprived of this property interest; and (3) that the state did not afford them adequate pre-deprivation procedural rights." *Cahoo I*, 912 F.3d at 900.

2. Plaintiffs meet the first element. Each Plaintiff received a written determination from the Agency confirming their eligibility for either UI or PUA unemployment benefits. At that juncture, each Plaintiff possessed a constitutionally protected property interest in the benefits.

3. The district court agreed with the parties that the Social Security Act establishes constitutionally protected property interests in UI benefits. Op. & Order, RE 142, Page.ID#7077 ("[T]he Sixth Circuit recognizes, and neither party disputes, that '[r]ecipients of unemployment compensation have constitutionally-protected property interests in unemployment benefits." (quoting *Cahoo I*, 912 F.3d at 900)).

4. The district court concluded that the CARES Act did not confer property interests in PUA benefits because state participation in that Act was discretionary. That was legal error. By virtue of our constitutional structure as

reflected in the Tenth Amendment, state participation in *every* federal spending program is discretionary, including, for example, the Social Security Act's unemployment compensation and Medicaid provisions. *See, e.g., Charles C. Steward Mach. Co. v. Davis*, 301 U.S. 548, 589–90 (1937) (unemployment compensation); *Planned Parenthood Affiliates of Mich. v. Engler*, 73 F.3d 634, 636 (6th Cir. 1996) (Medicaid). Yet those statutes unquestionably confer constitutionally protected property interests. *See Cahoo I*, 912 F.3d at 900 (unemployment compensation); *Hamby v. Neel*, 368 F.3d 549, 559 (6th Cir. 2004) (Medicaid). The district court's conclusion that discretionary state participation in a federal spending statute immunizes states from the mandates of the Fourteenth Amendment runs headlong into that fact.

5. A constitutionally protected property interest instead turns on whether the "language of the statute conferring the benefit is framed in mandatory terms and whether [the] statute imposes substantive constraints on official discretion to award the benefit." *Med Corp. v. City of Lima*, 296 F.3d 404, 409 (6th Cir. 2002) (quotation marks omitted); *see also, e.g., Sterling v. Feek*, 150 F.4th 1235, 1250 (9th Cir. 2025) (stating that "[b]enefits provided by federal-state cooperative programs can create property interests even where state participation in the program is voluntary" and that "the relevant inquiry is not whether states have discretion to *participate* in [a CARES Act unemployment compensation]

program, but rather whether states have open-ended discretion[] to *award* [the] benefits." (quotation marks omitted)). As demonstrated below, the CARES Act is pervaded by mandatory language constraining state discretion to award PUA benefits, including express requirements for pre-deprivation due process.

Plaintiffs accordingly meet the first element of the test for a due process violation on both their PUA and UI claims.

6. Plaintiffs likewise meet the second element for both PUA and UI claims. Neither the district court nor the Defendants disputed that the Agency withheld or suspended each Plaintiff's unemployment benefits, or that such actions constituted "deprivations" for purposes of the due process analysis.

7. As to the third element, the district court erred in concluding that Plaintiffs had been given "adequate pre-deprivation procedural rights," *Cahoo I*, 912 F.3d at 900. All of the Agency's letters informing a Plaintiff of his or her ineligibility and rights of appeal were sent *after* payments had already been withheld or suspended. The Agency deprived each Plaintiff of their property interests before providing any process *at all*.

8. Yet the district court concluded that it "should consider pre-deprivation and post-deprivation procedures together" and that "in some cases post-deprivation review alone may be sufficient." Op. & Order, RE 142, Page.ID#7083. But in the specific context of unemployment benefits, the

Fourteenth Amendment requires both "adequate notice" and "opportunity for a hearing *before* [a claimant] is deprived of" such benefits, *Cahoo I*, 912 F.3d at 903 (quotation marks omitted), and where pre-deprivation due process is absent, post-deprivation remedies are "immaterial" to the constitutional due process analysis, *id*. at 903.

9. That error led the district court to rely largely on evidence of post-deprivation process provided by the Agency—in the form of Agency letters informing Plaintiffs of their ineligibility for benefits and their rights of appeal, but sent, in each case, *after* the payments had already been stopped.

10. The district court also found it "[s]ignificant[]" that the post-deprivation letters "explain that the Agency would continue making benefits payments to the claimants until the agency decision became final." Op. & Order, RE 142, Page.ID#7086. But it overlooked that, in each case, when Plaintiffs received those letters, the payments had already been stopped.

11. Finally, for purposes of qualified immunity, the constitutional right to pre-deprivation due process was "clearly established" when the deprivations at issue took place. *See Cahoo I*, 912 F.3d at 903 ("It has been nearly fifty years since the Supreme Court held that recipients have a protected property interest in unemployment compensation." (citing *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970)).

ARGUMENT

I. Standard of Review

Summary judgment is permissible where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A genuine dispute of material fact exists if a reasonable factfinder could resolve the matter in favor of the nonmoving party." *United States v. Kelly*, 92 F.4th 598, 601 (6th Cir. 2024). Courts view the facts and draw all reasonable inferences in favor of the non-movant, *Taylor v. City of Saginaw*, 11 F.4th 483, 486 (6th Cir. 2021) (citation omitted), and "review the district court's legal conclusions de novo and its factual findings for clear error," *Kellar v. Yunion, Inc.*, 157 F.4th 855, 868 (6th Cir. 2025).

II. Defendants Violated Plaintiffs' Constitutional Due Process Rights.

To establish a violation of their constitutional due process rights, "Plaintiffs must establish three elements: (1) that they have a property interest protected by the Due Process Clause; (2) that they were deprived of this property interest; and (3) that the state did not afford them adequate pre-deprivation procedural rights." *Cahoo I*, 912 F.3d at 900. Plaintiffs meet all three elements.

A. Element 1: Plaintiffs Have a Property Interest in UI and PUA Benefits Protected by the Fourteenth Amendment.

1. UI Benefits

"Recipients of unemployment compensation have constitutionally-protected

property interests in unemployment benefits." *Id.* (citing *Goldberg*, 397 U.S. at 262). Thus, "they may not be deprived of this right without due process." *Id*. (citation omitted). The district court agreed with respect to UI benefits, *see* Op. & Order, RE 142, Page.ID#7079, as did Defendants, *id*. ("Defendants do not dispute that individuals who qualify for traditional [UI] benefits have a property interest in those benefits." (citing Defs.' Mot. Summ. J., RE 110, Page.ID#3337)). With respect to UI benefits, then, it is undisputed that the "property interest" element is met.

2. PUA Benefits

PUA benefits are unemployment compensation benefits. *See* 15 U.S.C. § 9021(b) (referring to PUA benefits as "unemployment benefit assistance" and "unemployment compensation."). Accordingly, this Court's categorical declaration that "[r]ecipients of unemployment compensation have constitutionally-protected property interests in unemployment benefits," *Cahoo I*, 912 F.3d at 900, encompasses PUA benefits. The district court held otherwise because "participating states may, in their discretion, end their distribution of CARES Act benefits upon 30-days' written notice to the Secretary," and "'a benefit is not a protected entitlement if government officials may grant or deny it in their discretion.'" Op. & Order, RE 142, Page.ID#7079 (quoting *Gonzales*, 545 U.S. at 756). Respectfully, this reasoning is unsound.

i. The voluntary nature of state participation in the CARES Act is irrelevant.

