No. 25-1497

In the
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.

Appeal from the United States District Court
Eastern District of Michigan, Southern Division
Honorable Mark A. Goldsmith

BRIEF FOR DEFENDANTS-APPELLEES

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CORPORATE DISCLOSURE

State government and state agencies are excepted from filing a corporate affiliate/financial interest disclosure statement.

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

At issue in this appeal are matters of first impression for this Court: whether there is a property interest in Pandemic Unemployment Assistance (PUA) benefits under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), as well of the scope of due process requirements regarding unemployment benefits under the Michigan Employment Security (MES) Act. Given the significance and novelty of these issues, Appellees request oral argument.

JURISDICTIONAL STATEMENT

Appellees agree with Appellants' Statement of Jurisdiction. (Doc. 23, p. 11.)

STATEMENT OF ISSUES PRESENTED

1. Issues not raised in an initial brief are considered abandoned. *Doe v. Michigan State Univ.*, 989 F.3d 418, 425 (6th Cir. 2021). Here, Appellants' brief fails to address Count II of their Second Amended Complaint. Have Appellants abandoned Count II?

2. In analyzing a procedural due process claim, a court must first determine whether the interest at stake is a protected liberty or property interest under the Fourteenth Amendment. *Puckett v. Lexington-Fayette Urban County Gov't,* 833 F.3d 590, 605 (6th Cir. 2016). Here, Pandemic Unemployment Assistance (PUA) benefits are the product of a temporary federal program in which states had complete discretion to discontinue participation at any time. Do Appellants have a property interest in PUA benefits?

3. Procedural due process guarantees a fair procedure when depriving someone of property. *EJS Props., LLC v. City of Toledo*, 698 F.3d 845, 855 (6th Cir. 2012). Here, Claimants received decisions and pursued administrative appeals. Were Claimants afforded due process?

4. Government officials have qualified immunity where their conduct does not violate clearly established statutory or constitutional rights. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). At the time of the challenged conduct, there was no caselaw regarding PUA benefits. Are Appellees Julia Dale, Kimberly Berry, and Teresa Burns entitled to qualified immunity as it relates to Claimants' PUA claims?

5. There is no respondeat superior liability on § 1983 claims. *Skinner v. Govorchin*, 463 F.3d 518, 525–526 (6th Cir. 2006). Here, there is no evidence that Dale, Berry, or Burns were directly involved in or responsible for the conduct of which Appellants complain. Have Claimants failed to substantiate a basis for individual liability as to Dale, Berry, and Burns?

INTRODUCTION

In February of 2020, Michigan's unemployment rate was 3.8%. Two months later, the unemployment rate was 22.7%.[1] Almost every state's unemployment agency was struggling to pay benefits. It is in this context that Appellants (Claimants) assert the Michigan Unemployment Insurance Agency (UIA) engaged in unconstitutional conduct by denying or delaying payments. But both the facts and the law, as properly analyzed by the District Court, make clear otherwise.

According to Claimants, if one can simply point to a document showing that payments were delayed for any reason, this is sufficient to show a violation of due process. It does not matter if the claimant received UIA's decisions and successfully appealed; it does not matter if the claimant told UIA that he or she had returned to work; it does not matter if a claimant's bank account is closed and fails to provide updated information; and it does not even matter if the claimant actually certified for benefits at all.[2] But this is not what due process

[1] https://fred.stlouisfed.org/series/MIUR <last accessed 03/18/2026>

[2] Under the logic presented by Claimants, rather than suspend all payments for three days in May of 2020, UIA should have allowed foreign criminals to abscond with billions.

requires, and the District Court correctly found that Claimants either 1) received due process, or 2) as to Claimants' Pandemic Unemployment Assistance (PUA) claims, that there was no property interest to which due process attached for a temporary federal program in which states had (and numerous states exercised) complete discretion to terminate their participation at any time. The District Court should be affirmed.

Moreover, even if this Court concludes there are issues of fact on Claimants' due process claim (and it should not), there is no basis for individual liability as to Appellees Julia Dale, Kimberly Berry, and Teresa Burns for at least two reasons. First, qualified immunity applies because PUA benefits were created under a brand new statutory scheme, and no case law at the time of the alleged conduct discussed PUA benefits generally, much less the specific question of whether due process applied to PUA benefits. Second, neither Dale, Berry, nor Burns directly supervised the departments responsible for the alleged conduct complained of, nor did they have any involvement with any of the Claimants' unemployment claims.[3]

[3] This brief will refer to Appellee Michigan Unemployment Insurance Agency as UIA and Appellees Dale, Berry, and Burns by name. UIA, Dale, Berry, and Burns will be collectively referred to as "the Agency."

STATEMENT OF THE CASE

A. How unemployment benefits work under the MES Act.

Any right to unemployment benefits in Michigan arises under the MES Act. *Peplinski v. Michigan Employment Sec Comm'n*, 103 N.W.2d 454, 456 (Mich. 1960). The Legislature created a "specific procedure to be observed in the administration of the unemployment compensation act and for a limited judicial review, [which] is exclusive of any and all other possible methods of review." *Mooney v. Unemployment Compensation Comm'n*, 28 N.W.2d 94, 99 (Mich. 1953).

Initially, individuals seeking benefits have the burden of demonstrating eligibility for those benefits—that is, they have sufficient earnings from covered employers to establish a claim. Mich. Comp. Laws § 421.32(b). To continue to receive benefits, claimants must report to UIA pursuant to its rules to maintain eligibility for those benefits. Mich. Comp. Laws § 421.32(a); Mich. Comp. Laws § 421.28(a). Claimants must also timely certify bi-weekly during their reporting weeks. Mich. Admin. Code R. 421.210(3). If a bi-weekly certification is late, a claimant must demonstrate good cause for the lateness. Mich. Admin. Code R. 421.210(5)–(6). The answers that claimants provide

during their certification may affect their eligibility for benefits, in whole or in part.

In addition, there are several issues that can suspend a claimant's benefits. For example, a claimant will not be paid for any week in which he or she does not certify for benefits, refuses suitable work or returns to work, fails to report work search, or is not able and available for work. Mich. Admin. Code, R. 421.210(1) ("An individual shall receive benefits for any week of unemployment for which the individual filed a claim and reported in accordance with this rule . . . and for which the individual is otherwise eligible and qualified for benefits."). (*See also* Kratz Decl'r, R. 133-1, Page ID ## 6002–6007, ¶ 7.) A benefit payment is not due and payable unless the individual is eligible for those benefits.

The MES Act recognizes that new issues may arise, or new information may come to light, after UIA's initial monetary determination on the claim. Thus, the Michigan Legislature gave UIA several years to issue an administrative decision to recover improperly obtained benefits. Mich. Comp. Laws § 421.62(a).

UIA has the exclusive original jurisdiction to determine a claimant's right to receive benefits. Mich. Comp. Laws § 421.32(a). It must issue written decisions (called Determinations or (Re)determinations) regarding eligibility and qualification issues. Mich. Comp. Laws § 421.32(a)(1)–(2). If an interested party appeals a decision, UIA will refer the matter to the Michigan Office of Administrative Hearings and Rules (MOAHR) for a hearing before an Administrative Law Judge. *Id.*; Mich. Comp. Laws § 421.33(1). Following an ALJ decision, an interested party may appeal to the Unemployment Insurance Appeals Commission, followed by judicial appeals. Mich. Comp. Laws § 421.33(2); § 421.34, § 421.38(1).

B. The CARES Act and Department of Labor guidance regarding fraud.

In response to the nationwide COVID-19 epidemic, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law on March 27, 2020. Pub. L. 116–136, § 2102. This temporary program gave states the option of extending Pandemic Unemployment Assistance (PUA) benefits to individuals who ordinarily

were ineligible under existing state law. *Id.* The initial program was limited to thirty-nine weeks. *Id.*

Any state that chose to participate in the program could also choose to terminate their participation upon thirty days' written notice. *Id.*, § 2104(a). PUA payments included a state's weekly unemployment benefit amount plus a supplemental federal benefit. *Id.*, § 2104(b)(1)(B). Congress gave states the exclusive right to determine PUA eligibility. *Id.*, § 2102(f)(1). The short agreement (11 pages) between the State of Michigan and the Department of Labor (DOL) provided that either party could terminate the agreement on thirty-days notice. (Agreement, R. 134-44, PageID # 6335, § XI.)

A "covered individual" under the CARES Act is defined as someone who is not eligible for regular unemployment benefits. Pub. L. 116–136, § 2102 (a)(3)(A)(i). In addition, the claimant must be unemployed due to at least one of eleven specified COVID-related reasons. *Id.*, § 2102(a)(3)(A)(ii)(I)(aa)–(kk). Covered individuals had to self-certify regarding their eligibility. *Id.*, § 2102(a)(3)(A)(ii)(II).

The DOL then issued a series of program letters to provide states with operating instructions: DOL 04/05/2020 Unemployment Insurance

Program Letter (UIPL) No. 16-20 (R. 83–2, Page ID ## 2463–2505); DOL 04/27/2020 UIPL No. 16-20, Change 1 (R. 83–3, Page ID ## 2507–2531); DOL 07/21/2020 UIPL Letter No. 16-20, Change 2 (R. 83–4, Page ID ## 2533–2545); and DOL 08/27/2020 UIPL No. 16-20, Change 3 (R. 83–5, Page ID ## 2547–2551).

In the original UIPL, issued just nine days after the CARES Act was enacted, the DOL required states to process PUA claims as they would under state law unless otherwise provided in Section 2102 of the CARES Act. (UIPL No. 16-20, R. 83–2, Page ID # 2476.)

Change 1, issued on April 27th, established the base period necessary to establish a claim. (Change 1, R. 83–3, Page ID ## 2513.) To be eligible for benefits, the worker must have worked or earned wages in 2019. (*Id.*) Self-attestation regarding work and wages was sufficient to file a claim so long as the worker does so under "penalty of perjury." (*Id.*, Page ID # 2516.) However, on May 11th, the DOL reminded states to maintain the integrity of their unemployment programs. (UIPL, No. 23-20, R. 83–6, Page ID # 2553.) DOL strongly recommended that states verify identities, utilize the federal Integrity

Data Hub, and perform incarceration cross-matches. (*Id.*, Page ID ## 2560–2561.)

Change 2 to UIPL 16-20 directly addressed the inconsistency between self-attestation and the investigation of fraud. The DOL reminded states that they had the authority to request supporting documentation and encouraged states to utilize the cross-matches and tools available to them. (Change 2, R. 83–4, Page ID # 2544.) This included use of the ICON Network, which matches names and social security numbers with the Social Security Administration. (UIPL, No. 23–20, R. 83–6, Page ID # 2553; Kolar Tr., R. 83–7, Page ID # 2612.)

On August 31st, the DOL issued another UIPL reminding states of their roles and responsibilities in addressing fraud. (UIPL No. 28–20, R. 85, Page ID ## 2639–2665.) The DOL recommended that states intercept potentially fraudulent activity as early as possible. (*Id.*, Page ID # 2641.) Further, it encouraged states to explore tools, methods, and strategies to deter and prevent fraud, including identity verification and cross-match tools. (*Id.*, Page ID ## 2642–2643.)

DOL issued more than 60 UIPLs to state unemployment agencies regarding PUA and would schedule frequent calls with states following

the release of UIPLs up until early 2021. (Burns Tr., R. 118 Page ID # 4470–4471.) As noted above, several UIPLs warned state unemployment agencies to maintain program integrity and minimize unemployment fraud by carefully reviewing claims. The DOL recommended that state unemployment agencies implement a benefit payment review system, to be implemented by managers or skilled adjudicators, for review of large, backdated claims before they were released. (Field Release, R. 118, Page ID ## 4541–4546.)

Several UIA staff members (including attorneys) disagreed regarding CARES Act provisions and requirements, including but not limited to:

1. The standards for reasonable suspicion (9/27/2020 Burns email, R. 118, Page ID ## 4548–4551); and

2. Whether claimants had to be able and available under state law to be eligible for PUA benefits (Gray Tr., R. 118, Page ID ## 4573, 4576–4577.)

The federal government extended and amended the CARES Act with the Continued Assistance for Unemployed Workers Act (CAUW Act) on December 27, 2020. Pub. L. 116-260. The CAUW Act had numerous new requirements, such as requiring PUA claimants to provide documentation to substantiate base period employment or the

planned commencement of employment to demonstrate eligibility. 15 U.S.C. § 9021(a)(3)(A)(iii). There was a natural delay between the passage of the CAUW and operating instructions issued by DOL in January of 2021 and the implementation of system changes, which stopped payments for a period of time. (Kratz Decl'r., R. 133-1, Page ID ## 6002–6007, ¶ 6; UIPL 16-20 Change 4, R. 133–1, Page ID ## 5606–5667.)