The voluntary nature of state participation in the CARES Act provides no support for the district court's conclusion because state participation in *every* federally funded spending program is voluntary. Indeed, "Congress violates the Tenth Amendment if it compels a state to … implement a specific regulatory scheme." *Westside Mothers v. Haveman*, 289 F.3d 852, 859 (6th Cir. 2002) (citing *Printz v. United States,* 521 U.S. 898 (1997), and *New York v. United States*, 505 U.S. 144 (1992)); *see also, e.g., United States v. Stock*, 685 F.3d 621, 626 (6th Cir. 2012) (same). Because Congress "cannot coerce states" to participate in any federal benefits program, "a state is free to accept federal conditions by conforming to federal statutory requirement or can refuse to participate entirely." *Com. of Ky., Dep't of Hum. Res. v. Donovan*, 704 F.2d 288, 299 n.16 (6th Cir. 1983) (citation and quotation marks omitted). That is, for every such program, states "retain the ultimate decision" whether to participate, and "may elect to decline a federal grant." *New York*, 505 U.S. at 168.

Under the district court's reasoning, then, *no* federal-state spending program could establish a protected property interest in benefits due to the discretionary nature of state participation. That is clearly not the law. The sole Supreme Court case relied on by the district court for this point, for example, recognizes that Medicaid benefits "trigger[] due process protections," *Gonzales*, 545 U.S. at 767,

as does this Court, *see Hamby*, 368 F.3d at 559 (Medicaid benefits are a "protectable property interest" (citation omitted)). Yet "state participation in Medicaid is *purely voluntary*," *Planned Parenthood*, 73 F.3d at 636 (emphasis added). Similarly, the Social Security Act gives rise to "constitutionally-protected property interests in unemployment benefits," *Cahoo I*, 912 F.3d at 900 (citing *Goldberg*, 397 U.S. at 262). Yet state participation in that program is also discretionary, *see, e.g., Charles C. Steward Mach. Co.*, 301 U.S. at 589–90 (participation in Social Security Act unemployment compensation programs is the product of states' discretionary "choice"); *Carmichael v. S. Coal & Coke Co.*, 301 U.S. 495, 525–26 (1937) (same).

Indeed, *Goldberg* itself involved benefits conferred pursuant to "the federally assisted program of Aid to Families with Dependent Children (AFDC)," 397 U.S. at 256, which it held to be protected property interests, *see id*. at 262, notwithstanding that "AFDC is a matching grant program in which *state participation is voluntary*," *Coker v. Sullivan*, 902 F.2d 84, 86 (D.C. Cir. 1990) (R.B. Ginsburg, J.) (emphasis added); *see also Bowen v. Gilliard*, 483 U.S. 587, 605 (1987) (referring to state participation in "the entirely voluntary AFDC program").

In *Sterling*, 150 F.4th at 1249, the Ninth Circuit readily concluded that the CARES Act created protected property interests. Like the district court here, the

district court in *Sterling* held otherwise because state participation "may be terminated at the discretion of the States," *id*. at 1244. The Ninth Circuit reversed. It first endorsed this Court's categorical conclusion that "[r]ecipients of unemployment compensation have constitutionally-protected property interests in unemployment benefits," *id.* at 1249 (quoting *Cahoo I*, 912 F.3d at 900). It then explained that "[b]enefits provided by federal-state cooperative programs can create property interests even where state participation in the program is voluntary," *id*. at 1250, and set forth examples including the federal "food stamp program," the "Section 8 housing program," and "the Medicaid Act," *id*. "Accordingly, the relevant inquiry is not whether states have discretion to *participate* in [a CARES Act unemployment compensation] program, but rather whether states have open-ended discretion[] to *award* … [the] benefits." *Id*. (quotation marks omitted).

In focusing on whether the CARES Act allows states discretion to withdraw from the PUA program, the district court asked the wrong question. Michigan did not withdraw, and Plaintiffs did not assert a due process right to have the State continue to participate.[10]

[10] By asking the wrong question, the district court relied on inapposite cases involving states that had withdrawn their participation in CARES Act altogether, with claimants asserting a due process violation on *that* basis. *See* Op. & Order, RE 142, Page.ID#7079–7080 (citing *Dickerson v. Texas*, No. CV H-21-2729, 2021

ii. The CARES Act created protected property interests because it imposed mandatory constraints on participating states' discretion to award unemployment benefits.

Rather than the discretionary nature of state participation in the PUA program, the existence of the property interest asserted by Plaintiffs turns on whether the federal requirements with which the State agreed to comply *while it participated* in the PUA program establish such a property interest. *Cf. Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 433 (2004) ("State participation is voluntary; but once a State elects to join the program, it must administer a state plan that meets federal requirements."). That determination turns on whether the "language of the statute conferring the benefit is framed in mandatory terms and whether [the] statute imposes substantive constraints on official discretion to award the benefit." *City of Lima*, 296 F.3d at 409 (citation omitted); *see also, e.g., Ammon v. Welty*, 64

WL 4192740, at *3 (S.D. Tex. Sept. 15, 2021) (rejecting due process claims where "[t]he unemployment benefits here were not removed on an individual basis. The Governor made the discretionary decision to end the federal programs that allowed for additional benefits"); *Jackson v. Daniel*, No. 1:21-CV-1107-LY-SH, 2022 WL 1157656, at *4 (W.D. Tex. Apr. 18, 2022) (same); and *Moss v. Lee*, No. 3:21-CV-00561, 2022 WL 68388, at *2, 6 (M.D. Tenn. Jan. 6, 2022) (rejecting claim that state "had no authority to end [its] participation in the CARES Act benefit programs, and that doing so deprived [plaintiffs] of a property interest.")); *see also, e.g., Smith v. Reynolds*, 139 F.4th 631, 634, 636 (8th Cir. 2025) (rejecting same argument). And while the district court described a case arising in Michigan, *Witzke v. Donofrio*, as "holding that the CARES Act established no protectible property interest in PUA benefits," Op. & Order, RE 142, Page.ID#7081, *Witzke* holds no such thing, No. 20-12594, 2021 WL 22467 at *5 (E.D. Mich. Jan. 4, 2021) (rejecting due process claim "because, based on Plaintiff's application, he is not eligible to receive PUA benefits").

F.3d 662 (6th Cir. 1995) (property interest established where statute "uses mandatory language creating a substantive limitation on the actions of state officials"); *Sterling*, 150 F.4th at 1249 (CARES Act created property interests because it "uses mandatory language that requires participating states to award [unemployment] benefits to individuals who meet specific objective eligibility criteria." (quotation marks omitted)).[11]

The CARES Act PUA provision meets this standard. It set forth mandatory conditions under which the Secretary "shall provide" PUA benefits to individuals, 15 U.S.C. § 9021(b); the duration that such assistance "shall be available to a covered individual," *id*. at § 9021(c)(1); the monetary amount that the assistance "shall be" equal to, *id*. at § 9021(d)(1); and that "compensation under this Act shall be made … without any waiting period," *id*. at § 9021(e).

These mandates governed the actions of participating states "through agreements with States" entered by the Secretary, *id*. at § 9021(f)(1) (which Michigan entered, *see supra* pp. 9-10), and through the substantive terms of 20 C.F.R Part 625, which were expressly incorporated as part of the CARES Act's PUA requirements, *see* 15 U.S.C. § 9021(h). Part 625 sets forth: substantive,

[11] *Sterling* involved a companion CARES Act unemployment compensation provision, 15 U.S.C. § 9025, which restricted state discretion on terms similar to the PUA program. *See, e.g., id*. at § 9025(a)(2) (the state "will make payments … to individuals who" meet enumerated criteria).

nondiscretionary predicates under which "[a]n individual shall be eligible to receive a payment of [PUA]," 20 C.F.R. § 625.4(a)-(i); what "the amount of [PUA] payable to an unemployed worker … shall be," *id*. at § 625.6; the duration that benefits "shall be payable," *id*. at § 625.7; matters to which "State law shall be applied," *id*. at § 625.6(a)(1); that the "State agency shall promptly … determine whether an individual is entitled" to benefits and "the amount of [PUA] to which the individual is entitled," *id*. at § 625.9(b); and the timing under which "[f]ull payment … when due shall be made," *id*. at § 625.9(e); *see also, e.g., Freeze v. City of Decherd, Tenn.*, 753 F.3d 661, 666 (6th Cir. 2014) (stating that "a wide variety of courts have held that the use of the terms 'shall' or 'will' creates a binding obligation" subject to due process protections).