C. States' struggle with timely payments and the prevention of fraudulent claims during the COVID-19 pandemic.

The nationwide problems implementing the CARES Act programs were bountiful. The Office of Inspector General (OIG) in a December 15, 2023, update, noted that the office remained committed to "meeting the challenges created by the COVID-19 pandemic and to assisting the [DOL] and Congress in improving the efficiency and integrity of the Unemployment Insurance (UI) program." (OIG Report, R. 133–1, Page ID ## 5669–5691.) From April 1, 2020, to March 31, 2021, "only 5 of the 53 SWAs [also known as state unemployment agencies] were able to timely pay benefits." (*Id.*, Page ID # 5671.) By August 2023, only 34%

of SWAs were paying on time compared to 75% before the pandemic. (*Id.*)

The OIG determined that "the risk of improper payments including fraud was even higher under PUA because claimants could self-certify their eligibility for benefits." (*Id.*) That office remained concerned that unemployment agencies have "unintentionally waived or will waive fraudulent payments." (*Id.)* At least $191 billion of the $888 billion of the total federal and state unemployment benefits could have been improperly paid to ineligible individuals. (*Id.*, Page ID # 5672.)

From March 28, 2020, to September 30, 2020, "in 4 states, potentially fraudulent claims were paid more than 60 percent of the time." (*Id.*, Page ID # 5673.) OIG's investigative matters are unprecedented, with 205,000 fraud investigative matters opened since April 1, 2020. (*Id.*, Page ID # 5674; *see also* OIG Investigations Newsletter, R. 133-1, Page ID ## 5690–5961 (Michigan fraudsters improperly obtained over $4.8 million in benefits).) In Michigan, UIA had to halt all pending payments in mid-May of 2020 for a period of three days in order to prevent $2.5 to $2.8 billion in fraudulent claims

from being paid to overseas criminals. (Kolar Tr., R. 83-7, Page ID ## 2604–2605.)

D. Claimants' claims

Claimants are nine individuals representing a putative class asserting two counts of alleged due process violations: (I) failure to pay unemployment benefits when due; and (II) failure to timely process or adjudicate protests or appeals.[4] (Sec. Am. Compl., R. 36, Page ID ## 1237–1301.) Plaintiffs fall into two broad categories: those with Pandemic Unemployment Assistance (PUA) claims and those with regular state unemployment insurance (UI) claims. Each claim for unemployment benefits was filed in the spring or summer of 2020, during the COVID-19 pandemic. During discovery, appellants did not take a 30(b)(6) deposition from any Agency claims examiners to

[4] The District Court dismissed the substantive due process claims incorporated in Counts I and II. (July 12, 2023, Opinion and Order, R. 33, Page ID ## 1213–1214.) Former plaintiff Zachary Brazil was dismissed by stipulation. (R. 99, Page ID ##1301–1302.) Count III was resolved by separate litigation. Count IV, alleging violation of a settlement agreement (*Zynda*) was dismissed by stipulation. (R. 147, Page ID ## 7101 –7105.)

ascertain any facts regarding the individual Plaintiffs' files outside of documentation.

1. Paul Kreps

Kreps alleges that the Agency will not pay his benefits, placed a stop payment indicator on his account, and closed his claim. (Sec. Am'd Compl., R. 36, Page ID # 1255, ¶¶ 49–51). Kreps filed his unemployment claim on or about August 5, 2020. (Monetary Determination, R. 118, Page ID # 4157.) UIA's monetary determination states Kreps is eligible for up to twenty-six weeks of benefits and explicitly notes that he "must also meet other requirements to be eligible for benefits." (*Id.*)

Contemporaneously with the monetary determination, UIA sent Kreps a request for information, titled "Verify Your Identity or Claim Will Be Denied," asking him to verify his identity. (R. 118, Page ID # 4159.) The deadline to respond was August 19, 2020. (*Id.*) Kreps acknowledges receiving the request for information and initially asserted that he provided the documents by the deadline. (Kreps Tr., R. 118, Page ID ## 4170–4173.) He admits that he lost both his driver's license and his social security card in August 2020. (*Id.*, Page ID ##

4174, 4175, 4179.) He had to seek replacements and did not provide the documentation until October 2020. (*Id.*, Page ID ## 4174–41758, 4179; Kreps ID documents, R. 118, Page ID # 4202.)

UIA issued an adverse decision on October 12, 2020. (Determination, R. 118, PageID # 4203.) Kreps received the decision and did not agree with it. (Kreps Tr., R. 118, Page ID ## 4180–4181.) Although he read the protest rights section, he did not file a protest. (*Id.*) Instead, he called UIA and re-submitted his identification documents, which did not comply with the Determination's protest instructions. (*Id.*, Page ID ## 4183–4188.)

Because he did not file a timely protest, the decision became final 30 days later. Mich. Comp. Law § 421.32a(1). However, UIA, on its own motion, reconsidered and reversed the previous decision on April 13, 2021. (Determination, R. 118, Page ID # 4205.)

On March 4, 2022, UIA sent Kreps a letter advising him that it could not issue payment to him because it did not have a valid payment method for him. (Payment letter, R. 118, Page ID # 4207.) He received the letter, which instructed him to either update his payment method

online or to use UIA's automated phone system to do so. (*Id.*; Kreps Tr., R. 118, Page ID ## pp 4199–4200.)

Kreps admits that his payment information (banking account) changed after he filed his claim. (Kreps Tr., R. 118, Page ID ## 4168–4169, 4191–4192.) After being unable to update his payment method, he called UIA and asked the customer service agent to update his financial information. (*Id.*, Page ID ## 4192–4195, 4200.) After the agent advised that they could not take his information over the phone, the agent offered him a debit card. (*Id.*, Page ID ## 4192–4193, 4200.) Kreps refused the debit card. (*Id.*, Page ID ## 4196–4197, 4200.) The call ended and Kreps never contacted UIA again. (*Id.*, pp 4193–4194, 4200.) Kreps ultimately was paid 26 weeks of benefits. (Burton Decl'r, R. 133-1, Page ID # 6037, ¶ 4.) There is no evidence that Defendants Dale, Berry, or Burns had any involvement with Kreps' unemployment claim.

2. Patricia Myrold

Patricia Myrold asserts that the Agency improperly denied her benefits in May, June, and July 2020. (Sec. Am'd Compl., R. 36, PageID # 1267, ¶¶ 142–143). She filed a regular claim on May 10, 2020, and

UIA found her monetarily eligible for benefits. (Burton Decl'r., R. 118, Page ID ## 4340–4342, ¶¶ 5 –6.) Regarding the claim, UIA paid her twenty-six weeks, Myrold waived her payment for five weeks, and UIA did not pay her for two weeks because her reported earnings offset her weekly benefit amount. (*Id.*, ¶¶ 9–10.) There were multiple weeks where UIA required Myrold to file an additional claim—the weeks ending May 9, 2020, through August 1, 2020—because Myrold reported to UIA that she had returned to work full-time. (*Id.*, ¶¶ 12–13.)

Myrold called customer service on May 3, 2021, and spoke with UI examiner Chequetta Shed. (*Id.* ¶¶ 14–15.) Ms. Shed advised Myrold to file a new (additional) claim, but Myrold refused. (*Id.*) Had Myrold filed the additional claim, UIA would have been able to pay for the involved weeks if she was eligible. (*Id.*, ¶ 16.) There is no evidence that Defendants Dale, Berry, or Burns had any involvement with her unemployment claim.

3. Andrew Myrold

Andrew Myrold asserts that the Agency improperly denied him benefits. (Sec. Am'd Compl., R. 36, PageID # 1267, ¶ 140.) On May 13, 2020, UIA found him monetarily eligible for benefits. (Mon.

Determination, R. 118, Page ID # 4225.) On July 30, 2021, and again on October 6, 2022, UIA found him ineligible for benefits. (Determinations, R. 118, Page ID ## 4227, 4231.) Furthermore, it sought restitution for multiple weeks of improperly paid benefits. (Weeks of Overpayment, R. 118, Page ID ## 4229–4230.)

Myrold appealed, and MOAHR ruled in his favor. (Administrative Decisions, R. 118, Page ID ## 4235–4244.) The decision found Myrold eligible beginning July 5, 2020, and that he was entitled to benefits if otherwise eligible and qualified. (*Id*.) Myrold appealed the favorable decision and asked MOAHR and the Appeals Commission to order UIA to pay him additional benefits. (*Id*, Page ID # 4245.) According to his circuit court brief, he wanted benefits from April 18, 2020 to July 4, 2020. (Brief, R. 118, Page ID ## 4247–4257.)

Initially, the circuit court ordered UIA to pay Myrold benefits from July 5, 2020, to January 19, 2023. (Opinion, R. 118, Page ID ## 4258–4266.) However, after UIA sought review, the circuit court scheduled a show cause hearing on the issue of whether UIA had to pay Myrold any additional benefits. (Ruling on Motion, R. 118, Page ID # 4272.) UIA detailed the myriad reasons Myrold was paid or not paid benefits for

certain weeks. (Agency Br., Page ID ## 4285–4287.) The court then affirmed the MOAHR and Appeals Commission decisions and "revoked" its earlier ruling requiring UIA to pay Myrold benefits from July 5, 2020, to January 19, 2023. (Ruling on Motion Page ID # 4273.) Myrold did not seek any further appeals. There is no evidence that Defendants Dale, Berry, or Burns were involved in his unemployment claim.

4. Marissa Quigg

Quigg asserts that the Agency improperly denied her benefits. (Sec. Am'd Compl., R. 36, Page ID # 1266, ¶ 134.) Quigg filed her regular unemployment claim on April 5, 2020, and UIA found her monetarily eligible three days later. (Monetary Determination, R. 118, Page ID # 4209.) UIA then issued adverse decisions in May and July 2020. (Determination and Redetermination, R. 118, Page ID ## 4212, 4214.) Quigg filed a late appeal to the July 2020 decision, and MOAHR found that she did not have good cause for the late appeal. (Denial of Request and MOAHR Order, R. 118, Page ID ## 4216, 4218–4224.) She took no further appeals, and the MOAHR decision became legally final.

Quigg filed her PUA claim (C8840686-0) on July 20, 2020, backdating her claim to February 2, 2020. (PUA Monetary

Determination, R. 133-1, Page ID # 5746.) She concedes that she received her first payment three days later. (Mot. For Class Cert., R. 111, Page ID # 3393.) UIA suspended her payments due to its benefit payment review policy, which the Department of Labor recommended for large backdated claims. (Burton Decl'r., R. 133-1, Page ID # 6036–6038, ¶ 5; Field Release, R. 118, Page ID ## 4541–4546.) UIA issued an adverse decision on March 26, 2021, which MOAHR ultimately found void. (CRM Notes, R. 134-55, Page ID # 6490.) There is no evidence that Defendants Dale, Berry, or Burns were involved in her unemployment claims.

5. Diana Boudrie

Boudrie asserts that the Agency engaged in premature collection against her and failed to pay her benefits owed. (Sec. Am'd Compl., R. 36, PageID ## 1256–1257, ¶¶ 61–69.) Boudrie filed a PUA claim on April 21, 2020 and UIA monetarily approved the claim three days later. (PUA Monetary Determination, R. 118, Page ID # 4143.) She certified for, and received payments, for weeks ending April 11, 2020, through August 22, 2020. No payment was issued for weeks ending August 29, 2020, through September 19, 2020 because she refused her employer's

offer to return to work. (Boudrie Tr., R. 118, Page ID 4353–4354; Certifications, R. 118, Page ID 4358–4359.) She never returned to work thereafter. (Boudrie Tr., R. 118, Page ID # 4357.) On November 6, 2020, UIA found her monetarily ineligible for PUA benefits. (Determination, R. 118, Page ID # 4360.) She timely protested. (Protest, R. 118, Page ID # 4362.) There is no evidence that Defendants Dale, Berry, or Burns were involved in her unemployment claim.

6. Richard Brainer

Brainer asserts that the Agency prematurely collected $532 from him while his appeal was pending. (Sec. Am'd Compl., R. 36, Page ID # 1265, ¶ 122.) UIA subsequently reimbursed him for the intercepted funds. (Check, R. 118, Page ID # 4375.) Other than the seizure of the $532, he does not allege any other injuries or damages. (Sec. Am'd. Compl., R. 36, PageID ## 1264–1265, ¶¶ 115–123.)

Brainer's December 2020 through April 2021 payments were delayed because Brainer did not certify to receive payments for those weeks until April 3, 2021. (Burton Decl'r, R. 133-1, Page ID ## 6036–6038, ¶ 7.) Brainer last certified on April 24, 2021 and last logged into his MiWAM account on July 17, 2021. (*Id.*) After he missed four

consecutive weeks of available certification, no further certifications were generated. (*Id.*) There is no evidence that Defendants Dale, Berry, or Burns were involved in his unemployment claim.