Not only do these provisions "impose[] substantive constraints on official discretion to award the benefit," *City of Lima*, 296 F.3d at 409 (citation omitted), they constrain state discretion to reconsider initial eligibility determinations, *see* 20 C.F.R. § 625.9(d), and mandate that those decisions be implemented pursuant to the same due process requirements that govern non-CARES Act unemployment benefits, *see id*. at § 625.15 ("[T]he right of individuals to [PUA benefits] shall be protected in the same manner and to the same extent as the rights of persons to regular unemployment compensation are protected[.]"); UIPL 16-20 Attachment I,

RE 134-45, Page.ID#6353 ("The provisions of the applicable state law that apply to claims for PUA include…Due Process to individuals[.]").

In sum, Michigan's participation in the CARES Act PUA program, like other federal-state spending programs, "is voluntary; but once a State elects to join the program, it must administer a state plan that meets federal requirements." *Hawkins*, 540 U.S. at 433. And those requirements give rise to property interests in PUA benefits because they are "framed in mandatory terms" that "impose[] substantive constraints on official discretion," *City of Lima*, 296 F.3d at 409 (citation omitted). The district court accordingly erred in granting summary judgment to Defendants on Plaintiffs' PUA claims.

B. Element 2: Defendants Deprived Plaintiffs of Property Interests in UI and PUA Unemployment Benefits.

For each Plaintiff, Defendants withheld or suspended unemployment compensation benefits based on "flags" placed on their claim by MiDAS. Defendants did not dispute these facts in the district court, or that in each case those acts amounted to a deprivation of the benefits. Nor did the district court. That Plaintiffs meet the second element of the test is therefore undisputed.

C. Element 3: Defendants Did Not Afford Plaintiffs Adequate Pre-Deprivation Due Process.

Defendants did not dispute below that they failed to provide pre-deprivation due process to each of the Plaintiffs. They instead disputed the existence of any

"authority that claimants are entitled to a pre-deprivation hearing when it comes to unemployment benefits," Defs.' Mot. Summ. J., RE 110, Page.ID#3340; *see also* Op. & Order Mot. Dismiss, RE 33, Page.ID#1210 (stating Defendants' position that the law "does not require a pre-deprivation hearing" before unemployment benefits are terminated (citation omitted)). Defendants' position is at war with controlling precedents of this Court and the Supreme Court.

The Fourteenth Amendment mandates that once an individual is deemed eligible to receive unemployment benefits, "[t]he root requirement of the Due Process Clause" is that he is entitled to "adequate notice" and "opportunity for a hearing *before* he is deprived of" such benefits, *Cahoo I*, 912 F.3d at 903 (quoting *Loudermill*, 470 U.S. at 542). And subjecting such a recipient to a "deprivation of property rights without pre-deprivation notice and a hearing … violate[s] the Constitution" *Cahoo II*, 71 F.4th at 409 (quotation marks omitted); *see also, e.g., Merck v. Walmart, Inc*, 114 F.4th 762, 781 (6th Cir. 2024) (discussing rights to government-conferred benefits and stating that "[t]hose rights are strong; that's why it's important to ensure the government provides due process before depriving someone of those rights." (citing *Goldberg*, 397 U.S. at 261-63)). Accordingly, "depriving Plaintiffs of their property interests without adequate notice or a meaningful opportunity to be heard violate[s] due process" and renders post-

deprivation remedies "immaterial to the question of whether the Individual Agency Defendants violated Plaintiffs' due process rights." *Cahoo I*, 912 F.3d at 903–04.

The relevant statutes track these immutable mandates of the Constitution, as they must.

First, under the Social Security Act, once an individual is "ruled eligible for benefits," a "pretermination hearing" is required before a state may withhold those benefits. *Java*, 402 U.S. at 123–24. As the Department's binding directive makes clear, if a state has reason to question an individual's eligibility, "the state *may not suspend or delay payment before the individual is notified of the issue and has an opportunity to be heard, and the state makes an official determination that the payment was improper*." UIPL 01-16, RE 75-30, Page.ID#2118 (emphasis added).[12]

Second, MESA adheres to these requirements of the Social Security Act and the Fourteenth Amendment. Indeed, the Agency has acknowledged—contrary to Defendants' position below—that under MESA "benefits once allowed … *cannot be discontinued unless* a (***re***)determination, ALJ, Michigan Compensation Appellate Commission … or Court decision is issued holding the claimant

[12] As noted above, *supra* p. 13, Defendants admit that seven of the Plaintiffs were subjected to "a suspension of weekly benefits … *without being issued a determination or redetermination regarding the reason for the suspension*," Pls.' Reply Supp. Mot. Summ. J., RE 88, Page.ID#2660 (emphasis omitted).

ineligible or disqualified." UIA Manual Section 7902, RE 134-40, Page.ID#6291 (emphasis added) (citing *Java*, 402 U.S. at 121). As Defendant Burns has stated, for claimants already deemed eligible, "payment is due and cannot be stopped … until the suspicion (issue) is investigated and a determination issued," Feb. 1, 2021 Burns Email, RE 134-21, Page.ID#6130–6131; *see also* Jan. 22, 2020 Mem. of Director Gray at 4 n.9 (Under *Java*, payments must "continue until due process [is] exhausted.").[13]

Third, the CARES Act incorporates these same due process requirements. *See* 20 C.F.R. § 625.15 (rights to PUA benefits "shall be protected … to the same extent as the rights of persons to regular unemployment compensation are protected under the applicable State law."); 20 C.F.R. § 625.10(e)(2) ("The provisions on right of appeal and opportunity for hearing and review with respect to applications for [PUA] shall be consistent with … the Social Security Act[.]"). *See also* UIPL 16-20 Attachment I, RE 134-45, Page.ID#6353 ("The provisions of the applicable state law that apply to claims for PUA include…Due Process to individuals … [and] [d]eterminations, redeterminations, appeals, and hearings.").

In *Cahoo II*, this Court found that, while the claimants there had been deprived of unemployment benefits, they had received due process because the Agency had provided "notice and an opportunity for a hearing before any of those

[13] PA_225_of_2017_Sec_54_g1_Identity_Theft_Annual_Report_2019_12220.pdf

later property deprivations occurred." 71 F.4th at 407; *see also id*. at 409 (The Agency sent "notices of determination and multiple levels of appeal *before* any immediate consequences for property rights."). In so finding, the Court expressed "no second thoughts" about its holding in *Cahoo I* that providing claimants with only post-deprivation notice and an opportunity to be heard would have "violate[d] their due process rights," *id*. at 407 (quoting *Cahoo I*, 912 F.3d at 904); *see also id*. at 409 (endorsing district court's reasoning that "[t]he State defendants cannot rely on post-deprivation process to remedy the lack of pre-deprivation notice." (quotation marks omitted)). Defendants' actions, as explained next, fall squarely within what this Court held in *Cahoo I* and reaffirmed in *Cahoo II* to be unconstitutional.

1. No Plaintiff Received Pre-Deprivation Notice and an Opportunity to be Heard.

Here, all Plaintiffs were deprived of their property interests in unemployment benefits before the Agency provided notice of its determination calling their eligibility into question, an opportunity to be heard, and a final determination of ineligibility. The district court did not reach the issue of whether Plaintiffs had been given due process with respect to PUA claims due to its conclusion that the CARES Act did not confer protected property interests. *See* Op. & Order, RE 142, Page.ID#7077 n.6. For the Plaintiffs with UI claims, the district court concluded that they had received due process. *Id*. at Page.ID#7082–7084.

However, as addressed next, for both UI and PUA benefits, the Agency provided Plaintiffs no pre-deprivation process *at all*.

UI Claimants

Plaintiff Patricia Myrold. The Agency confirmed Ms. Myrold's eligibility on May 13, 2020. P. Myrold Docs., RE 134-54, Page.ID#6480, commenced her payments on May 12, 2020, and issued three payments between that date and May 27, 2020, *id*. at Page.ID#6484. Her payments thereafter were suspended because her claim was flagged by MiDAS for "additional claim required," *id*., which is among the flags that, as Defendants acknowledge, "result in *immediate halt* in benefit payments," Defs.' Resp. to Interrog. 11, RE 134-18, Page.ID#6123 (emphasis added). For the flagged weeks prior to August 1, 2020, Ms. Myrold has never been paid, P. Myrold Docs., RE 134-54, Page.ID#6484, and no notice of determination was ever issued regarding her alleged ineligibility for those weeks. As noted above, *supra* p. 13, Defendants acknowledge that Ms. Myrold was subject to "a suspension of weekly benefits … without being issued a determination or redetermination regarding the reason for the suspension." Pls.' Reply Supp. Mot. Summ. J., RE 88, Page.ID#2660.

The record is devoid of any evidence (and Defendants have not claimed) that Ms. Myrold received "notice" and "opportunity for a hearing *before* [she was] deprived of" those benefits, *Cahoo I*, 912 F.3d at 903. Accordingly, Ms. Myrold

was subject to a "deprivation of property rights without pre-deprivation notice and a hearing," which "violate[s] the Constitution," *Cahoo II*, 71 F.4th at 409 (citation omitted).

Plaintiff Andrew Myrold. The Agency confirmed Mr. Myrold's eligibility on May 13, 2020 (with his eligibility backdated to March 15), A. Myrold Docs., RE 134-53, Page.ID#6456. It issued his first payment the previous day, *id*. at Page.ID#6457 ("Payment Issued on 5/12/2020" for backdated March pay period). Mr. Myrold was then flagged by MiDAS for "additional claim required," *id*., which is among the flags that Defendants acknowledge "result in immediate halt in benefit payments," Defs.' Resp. to Interrog. 11, RE 134-18, Page.ID#6123. His benefits for the April 18 to July 4, 2020 period were then stopped, A. Myrold Docs., RE 134-53, Page.ID#6457 (showing "0.00" in payments for that date range). For the flagged weeks up to July 4, 2020, Mr. Myrold has never been paid and no notice of determination has ever issued.

The record is again devoid of evidence (and Defendants have not claimed) that Mr. Myrold received "notice" and "opportunity for a hearing *before* [he was] deprived of" those UI benefits, *Cahoo I*, 912 F.3d at 903. To the contrary, as noted above, *supra* p. 13, Defendants admitted that Mr. Myrold was subjected to "a suspension of weekly benefits … without being issued a determination or redetermination regarding the reason for the suspension." Pls.' Reply Supp. Mot.

Summ. J., RE 88, Page.ID#2660 (emphasis omitted). Mr. Myrold was therefore subject to a "deprivation of property rights without pre-deprivation notice and a hearing," which "violate[s] the Constitution," *Cahoo II*, 71 F.4th at 409 (citation omitted).

Plaintiff Kreps. Mr. Kreps applied for UI benefits on April 15, 2020, and the Agency confirmed his eligibility on August 5, 2020. Kreps Docs., RE 134-47, Page.ID#6375. However, the Agency withheld his payments because his account had been flagged for "stop payment" and "Fraud Investigation" by the MiDAS system, *id.* at Page.ID#6389, 6395, which are among the indicators that "result in immediate halt in benefit payments," Defs.' Resp. to Interrog. 11, RE 134-18, Page.ID#6123. Mr. Kreps complied with the Agency's requests to verify his identity, *see* Kreps Docs., RE 134-47, Page.ID#6376, and the Agency issued a redetermination in April 2021 confirming his identity and eligibility, Defs.' Exs. Mot. Summ. J., RE 118, Page.ID#4205.

That redetermination stated that Mr. Kreps was eligible for unemployment benefits and that, "[i]n accordance with [MESA,] benefits payable as result of this determination *will be paid* even though an appeal may be filed at a later date." *Id.* at Page.ID#4206 (emphasis added). Despite that redetermination, Mr. Kreps' payments remained suspended due to the "stop payment" flag on his file. It was not until March 4, 2022—i.e., nearly a year *after* the Agency confirmed his identity

and his eligibility—that the Agency requested further information before the "outstanding benefit payments due to [Mr. Kreps]" could be paid. *Id*. at Page.ID#4207.[14]

The record is devoid of evidence that Mr. Kreps received notice or an opportunity to be heard before the Agency began to withhold his payments, even after re-confirming his eligibility in April 2021. Mr. Kreps therefore received neither "notice" nor "opportunity for a hearing *before* [being] deprived of" those benefits, *Cahoo I*, 912 F.3d at 903, which "violate[s] the Constitution," *Cahoo II*, 71 F.4th at 409 (citation omitted).

PUA Claimants

Plaintiff Quigg. On July 20, 2020, the Agency notified Ms. Quigg of her eligibility for PUA benefits, Quigg Docs., RE 134-55, Page.ID#6489, and commenced payments on July 23, 2020, *id.* at Page.ID#6494 ("Payment … issued 7/23/2020"). Ms. Quigg's PUA claim was then flagged by MiDAS for a "benefit payment review," *id.* at Page.ID#6491 ("28-Aug-2020 … account under benefit payment review"), which is among the flags that Defendants acknowledge "result in immediate halt in benefit payments," Defs.' Resp. to Interrog. 11, RE 134-18,

[14] The district court appears to have understood this letter to have been sent roughly a year earlier in April 2021. Op. & Order, RE 142, Page.ID#7087 n.9. That is incorrect. *See* Defs.' Exs. Mot. Summ. J., RE 118, Page.ID#4207 (showing letter dated March 4, 2022).

Page.ID#6123. Her payments were immediately halted, *see* Quigg Docs., RE 134-55, Page.ID#6494 (showing payment stopped after week of August 29, 2020).

The record is devoid of evidence (and Defendants have not claimed) that Ms. Quigg received "notice" and "opportunity for a hearing *before* [she was] deprived of" those benefits, *Cahoo I*, 912 F.3d at 903. Indeed, as noted above, *supra* p. 13, Defendants admitted that they gave her no notice at all and that Ms. Quigg was subject to "a suspension of weekly benefits … without being issued a determination or redetermination regarding the reason for the suspension." Pls.' Reply Supp. Mot. Summ. J., RE 88, Page.ID#2660 (emphasis omitted).

In fact, it was not until March 25, 2021—six months *after* the Agency suspended her payments—that it issued the first adverse determination on Ms. Quigg's PUA claim, Quigg Docs., RE 134-55, Page.ID#6490 ("25-Mar-2021 … rejected BPR, denied PUA[.]"). The next day, the Agency "advised [her] to protest [that] determination," *id*., but post-deprivation process is "immaterial" to the constitutional analysis if pre-deprivation due process has been denied, *Cahoo I*, 912 F.3d at 903. Ms. Quigg was therefore subject to a "deprivation of property rights without pre-deprivation notice and a hearing," which "violate[s] the Constitution," *Cahoo II*, 71 F.4th at 409 (citation omitted).

Plaintiff Boudrie. The Agency confirmed Ms. Boudrie's eligibility for PUA benefits on April 23, 2020. Boudrie Docs., RE 92-2, Page.ID#2733, and payments

commenced on April 11, 2020, *id*. at Page.ID#2734 (showing payments commenced "11-Apr-2020"). The Agency then stopped her payments on August 29, 2020. *Id*. ("No Payment Issued[.]"). The record is devoid of any evidence (and Defendants have not claimed) that Ms. Boudrie received "adequate notice" and "opportunity for a hearing *before* [she was] deprived of" those PUA benefits. *Cahoo I*, 912 F.3d at 903.