7. Christine Holifield

Holifield alleges that after UIA approved her unemployment claim, UIA stopped paying her in June 2020. (Sec. Am'd Compl., R. 36, PageID # 1263, ¶¶ 107–108.) Further, she alleges UIA issued adverse decisions that the Appeals Commission did not reverse until July 29, 2022. (*Id.*, ¶¶ 110–112.)

On October 16, 2020, UIA issued an adverse decision to Holifield finding her ineligible for benefits (due to availability) beginning March 22, 2020, going forward. (Determination, R. 188, Page ID # 4376.) She appealed the decision, and the Appeals Commission found in her favor after a retroactive change in Michigan law. (Decision, R. 118, Page ID ## 4377–4379.) There is no evidence that Defendants Dale, Berry, or Burns were involved in her unemployment claim.

8. Isabella Foster

Foster alleges that after the Agency approved her unemployment claim it stopped paying her in January of 2021. (Sec. Am'd Compl., R. 36, Page ID # 1263, ¶¶ 98–99.)

UIA found Foster eligible for PUA benefits, effective March 8, 2020 for thirty-nine weeks of benefits. (Monetary Determination, R. 133-1, PageID # 5949.) The thirty-nine weeks expired the week ending December 12, 2020. (Burton Decl., R. 133–1, Page ID ## 6036–6038, ¶ 8.) Foster, a high school student, was not available for full-time work as required by state law and was deemed ineligible for PUA benefits in April 2021. (5/7/2021 MOAHR decision, R. 133–1, Page ID ## 5951–5955.) She appealed that determination, and MOAHR affirmed UIA. (*Id.*) Upon a change in Michigan law and a further appeal, the Appeals Commission reversed UIA's adverse decision. (07/29/2022 Decision of the UIAC, R. 133–1, Page ID ## 5956–5957.) There is no evidence that Defendants Dale, Berry, or Burns were involved in her unemployment claim

9. Robin Shipe

Shipe claims that after UIA approved her PUA unemployment claim it placed her file under Benefit Payment Review. (Sec. Am'd Compl., R. 36, Page ID # 1260, ¶ 85.) She also claims that she has never been paid benefits. (*Id.*, ¶ 94.) Shipe was found eligible for PUA benefits on October 9, 2020, backdated to March 15, 2020. (Monetary Determination, R. 133–1, Page ID ## 5959.) UIA found Shipe ineligible for PUA benefits in January of 2021. (CMR Notes, R. 134–56, Page ID # 6505.) Shipe appealed and ultimately was found eligible for benefits. (11/28/2022 MOAHR Order, R, 133–1, Page ID ## 5961.) There is no evidence that Defendants Dale, Berry, or Burns were involved in her unemployment claim.

E. Roles of the individual Defendants.

The Second Amended Complaint names three Defendants in their individual capacities: Julia Dale, Kimberly Berry, and Teresa Burns. (R. 36, Page ID ## 1247–1248.)

1. Julia Dale

Julia Dale became UIA's director some twenty months into the pandemic in late October of 2021. (Dale Tr., R. 118, Page ID # 4586).[5] Dale's job duties included overseeing UIA's operations and budget. (*Id.*, Page ID # 4592.) She relied on subject matter experts, also known as division administrators. (*Id.*, Page ID ## 4592, 4602.) She had general knowledge of backlogs and fraud investigations. (*Id.*, Page ID ## 4588–4589, 4596–4597, 4600–4601.)

When she started, UIA was still struggling with the aftereffects of the pandemic. (*Id.*, Page ID # 4588.) Staffing had been cut in half and resources were lacking. (*Id.*, Page ID # 4589.) She was not a claims subject matter expert, and she did not review individual claims. (*Id.*, Page ID # 4589–4590.) She denied taking any action to intentionally deny benefits to any specific claimants. (*Id.*, Page ID # 4619.) She was not questioned about any of the individual Claimants.

[5] Dale stepped down as director in January of 2025.

2. Kimberly Berry

Kimberly Berry joined UIA in 2012 as a Senior Executive Management Assistant. (Berry Tr., R. 118, Page ID # 4626.) Berry's work duties have always focused on the employer side of UIA's operations. (*Id.*, Page ID 4663–4664.) Berry served as a State Administrative Manager for the Collections Unit (which dealt with employer collections) and the Tax Office. (*Id.*, Page ID ## 4627–4630.) Berry became the Deputy Director of UIA in December 2018 and held that role until March 2022. (*Id.*, Page ID ## 4628, 4636.) Other than being the designated contact liaison under the terms of the *Zynda* settlement agreement, Berry had no responsibilities as Deputy Director that related to claimant benefits or claimant collections.[6] (*Id.*, Page ID ## 4633–4634.)

Since Berry's duties have never been on the claimant side, she lacks knowledge regarding UIA policies and procedures relating to claimant misrepresentation issues, stop payments, suspension of

[6] The *Zynda* settlement agreement was the subject of the resolved Count IV. As liaison, Berry ensured that any notices received were forwarded to the proper area for review. (*Id.*, Page ID ## 4638–4639, 4669.)

benefits, or benefit payment reviews. (*Id.*, Paged ID ## 4641–4642, 4645–4651, 4654–4656, 4661–4662, 4665–4667, 4672–4673, 4676.) While Berry did have oversight over members of the UIA management team with duties on the claimant benefits side, she had no direct overview of policies and procedures relating to claimant benefits. (*Id.*, Page ID ## 4634, 4651–4652.) During the pandemic, these individuals effectively reported to then UIA Director Steve Gray. (*Id.*, Page ID ## 4652, 4674.)

Berry's primary focus at this time was getting staff working from home and hiring the thousands of additional workers who were needed at that time. (*Id.*) This is consistent with Gray's testimony, who initially stated that the management team reported to him since "[t]here wasn't anybody else that [sic] would have reported to" before clarifying that they technically would have reported to Berry. (Gray Tr., R. 118, Page ID ## 4561–4562.) Gray also confirmed that Berry was responsible for bringing on temporary staff. (*Id.*, Page ID # 4564.) At some point after Gray left as Director of UIA, the management team no longer reported to Berry in any capacity. (Berry Tr, R. 118, Paged ID ## 4656–4658.)

In March of 2022, Berry became State Administrative Manager over employer special programs and is currently the Director of the Tax and Employer Services Division. (*Id.*, Page ID # 4623, 4636, 4648.) This role involves oversight of field audit, tax office, collections, and employer special programs. (*Id.*) Berry was not questioned about any of the individual Claimants.