Instead, it was not until November 6, 2020—more than two months *after* the cessation of her payments—that Ms. Boudrie was informed that "you do not meet the PUA eligibility requirements" and that "[t]his determination is effective beginning 05-Apr-2020." Defs.' Exs. Mot. Summ. J., RE 118, Page.ID#4360. That November 6 determination informed her of her "right to protest requesting a redetermination" *id*. at Page.ID#4361, but by then her payments had already been stopped, Boudrie Docs., RE 92-2, Page.ID#2734 ("29-Aug-2020 … No Payment Issued[.]"). Ms. Boudrie was therefore subject to a "deprivation of property rights without pre-deprivation notice and a hearing," which "violate[s] the Constitution" *Cahoo II*, 71 F.4th at 409 (citation omitted).

Plaintiff Holifield. The Agency approved Ms. Holifield's eligibility for PUA benefits on April 23, 2020, Holifield Docs., RE 92-2, Page.ID#2771, and payments commenced two days later, *id*. at Page.ID#2772 ("Payment issued on 4/25/2020"). Payments were suspended in July 2020. Add'l Holifield Docs., RE 134-52,

Page.ID#6448 (showing no payments after July 1, 2020, until February 6, 2023). Her claim had been flagged with a nonmonetary indicator ("NMI"), *see id.* at 6450 ("29-Sep-2020 claimant called to see if she can get her NMIs expedited[.]")—which is among the flags that Defendants admit "result in immediate halt in benefit payments," Defs.' Resp. to Interrog. 11, RE 134-18, Page.ID#6123 (listing "open nonmon [nonmonetary issue] exists").

The Agency did not provide notice of its determination of her ineligibility until October 16, 2020, roughly three months *after* halting her payments. *See* Add'l Holifield Docs., RE 134-52, Page.ID#6449. While that document informed her of her "Protest Rights," *id*., post-deprivation process is "immaterial" to the constitutional analysis if pre-deprivation process has been denied, *Cahoo I*, 912 F.3d at 903. As noted above, *supra* p. 13, Defendants admitted that Ms. Holifield was subjected to "a suspension of weekly benefits … without being issued a determination or redetermination regarding the reason for the suspension," Pls.' Reply Supp. Mot. Summ. J., RE 88, Page.ID#2660 (emphasis omitted).

The record contains no evidence (and Defendants have not claimed) that Ms. Holifield received "adequate notice" and "opportunity for a hearing *before* [she was] deprived of" those PUA benefits, *Cahoo I*, 912 F.3d at 903. The record instead confirms that she was subject to a "deprivation of property rights without

pre-deprivation notice and a hearing," which "violate[s] the Constitution" *Cahoo II*, 71 F.4th at 409 (citation omitted).

In July of 2022, the Michigan Unemployment Insurance Appeals Commission (UIAC) vacated the Agency's determination of Ms. Holifield's ineligibility (and an ALJ's decision affirming it) as erroneous. Defs.' Exs. Mot. Summ. J., RE 118, Page.ID#4377–4379.

Plaintiff Brainer. The Agency informed Mr. Brainer of his eligibility for PUA benefits on April 22, 2020, Brainer Docs., RE 134-49, Page.ID#6413, and commenced payments on May 12, 2020. Add'l Brainer Docs., RE 92-2, Page.ID#2741 ("Payment issued on 5/12/2020[.]"). On April 18, 2021, MiDAS flagged Mr. Brainer's account for Stop refund/Benefit Payment Review, Brainer Docs., RE 134-49, Page.ID#6417—which is again among the indicators "that result in immediate halt in benefit payments," Defs.' Resp. to Interrog. 11, RE 134-18, Page.ID#6123—and payments immediately halted, Brainer Docs., RE 134-49, Page.ID#6428 (showing April 17, 2021 as last week of payments). Yet the Agency issued no notice of its determination of Mr. Brainer's ineligibility until more than six months later on December 3, 2021. *Id*. at Page.ID#6424. As noted above, *supra* p. 13, Defendants admitted that Mr. Brainer was subjected to "a suspension of weekly benefits … without being issued a determination or redetermination

regarding the reason for the suspension." Pls.' Reply Supp. Mot. Summ. J., RE 88, Page.ID#2660 (emphasis omitted).[15]

The record is devoid of evidence (and Defendants have not claimed) that Mr. Brainer received "adequate notice" and "opportunity for a hearing *before* [he was] deprived of" those PUA benefits, *Cahoo I*, 912 F.3d at 903, which "violate[s] the Constitution" *Cahoo II*, 71 F.4th at 409 (citation omitted).

Plaintiff Foster. The Agency informed Ms. Foster of her eligibility for PUA benefits on April 23, 2020, Foster Docs., RE 134-51, Page.ID#6435, and commenced payments that day, *id*. at Page.ID#6437 ("Payment … issued 4/23/2020[.]"). On December 14, 2020, MiDAS flagged her account for "Fraud Investigation" Related to "ID Theft," *id*. at Page.ID#6439, which is among the indicators "that result in immediate halt in benefit payments," Defs.' Resp. to Interrog. 11, RE 134-18, Page.ID#6123, and the Agency then immediately halted her payments. Foster Docs., RE 134-51, Page.ID#6436 (showing no payments after week of December 12, 2020).

Once again, the record is devoid of evidence (and Defendants have not claimed) that Ms. Foster received "adequate notice" and "opportunity for a hearing *before* [she was] deprived of" those PUA benefits, *Cahoo I*, 912 F.3d at 903. As

[15] The Agency also initiated collection activity with a "Monthly Statement" on April 4, 2022. Brainer Docs., RE 134-49, Page.ID#6427. Thereafter, Mr. Brainer's tax refund was intercepted and the State seized $532. *Id.* at Page.ID#6429.

noted, *supra* p. 13, Defendants admitted that Ms. Foster was subjected to "a suspension of weekly benefits … without being issued a determination or redetermination regarding the reason for the suspension." Pls.' Reply Supp. Mot. Summ. J., RE 88, Page.ID#2660 (emphasis omitted).

Indeed, the Agency provided no notice of its determination of her ineligibility until April 20, 2021—roughly four months *after* halting her payments. *See* Foster Docs., RE 134-51, Page.ID#6441 (referencing Apr. 20, 2021 redetermination). Thus, Ms. Foster was subject to a "deprivation of property rights without pre-deprivation notice and a hearing," which "violate[s] the Constitution," *Cahoo II*, 71 F.4th at 409 (citation omitted).

On July 29, 2022, the UIAC ruled that the Agency's April 2021 redetermination finding Ms. Foster ineligible (as upheld by an ALJ) had been in error and that she "is eligible for PUA benefits," Foster Docs., RE 134-51, Page.ID#6441. In January of 2024, the Agency closed out Ms. Foster's claim without responding to her inquiry about unpaid weeks. *Id*. at Page.ID#6445.

Plaintiff Shipe. The Agency informed Ms. Shipe of her eligibility for PUA benefits on October 9, 2020, Shipe Docs., RE 134-56, Page.ID#6503. She did not receive her first scheduled payment or any thereafter. *Id.* at Page.ID#6504 (showing $0.00 in benefit payments were issued in 2020, and that all weeks remained "pending payment").

The record is devoid of evidence that Ms. Shipe received an opportunity to be heard before she was deprived of her first scheduled payment, and the Agency had made no determination of ineligibility. Instead, her payments were withheld because MiDAS flagged her claim, *id.* at Page.ID#6505 ("13-Nov-2020 … Reasonable suspicion."). Withholding her payments at that juncture contravened the requirement that, where a claimant's eligibility is called into question, "[i]f a determination of ineligibility has not yet been made …. there is a presumption of continued eligibility and benefit payments must be issued timely," UIPL 01-16 Change 1, RE 75-33, Page ID # 2146–47; *see also* UIPL 01-16, RE 75-30, Page.ID#2118 ("[T]he state may not suspend *or delay* payment before the individual is notified of the issue and has an opportunity to be heard[.]" (emphasis added)).