3. Teresa Burns

Teresa Burns is UIA's State Administrative Manager for Internal Controls. (Burns Tr, R. 118, Page ID # 4444.) She supervises two units – compliance and special projects. (*Id.*, Page ID # 4445). The duties of the unit include filing administrative appeals, reviewing documents and forms, drafting and reviewing data sharing agreements, and reviewing proposed legislation. (*Id.*, Page ID # 4446.) She explained the clearance process, which is the process for the generation or review of UIA documents. (*Id.*, Page ID ## 4449–4451.) In addition, the unit handles audits, bankruptcy, Friend of the Court, the Advocacy unit, hearings and record support, and the appeals team. (*Id.*, Page ID ## 4453–4454.)

Internal Controls oversees UIA's policies and procedures, but it does not manage, process, or adjudicate claims. (*Id.*, Page ID ## 4457,

4460.) Internal Controls was not responsible for the suspension of benefits. (*Id.*, Page ID # 4471). Burns was not questioned about any of the individual Claimants.

F. The District Court's decision.

Claimants filed a motion for partial summary judgment while discovery was still ongoing against UIA and then Director Dale in her official capacity. (Claimant's Motion, R. 71, Page ID ## 1826–1858.)[7] The Agency moved for summary judgment after the close of discovery. (Agency Motion, R. 110, Page ID ## 3319–3369.)

The District Court, Judge Mark A. Goldsmith, issued an Opinion and Order denying Claimants' motion and granting Defendants' motion as to counts I through III. (Opinion, R. 142, Page ID ## 7073–7094.) Judge Goldsmith's decision rested on two grounds. First, Claimants failed to establish that there is a constitutionally protected property interest in PUA benefits because States' participation in the PUA program was discretionary and States could terminate their participation at any time for any reason. (*Id.*, Page ID ## 7078–7082.)

[7] The motion did not cite to any facts regarding any individual Claimant. (*See* Agency Resp., R. 83, Page ID ## 2445–2446.)

Second, the individual Claimants with regular state unemployment claims received sufficient process, having received multiple notices describing UIA's decisions and instructions regarding appeal, and in fact pursued one or multiple steps to protest or appeal UIA's decisions. (*Id.*, Page ID ## 7082–7088.)

G. The resolution of count III.

In a separate class action lawsuit, ten other plaintiffs pursued an unlawful early collection claim (Count III) against UIA. *Kellie Saunders v. Michigan Unemployment Insurance Agency* (Michigan Court of Claims, Docket No. 2022-000007-MM). When the Agency filed its motion for summary judgment, the parties had preliminarily settled. (*Saunders* Stipulated Order, R. 118, Page ID ## 4681–4684.) That settlement has since been finalized, and its terms required the Claimants to release any claims under Count III.

STANDARD OF REVIEW

The review of a district court's grant of summary judgment is de novo. *Abercrombie & Fitch Stores, Inc. v. American Eagle Outfitters, Inc.*, 280 F.3d 619, 628 (6th Cir. 2002). Where this review involves only

the application of law to undisputed facts, this Court may affirm on any grounds supported by the record. *Id.* at 629.

Summary judgment is appropriate where "the movant shows 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). Rule 56 mandates summary judgment upon motion against a party who fails to establish an "element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986).

Once the moving party identifies elements of a claim or defense that it believes are not supported by evidence, the nonmovant must present affirmative evidence tending to show a genuine dispute of material fact. *Id.,* at 324–325. Facts are "material" only if establishment thereof might affect the outcome of the lawsuit under governing substantive law. *Anderson,* 477 U.S. at 248. A failure of proof concerning an essential element necessarily renders all other facts immaterial. *Celotex Corp.*, 477 U.S. at 322–323. Production of a "mere scintilla of evidence" in support of an essential element will not forestall summary judgment. *Anderson*, 477 U.S. at 25.

SUMMARY OF ARGUMENT

Claimants' brief has limited the scope of their appeal. Claimants address only Count I (prompt payments) and ignore Count II (prompt appeals) in their brief. Because Claimants did not address Count II in their briefing, it has been abandoned. *See Doe v. Michigan State Univ.*, 989 F.3d 418, 425 (6th Cir. 2021).

Claimants have no protected property interest in PUA benefits. Regular unemployment benefits under the MES Act and PUA benefits under the CARES are different, and *Cahoo v. SAS Analytics Inc.*, 912 F.3d 887 (6th Cir. 2019) (*Cahoo I*) does not compel this Court to conclude that there is a property interest in PUA benefits. One (traditional benefits) is required by the Michigan Legislature since the inception of the unemployment insurance benefits program in the 1930's, while the other (PUA benefits) is the product of a temporary federal program for individuals not eligible for regular benefits. Because participation in the PUA program was not required by Michigan law and could be easily terminated at any time, it is fundamentally different from the other federal-state programs

identified in *Sterling v. Feek*, 150 F.4th 1235 (9th Cir. 2025), such that Claimants had no property interest in PUA benefits.

Claimants also received due process. In only one case has the Supreme Court held that a hearing closely approximating a judicial trial is necessary before governmental benefits may be terminated. *Goldberg v. Kelly*, 397 U.S. 254 (1970). The requirement of a pre-deprivation hearing in the context of unemployment benefits would not be administratively feasible, especially during a global pandemic. Here, UIA provided a fair procedure to all Claimants, who took advantage of those procedures.

Finally, there is no basis in the record for individual liability on the part of Dale, Berry, and Burns. They are entitled to qualified immunity as to the PUA claimants because there was no clearly established due process interest in PUA benefits at the time. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). At the time, there was no established case law regarding PUA benefits at all, much less the conflicting authority that exists today. Moreover, Dale, Berry, and Burns cannot be held individually liable with respect to any claimants because Claimants have no substantiating evidence that Dale, Berry, or

Burns violated their constitutional rights. *Cahoo I*, 912 F.3d at 897. Dale was not even employed by UIA at the time of the alleged constitutional violations; Berry had no responsibilities related to claimant benefits; and while Burns' division oversees UIA's policies and procedures, it does not manage, process, or adjudicate claims, nor is it responsible for the suspension of benefits. Therefore, even if this Court concludes there are issues of fact as to whether Claimants received due process, summary judgment was still appropriate as to Dale, Berry, and Burns.

ARGUMENT

I. Claimants' have abandoned Count II regarding prompt adjudication of protests or appeals.

Count II of the Second Amended Complaint was brought by Claimants on behalf of the "Prompt Appeal Class" based on the alleged failure by the Agency to adjudicate protests or appeals in a timely manner. (Sec. Am'd Compl., R. 36, Page ID # 1294, ¶ 266.) But Count II is wholly absent from Claimants' brief. Claimants' Statement of Issue concerns only the withholding of payments. (Doc. 23, p. 12.) And the alleged due process violations discussed in Claimants' brief each

relate to alleged "flags" placed on their claims that, according to Claimants, improperly stopped payments. (*Id.*, pp. 38, 43–54.) No evidence or argument regarding an alleged failure to timely adjudicate protests or appeals is presented.

Claimants' appeal as to Count II has therefore been abandoned. Issues "not raised and argued in [Claimants'] initial brief on appeal" are considered abandoned. *Doe v. Michigan State Univ.*, 989 F.3d 418, 425 (6th Cir. 2021) (cleaned up). There must be some attempt to develop arguments on an issue. *Id.* Because Claimants have failed to do so, this Court should affirm the District Court's grant of summary judgment as to Count II.

II. The District Court properly concluded that PUA benefits are not "property" that due process rights can attach to.

The Due Process Clause of the Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Courts have interpreted the Fourteenth Amendment to protect both procedural and substantive due process rights. *See, e.g., Puckett v. Lexington-Fayette Urban County Gov't,* 833 F.3d 590, 604–605 (6th Cir. 2016). For

procedural due process a court must first determine whether the interest at stake is a protected liberty or property interest under the Fourteenth Amendment. *Id.* at 605.

In its opinion, the District Court noted that Claimants "consistently fail[] to engage with or acknowledge the difference between PUA benefits and traditional UI benefits." (Op., R. 142, Page ID # 7081.) That trend continues before this Court, with Claimants going so far as to argue that there is a protected property interest in PUA benefits because this Court generically used the term "unemployment benefits," such that it applies to any use of the term in the future, and therefore Claimants have a property interest in PUA benefits under *Cahoo I*. (Doc. 23, p. 31.) This of course, necessarily could not have been the holding of *Cahoo I* since neither the CARES Act, PUA benefits, nor indeed COVID-19 existed on January 3, 2019. This Court does not issue advisory opinions to answer theoretical questions. *Chapman v. Tristar Prods., Inc.*, 940 F.3d 299, 303 (6th Cir. 2019) (citation omitted).

PUA benefits and traditional unemployment benefits have multiple fundamental differences. One (traditional benefits) has been

required by the Michigan Legislature since the inception of the unemployment insurance benefits program in the 1930's. (Op., R. 142, Page ID # 7074.) The other (PUA benefits) is the product of a temporary federal program for individuals not eligible for benefits under the MES Act, where any state choosing to participate could cease its participation at any time.[8] Pub. L. 116–136 § 2102 (a)(3)(A)(i); § 2104(a). These differences are exactly why the District Court concluded that there is no constitutionally protected property interest in PUA benefits. (Op, R. 142, Page ID ## 7078–7081.)

A. The temporary and discretionary nature of participation in the PUA program means there was no reasonable expectation to those benefits.

The Supreme Court has held that a plaintiff must establish a legitimate claim of entitlement to an interest protected by the Fourteenth Amendment. *Board of Regents of State College v. Roth*, 408 U.S. 564, 575-578 (1972). In *Roth*, an assistant professor was working

[8] That is exactly what approximately half the states did. *See States Opting Out of COVID-19 Unemployment Insurance (UI) Agreements*, Congressional Research Service, https://www.congress.gov/crs_external_products/IN/PDF/IN11679/IN11679.4.pdf <accessed February 24, 2026>.

on a fixed one-year contract with no tenure rights. *Id.* at 566. When his employer denied continuance of his employment, he sued alleging that he had been denied due process. *Id.* The *Roth* Court found that to establish a protectable property right that would entitle the plaintiff to due process, he had to do more than allege an "abstract need or desire for" the property right. *Id.* at 577. The plaintiff had to establish a "legitimate claim of entitlement." *Id.* Because the *Roth* plaintiff failed to establish a constitutional right to continued employment, he did not establish a violation of his due process rights. *Id.* at 575–578.

Here, the District Court correctly concluded that the legitimate claim of entitlement is absent. Both the CARES Act and the agreement between the State of Michigan and the DOL gave the State of Michigan complete discretion to terminate its participation on 30-days notice. Pub. L. 116–136, § 2104(a); (Agreement, R. 134-44, Page ID # 6335, § XI.) As the District Court noted, "[t]his 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.' *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756." (Op., R. 142, Page ID # 7079.)

The District's Court's conclusion was consistent with every other court to have considered the issue at the time, each concluding that the discretion to end participation in the PUA program at any time for any reason meant that PUA benefits fell outside the scope of a property interest. (*Id.*, Page ID ## 7079–7081 (citing *Moss v Lee*, 3:21-cv-00561, 2022 WL 68388 (M.D. Tenn. Jan. 6, 2022); *Dickerson v. Texas*, H-21-2729, 2021 WL 4192740 (S.D. Tex. Sept. 15, 2021); *Jackson v Daniel*, 1:21-cv-1107-LY-SH, 2022 WL 1157656 (W.D. Tex. Apr. 18, 2022); *Winter v New Mexico Dep't of Workforce Solutions*, 21-475 JFR/SCY, 2023 WL 184115 (D. N.M. Jan. 13, 2023); *Al-Farouk v. Dep't of Lab. & Indus. Rels.*, 23-00385 LEK-KJM, 2023 WL 6796200 (D. Haw. Oct. 13, 2023); *Witzke v. Donofrio*, 20-12594, 2021 WL 22467 (E.D. Mich. Jan. 4, 2021).)

The court in *Winter* put it succinctly: "the answer to [whether a property right exists in CARES Act benefits] is not found in how state officials went about exercising their discretion to confer CARES Act benefits, but in the fact that state officials had discretion to exercise at

all." *Winter*, 2023 WL 184115 at *5 (citing *Am. Premier Underwriters, Inc. v. Nat'l R.R. Passenger Corp.*, 709 F.3d 584, 594 (6th Cir. 2013)). Indeed, during the pandemic interested groups advocated both for and against the State of Michigan's continued participation in the PUA program.[9] Because under the CARES Act and the Agreement between the State of Michigan and DOL there was no guarantee Michigan's participation in the PUA program would continue—and its continued participation was entirely discretionary—claimants for PUA benefits lacked a reasonable expectation of entitlement to these benefits. (Op., R. 142, Page ID # 7081 (citing *Al-Farouk*, 2023 WL 6796200 at *4).)