Despite these clear requirements of the law, not until roughly three months *after* it began withholding Ms. Shipe's payments did the Agency issue a determination of ineligibility. Shipe Docs., RE 134-56, Page.ID#6505 ("07-Jan-2021 PUA denied[.]"). Indeed, Defendants admitted that Ms. Shipe was subjected to "a suspension of weekly benefits … without being issued a determination or redetermination regarding the reason for the suspension." Pls.' Reply Supp. Mot. Summ. J., RE 88, Page.ID#2660 (emphasis omitted).

Thus, Ms. Shipe did not receive "adequate notice" and "opportunity for a hearing *before* [she was] deprived of" her PUA benefits, *Cahoo I*, 912 F.3d at 903. Instead, she was subject to a "deprivation of property rights without pre-deprivation notice and a hearing," which "violate[s] the Constitution" *Cahoo II*, 71 F.4th at 409 (citation omitted).

In December 2022, an ALJ reversed the Agency's determination of Ms. Shipe's ineligibility. Shipe Docs., RE 134-56, Page.ID#6505 ("06-Dec-2022 ALJ allowed PUA claim[.]").

III. The District Court's Errors of Law on the Third Element of the Due Process Analysis

The district court erred in three important ways in concluding that Plaintiffs received due process. It (1) misstated the governing legal framework; which led it to (2) grant summary judgment to Defendants based on immaterial *post*-deprivation evidence of the process afforded to Plaintiffs; and (3) took at face value standard language in Agency correspondence promising continued payments pending the exhaustion of due process that the evidence contradicts.

A. The District Court Misstated the Governing Legal Framework.

The district court relied on *Shoemaker v. City of Howell*, 795 F.3d 553, 559 (6th Cir. 2015), for the proposition that, pursuant to *Mathews v. Eldridge*, 424 U.S. 319 (1976), courts analyzing the adequacy of procedural due process under the Fourteenth Amendment

> should consider pre-deprivation and post-deprivation procedures together; where "elaborate procedures for post[-]deprivation review are in place, less elaborate pre[-]deprivation process may be required," and *in some cases post-deprivation review alone may be sufficient.*

Op. & Order, RE 142, Page.ID#7083 (emphasis added). That approach to the due process analysis is foreclosed here. *Shoemaker* involved a challenge to a municipal fine imposed for inadequate lawn maintenance. *See* 795 F.3d at 556–58. This Court has squarely held that in the specific context of unemployment benefits, a claimant is entitled to "adequate notice" and "opportunity for a hearing *before* he is deprived of" such benefits, and where that has not occurred, post-deprivation remedies are "immaterial" to the constitutional due process analysis. *Cahoo I*, 912 F.3d at 903 (citation omitted). As a matter of law, a deprivation of unemployment benefits "without pre-deprivation notice and a hearing … violate[s] the Constitution." *Cahoo II*, 71 F.4th at 409 (citation omitted). *Cahoo I* and *Cahoo II* control here, and the district court had no authority to depart from their reasoning.

B. The District Court Relied on Post-Deprivation Evidence.

Having erroneously concluded that evidence of post-deprivation process is material to its analysis, the district court relied on post-deprivation notice letters sent to Plaintiffs by the Agency. It stated that "all of the named Plaintiffs received at least three notice letters entitled: (i) Monetary Determination Plus Important Claim Information; (ii) Notice of Determination; and (iii) Notice of

Redetermination." Op. & Order, RE 142, Page.ID#7083 (quotation marks omitted). It further stated that "these letters contained a section that described the steps a recipient could take if that individual disagreed with the contents of the letter." *Id*. at Page.ID#7084. However, in evaluating the letters, the district court, which declined to hear oral argument, *see id.* at Page.ID#7074 n.3, overlooked the dispositive distinction between pre-deprivation and post-deprivation process.

For example, it relied on the October 6, 2020, Notice of Redetermination that the Agency sent to Mr. Myrold informing him that "[y]ou are ineligible for benefits … beginning July 5, 2020," Defs.' Exs. Mot. Summ. J., RE 118, Page.ID#4231–4232. According to the district court, that letter (which it viewed as exemplary of redetermination letters sent to Plaintiffs), "set forth clear instructions regarding how a Plaintiff could submit an appeal, including the manner of submitting the appeal, an invitation to submit attachments in support of the appeal, and the applicable deadlines." Op. & Order, RE 142, Page.ID#7084. But Mr. Myrold received that letter *after* the Agency had terminated his benefits in May 2020 (and never received *any* notice regarding his suspended benefits for weeks before July 5, 2020), *see supra* p. 35. And all other UI plaintiffs likewise received such letters only after their payments had stopped, *see supra* pp. 34–37. Any such letters therefore relate to post-deprivation process, which is "immaterial" to the

relevant constitutional analysis. *Cahoo I*, 912 F.3d at 903. The district court erred in concluding otherwise.

It likewise erred in relying on the May 22, 2020, Notice of Determination, Defs.' Exs. Mot. Summ. J., RE 118, Page.ID#4212–13, and the July 20, 2020 Notice of Redetermination, *id*. at Page.ID#4214-15, that the Agency sent to Ms. Quigg. *See* Op. & Order, RE 142, Page.ID#7085. Both notices informed her that she was "disqualified for benefits," Defs.' Exs. Mot. Summ. J., RE 118, Page.ID#4212, 4214, and the district court noted that the May 22 notice "explains her right to obtain review of the decision and the requirements for doing so," and that the July 20 notice also "explains how and when to submit an appeal of the decision," Op. & Order, RE 142, Page.ID#7085. However, those letters pertained to Ms. Quigg's *UI benefits*, which were not the basis of her claim before the district court. Her claim pertained to PUA benefits. 2d Am. Compl., RE 36, Page.ID#1265–1266. As established above, Ms. Quigg received no such notice prior to the stoppage of her PUA benefits. *See supra* pp. 37–38.

The only pre-deprivation letter relied on by the district court is the Agency's August 5, 2020, Monetary Determination letter to Mr. Kreps, Defs.' Exs. Mot. Summ. J., RE 118, Page.ID#4157–4158, which the district court noted "set forth the steps that a claimant could take to obtain further review of the Agency's determination … and the manner to submit such protests." Op. & Order, RE 142,

Page.ID#7084. But that letter notified Mr. Kreps of his *eligibility* for benefits. *See* Defs.' Exs. Mot. Summ. J., RE 118, Page.ID#4157–4158 ("You are able to establish a claim for unemployment benefits," and "it is determined that you are eligible[.]"). That the letter then states that "[i]f you disagree with *this determination* you have the right to protest requesting a redetermination," *id*. at Page.ID#4158 (emphasis added), self-evidently does not constitute notice and an opportunity to be heard regarding the entirely *different* action by the Agency upon which Mr. Kreps' bases his claim—namely, its subsequent withholding of his benefits. To be sure, as the district court noted, on October 12, 2020, the Agency notified Mr. Kreps (in a determination it later reversed) that he was "not eligible for benefits" because he had not adequately verified his identity, Defs.' Exs. Mot. Summ. J., RE 118, Page.ID#4159–4160; *see also* Op. & Order, RE 142, Page.ID#7086–87. But that notice was provided to Mr. Kreps *after* the Agency was already withholding his payments. *See supra* pp. 36–37. It is therefore post-deprivation process and is "immaterial" to the relevant constitutional analysis. *Cahoo I*, 912 F.3d at 903. The district court again erred in relying on it.

The district court further noted that "[n]ot only did Plaintiffs receive the notice letters, they also all undertook, to varying degrees of success, one or more steps of the protest and/or appeal processes," and it faulted various Plaintiffs for allegedly not fully partaking of those processes, Op. & Order, RE 142,

Page.ID#7086–87. But as established above *supra* pp. 34–45, all of that process occurred post-deprivation and was therefore "immaterial" to the relevant constitutional analysis. *Cahoo I*, 912 F.3d at 903.

Thus, the district court's conclusion that, "on balance, the letters provided Plaintiffs with adequate notice and an opportunity to be heard regarding each step of the way in the Agency's determination process," Op. & Order, RE 142, Page.ID#7084, overlooks the only "step of the way" that is legally material—namely, the process provided *pre*-deprivation, of which there was none.

Finally, and relatedly, the district court erred when it agreed with Defendants that

> the process set forth in their Notice letters follows the process and procedure they are required to follow under state law. Mich. Comp. Laws § 421.32a sets forth that the Agency must undertake a review when an applicant requests one, and then must make a determination or redetermination itself or refer the matter to an administrative law judge. This, Defendants argue, is exactly the process they provided. The Court agrees.

Op. & Order, RE 142, Page.ID#7080 (citation omitted).

This statement accurately sets forth the requirements of Section 421.32a of MESA. But it overlooks entirely the prohibition imposed by the Fourteenth Amendment and the relevant statutes, including MESA, against suspending benefits *while* those required processes are undertaken. *See supra* pp. 5–10, 30–33.

IV. The District Court's Clear Error of Fact on the Third Element of the Due Process Analysis

The district court erred as a factual matter in concluding that Plaintiffs had received pre-deprivation process consistent with the Fourteenth Amendment. According to the court:

> Significantly, the letters explain that the Agency would continue making benefits payments to the claimants until the agency decision became final. For example, Quigg's notice of determination letter states: "In accordance with the provisions of [MESA], benefits payable because [of] this determination [sic] will be paid, even though a protest may be filed later."

Op. & Order, RE 142, Page.ID#7086 (quoting May 22, 2020, Notice of Determination for Ms. Quigg, Defs.' Exs. Mot. Summ. J., RE 118, Page.ID#4213). Therefore, according to the district court, "Plaintiffs were not deprived of benefits before they had notice and an opportunity to be heard." *Id*. The district court referred to identical language in a letter to Mr. Kreps as a "decision in Kreps' favor," *id.* at Page.ID#7087.

This language (promising that benefits "will be paid" while the claimant exhausts due process) indeed appeared in the letters relied on by the district court, and it is an accurate statement of the requirements of state and federal law. But the district court erred in overlooking the fact that the Agency did not actually comply with those requirements. As demonstrated above, in each case, the Agency had already stopped Plaintiffs' payments when it sent the letters containing that

promise. *See supra* pp. 34–45. The Agency's after-the-fact promise that benefits "will be paid" pending the exhaustion of due process, then, was broken the moment it was made, rendering it meaningless for purposes of the constitutional due process analysis. The district court committed a clear error of fact in concluding that the "will be paid" language in the letters evidenced the actual actions of the Agency when the record evidence establishes that the opposite was true.

* * *

In sum, for both UI and PUA claims, Plaintiffs have established the three requisite elements of a constitutional due process violation. The district court erred in granting summary judgment to Defendants.

V. The Right to Pre-Deprivation Due Process Was "Clearly Established" for Qualified Immunity Purposes.

The district court denied the individual Defendants' motion to dismiss based on qualified immunity, finding (without distinguishing between PUA and UI benefits) that Plaintiffs' constitutional right to pre-deprivation notice and an opportunity to be heard was "clearly established," Op. & Order Mtn. Dismiss, RE 33, Page.ID#1211 (quoting *Cahoo I*, 912 F.3d at 903), but reserved for summary judgment the factual question whether the conduct of the individual Defendants had violated that right, *see id*. at Page.ID#1212. The district court then declined to

address qualified immunity at summary judgment, Op. & Order, RE 142, Page.ID#7088 n.10, but this Court may do so, to the extent it involves "a question of law," *City Mgmt. Corp. v. U.S. Chem. Co.*, 43 F.3d 244, 255 (6th Cir. 1994); *see also Lundblad v. Celeste*, No. 84-3561, 1985 WL 13590, at *3 (6th Cir. 1985) ("[T]his Court may … resolve a question of law that the district court below did not address.").

A claim of qualified immunity involves a two-step analysis: "First, taken in the light most favorable to the party asserting the injury, do the facts alleged show that the officer's conduct violated a constitutional right? Second, is the right clearly established? … This Court may address these prongs in either order." *Cahoo I*, 912 F.3d at 897 (quotation marks and citations omitted).

The first question involves factual inquiry into Defendants' conduct. *See, e.g., Johnson v. Jones*, 515 U.S. 304, 313–14 (1995) (describing same as a question of "evidence insufficiency"). The parties disputed the relevant facts below (*see* Pls.' Resp. Opp. Defs.' Mot. Summ. J., RE 129, Page.ID#5437–5448; Defs.' Mot. Summ. J., RE 110, Page.ID#3353–3358) and the district court did not resolve those factual disputes because it declined to address qualified immunity on summary judgment. The "clearly established" inquiry, however, is a "purely legal issue," *Johnson*, 515 U.S. at 313, that this Court can resolve by reaffirming what it has already held in *Cahoo I* and *Cahoo II*:

> Plaintiffs' rights to adequate notice and a pre-deprivation hearing were clearly established. The Supreme Court long-ago proclaimed that "the root requirement' of the Due Process Clause [is] that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest." *Loudermill*, 470 U.S. at 542 (emphasis in original). It has been nearly fifty years since the Supreme Court held that recipients have a protected property interest in unemployment compensation. *See Goldberg*, 397 U.S. at 262 (citing *Sherbert* [*v. Verner*], 374 U.S. 398 [(1963)]) …. Therefore, every reasonable Agency employee should have known that depriving Plaintiffs of their property interests without adequate notice or a meaningful opportunity to be heard violated due process.

Cahoo I, 912 F.3d at 903 (citation and quotation marks omitted); *see also Cahoo II*, 71 F.4th at 411 ("[W]e embrace our court's initial clearly established ruling.").

Defendants may argue that *Cahoo I*'s clearly established ruling does not encompass unemployment compensation under the CARES Act. But nothing in that ruling turned on the specifics of the statute under which the benefits arose; indeed, no such statutes are mentioned in the opinion. *Cahoo I* instead addresses "unemployment compensation" categorically, 912 F.3d at 903, and both Social Security Act and CARES Act benefits fall within that category, *see* 42 U.S.C. § 503(a) (referring to Social Security Act benefits as "unemployment compensation"); 15 U.S.C. § 9021(b) (referring to CARES Act PUA benefits as "unemployment benefit assistance" and "unemployment compensation.").

Cahoo I's categorical approach is underscored by its reliance on *Goldberg*, which holds, also categorically, that the Fourteenth Amendment's notice and a pre-termination hearing requirements "apply … to disqualification for unemployment

compensation," 397 U.S. at 262. And the case *Goldberg* cites for that categorical principle involved unemployment benefits under a South Carolina statute, with no material mention of the Social Security Act. *See Sherbert*, 374 U.S. at 399–400. *Cahoo II* confirms that "cases like *Goldberg* … gave Agency supervisors fair warning that the midstream deprivation of [unemployment] benefits without process violated the Constitution." 71 F.4th at 409 (quotation marks omitted).[16]

Here, the right to pre-deprivation due process was not only clearly established by "cases like *Goldberg*," *id*., but underscored emphatically by *Cahoo I*, a case implicating the Agency and its MiDAS system directly. *See Andrews v. Hickman Cnty., Tenn.*, 700 F.3d 845, 853 (6th Cir. 2012) (in prioritizing authorities under the clearly established analysis, this Court "look[s] first to decisions of the Supreme Court, then to [its] own decisions").

The district court cited no Supreme Court case to the contrary in support of its conclusion that the CARES Act did not create property interests in unemployment benefits because state participation is voluntary. It cited only one

[16] In fact, that same fair warning was written into the incorporated terms of the CARES Act PUA provision. *See* 20 C.F.R. § 625.15 ("[T]he right of individuals to [PUA benefits] shall be protected in the same manner and to the same extent as the rights of persons to regular unemployment compensation are protected under the applicable State law."); *id*. at § 625.10(e)(2) ("The provisions on right of appeal and opportunity for hearing and review with respect to applications for [PUA] shall be consistent with … the Social Security Act, 42 U.S.C. 503(a)(1) and 503(a)(3).").

Supreme Court case, *Gonzales*, *see* Op. & Order, RE 142, Page.ID#7079, which holds that a state-law restraining order did not give rise to a property interest in its enforcement given the "established tradition of police discretion" and "deep-rooted nature of law enforcement discretion," 545 U.S. at 760–61. But *Gonzales* contrasts that situation with a government's provision of "direct benefits," including Medicaid payments, which "trigger[] due process protections," *id*. at 767, and as noted, "state participation in Medicaid is purely voluntary," *Engler*, 73 F.3d at 636. The district court cited no decision of this Circuit or any other federal court of appeal. *See* Op. & Order, RE 142, Page.ID#7078–7082.

Nor do the unpublished district court decisions involving PUA benefits relied on by the district court (all of which post-dated the deprivations in this case), *see id*. at Page.ID#7079–7080, undermine that *Cahoo I*'s clearly established ruling encompasses PUA benefits. For one thing, they are district court decisions (and one magistrate decision). *See Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) ("Many Courts of Appeals … decline to consider district court precedent when determining if constitutional rights are clearly established[.]"); *DeCrane v. Eckart*, 12 F.4th 586, 600 (6th Cir. 2021) (citing same and stating that "[i]t is not obvious that we should even consider these district-court decisions when identifying the rules that our cases have clearly established").

In addition, the district court relied on district court cases involving states that had withdrawn from CARES Act participation, and others that simply do not stand for the proposition attributed to them by the district court. *See supra* p. 25 & n.10. Indeed, the district court in *Sterling* cited some of those same cases, as did the state defendants there.[17] The Ninth Circuit—after concluding that this Court's 2019 reasoning in *Cahoo I* applies squarely to CARES Act unemployment benefits, 150 F.4th at 1248–49—made clear that to the extent those cases hold that the CARES Act established no property interests even where states had not withdrawn from participation, they "cannot be reconciled with the longstanding precedents regarding comparable benefit programs" establishing protected property interests notwithstanding that state participation is voluntary, *id*. at 1250.

In sum, *Goldberg* and its progeny, including *Cahoo I*, confirm that the constitutional right to pre-deprivation due process protections was clearly established in the context of unemployment benefits when the deprivations at issue here occurred. There is no daylight between that conclusion and this case.

[17] *See Sterling*, 2023 WL 5718163, at *4 (citing *Dickerson*, 2021 WL 4192740, at *2–3; and *Moss*, 2022 WL 68388, at *6–7); Resp. Br. of Defs.-Appellees at 36–37, *Sterling v. Feek*, No. 24-1296 (9th Cir. Aug. 23, 2024) (citing *Moss*, *Dickerson*, *Jackson*, 2022 WL 1157656, at *4, and *Winter v. N.M. Dep't of Workforce Sol.*, No. 21-475, 2023 WL 184115, at *7 (D.N.M. Jan. 13, 2023)); *see also* Op. & Order, RE 142, Page.ID#7079–7080 (citing same).

CONCLUSION

Plaintiffs request that this Court reverse the decision of the district court and remand for proceedings consistent with this Court's ruling.

Dated: January 28, 2026

Respectfully submitted,

/s/ David M. Blanchard

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CERTIFICATE OF COMPLIANCE

In compliance with Fed. R. App. P. 32(a)(7)(B), and excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 12,974 words.

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Date: January 28, 2026

By: /s/ David M. Blanchard
Counsel for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I certify that on January 28, 2026, this document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

Dated: January 28, 2026

By: /s/ David M. Blanchard
Counsel for Plaintiffs-Appellants

ADDENDUM

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Plaintiffs–Appellants, per Sixth Circuit Rule 30(g), hereby designate the following portions of the record on appeal:

Description of Entry	**Date Filed**	**Record Entry No.**	**Page ID No.**
Complaint	08/26/2022	RE 1	
Defendants' Brief in Support of Motion to Dismiss	12/12/2022	RE 19	861
UIPL 01-96	1/17/2023	RE 23-4	1080
Opinion & Order Denying in Part Motion to Dismiss	07/12/2023	RE 33	1210–1212
Second Amended Complaint	07/25/2023	RE 36	
Plaintiffs' Motion for Partial Summary Judgment	07/24/2024	RE 71	
UIA Common Scenarios with Responses	08/05/2024	RE 75-5	1934
UIA Request for MiDAS Automation Services	08/05/2024	RE 75-6	1949
Michigan Talent Investment Agency request for MiDAS Automation Services	08/05/2024	RE 75-8	1961
UIA Do Not Release Payment Indicator	08/05/2024	RE 75-11	1977
UIPL 01-16	08/05/2024	RE 75-30	2115, 2118
UIPL 01-16 Change 1	08/05/2024	RE 75-33	2146–2147
Plaintiffs' Reply in Further Support of Motion for Partial Summary Judgment	09/18/2024	RE 88	
Boudrie Documents	09/26/2024	RE 92-2	2733–2734
Additional Brainer Documents	09/26/2024	RE 92-2	2741
Holifield Documents	09/26/2024	RE 92-2	2771–2772
Dale Deposition (Excerpts)	09/26/2024	RE 92-11	2838
Defendants' Motion for Summary Judgment	11/04/2024	RE 110	

Defendants' Exhibits to Motion for Summary Judgment	11/14/2024	RE 118	4157–4160, 4205–4207, 4212–4215, 4231–4232, 4360–4361, 4377–4379, 4561–4562, 4586
Plaintiffs' Response in Opposition to Defendants' Motion for Summary Judgment	12/09/2024	RE 129	
Dec. 2, 2020 Berry Email	12/18/2024	RE 134-10	6088
Berry Deposition (Excerpts)	12/18/2024	RE 134-11	6092
Def. Response to Interrogatory 11	12/18/2024	RE 134-18	6123
Feb. 1, 2021 Burns Email	12/18/2024	RE 134-21	6130–6131
Burns Deposition (Excerpts)	12/18/2024	RE 134-27	6171
Payment Release Team Meeting Minutes	12/18/2024	RE 134-34	6210
March 20, 2023 Bayes Email	12/18/2024	RE 134-35	6213
UIA Manual Section 7902	12/18/2024	RE 134-40	6290–6291
Agreement Between State of Michigan and Secretary of Labor, U.S. Department of Labor	12/18/2024	RE 134-44	6333–6336
UIPL 16-20 Attachment 1	12/18/2024	RE 134-45	6353
Kreps Documents	12/18/2024	RE 134-47	6375–6376, 6389, 6395
Brainer Documents	12/18/2024	RE 134-49	6413, 6417, 6424, 6427–6429
Foster Documents	12/18/2024	RE 134-51	6435–6437, 6439, 6441, 6445
Additional Holifield Documents	12/18/2024	RE 134-52	6448–6450
Andrew Myrold Documents	12/18/2024	RE 134-53	6456–6457
Patricia Myrold Documents	12/18/2024	RE 134-54	6480, 6484
Quigg Documents	12/18/2024	RE 134-55	6489–6491, 6494
Shipe Documents	12/18/2024	RE 134-56	6503–6505
Kratz Deposition (Excerpts)	01/02/2025	RE 139-15	7005

Opinion and Order Granting Defendants' Motion for Summary Judgment and Denying Plaintiffs' Motion for Partial Summary Judgment	03/24/2025	RE 142	
Judgment	05/09/2025	RE 148	
Notice of Appeal	05/23/2025	RE 149	