B. The PUA program is fundamentally different from participation in other longstanding federal-state programs.

Claimants' argument rests on the only case to have concluded there is a property interest in PUA benefits, *Sterling v. Feek*, 150 F.4th

[9] *See, e.g.*, Taylor DesOrmeau, *Cancel extra $300, federal unemployment programs, Michigan business group urges*, MLive (May 11, 2021), https://www.mlive.com/public-interest/2021/05/cancel-extra-300-federal-unemployment-programs-michigan-business-group-urges.html <accessed February 25, 2025>; Michigan H.R. 134 of 2021, available at https://www.legislature.mi.gov/Bills/Bill?ObjectName=2021-HR-0134 <accessed February 25, 2026> (proposed House Resolution opposing withdrawal from the PUA program).

1235 (9th Cir. 2025); (Doc. 23, pp. 33–36). Respectfully, the analysis in *Sterling* is flawed, and should not be adopted by this Court.

Despite the discretionary nature of CARES Act benefits, the Ninth Circuit in *Sterling* found a protected property interest in CARES Act benefits because state participation in other benefit programs such as Medicaid, the Section 8 housing program, and the food stamps program is also voluntary. *Sterling*, 150 F.4th at 1250. And, the Ninth Circuit reasoned, the courts have found a protected property interest in each of those categories of benefits. *Id.*

But this one-for-one comparison is problematic on at least two levels. First, none of the cases that *Sterling* cites meaningfully considered whether the discretionary nature of the program itself affected the due process analysis. *See Atkins v. Parker*, 472 U.S. 115, 128 (1985); *Ressler v. Pierce*, 692 F.2d 1212, 1215–16, 1222 (9th Cir. 1982); *Pediatric Specialty Care, Inc. v. Ark. Dep't of Hum. Servs.*, 364 F.3d 925, 928 n.2, 930 (8th Cir. 2004)

Second, while the initial participation in these programs may have been voluntary, the continued participation was anything but. The Medicaid program was created in 1965 through the enactment of Title

XIX of the Social Security Act, 42 USC 1396 *et seq*. While a state in theory could opt not to participate, in reality every state participates in Medicaid and has since 1982. *See* Huberfeld, *Plunging into Endless Difficulties: Medicaid and Coercion in National Federation of Independent Business v. Sibelius*, 93 B.U. L. Rev. 1, 15 fn. 79, 16 (2013). As to PUA benefits, as noted above, approximately half the states terminated their participation in the program prior to its expiration.

When entering into a Medicaid agreement with the federal government, a state must draft and submit a state plan that complies with 42 U.S.C. § 1396a—"a virtually impenetrable thicket of legalese and gobbledygook." *Lamore v. Ives*, 977 F.2d 713, 716 (1st Cir. 1992). To receive funding for PUA benefits, states were required to simply execute an 11-page agreement. (Agreement, R. 134-44, Page ID # 6335, § XI.)

Exiting Medicaid would be a monumental (and unprecedented) undertaking with far-reaching economic and political ramifications. *See generally Nat'l Fed'n of Indep. Bus. (NFIB) v. Sebelius*, 567 U.S. 519, 581–582 (2012) (plurality) (noting that losing Medicaid funding is not a "real option" for the states). This would also require an overhaul of a

state's legislative and regulatory scheme as it relates to Medicaid specifically and indigent healthcare generally. *See generally Pharmaceutical Research & Manufacturers of Am. v. Dep't of Comm. Health*, 657 N.W.2d 162, 166–167 (Mich. Ct. App. 2002) (describing Michigan's statutory framework for implementing Medicaid). There simply would be no way for Michigan's executive branch to faithfully execute the laws without participation in the federal Medicaid program. *See, e.g.*, Mich. Comp. Laws § 400.105b(4) (requiring financial support for "health information technology initiatives using Medicaid funds").[10] Terminating PUA benefits, on the other hand, required only 30-days' notice and had little economic impact on the states who chose to opt in or out.

So while Medicaid, food stamps, Section 8 and PUA benefits were all voluntary to join, the first three are permanent federal programs that states have relied on for decades, and which state legislation

[10] It is no different for food stamps or Section 8 benefits. *See* State Housing Development Authority Act of 1966, Mich. Comp. Laws § 125.1401 *et seq.*; *Comstock Vill. Ltd. Dividend Hous. Ass'n v. Comstock Twp.*, 425 N.W.2d 702, 703 (1988) (noting that a "purpose of the MSHDA act was to take advantage of available federal funds for housing projects"); Mich. Comp. Laws § 400.10 (food stamps).

effectively compels continued participation in, while the other is a temporary federal program states had complete discretion to (and did) end participation in at any time. In other words, the first three are discretionary only in theory, while the latter is discretionary in fact. *See generally NFIB*, 567 U.S. at 581–582. For purposes of the due process analysis, this is not a distinction without a difference. In determining whether an individual has a "legitimate claim" or merely a "unilateral expectation" of certain benefits, the distinction between a program that a state is practically guaranteed to continue versus a program that is temporary is nature and that a state can easily terminate is dispositive.

And the same distinction exists between traditional unemployment benefits and PUA benefits. Traditional unemployment benefits have existed as a joint state-federal program since the 1930's. (*See* Op., R. 142, Page ID ## 7074–7075.) The MES Act requires UIA to collect taxes from employers and pay benefits to those that are eligible and qualified. *See* Mich. Comp. Laws § 421.19; *id.* § 421.27. Over 90% of UIA's operating budget comes from federal funds. *See* Mich. P.A. 22 of 2025, Art. 9, § 106 (showing $280,315,100 of $303,069,100 gross

appropriation coming from federal funds).[11] Again, there simply is no way for the State of Michigan to run its unemployment insurance program and faithfully execute the law without continued participation in the federal unemployment program.

In contrast, there was no act of the Michigan Legislature requiring UIA to participate in the PUA program: it was simply an 11-page agreement, signed by Governor Whitmer, between the State of Michigan and DOL that, by law, gave the State exclusive authority to determine eligibility and that the State could discontinue at any time and for any reason. Pub. L. 116–136, § 2104(a); § 2102(f)(1); (Agreement, R. 134-44, PageID # 6335, § XI.) Because there were no federal legislative, state legislative, or contractual hurdles to the State of Michigan ending its participation in the PUA program, there is no property interest that due process attached to.

[11] Available at https://www.legislature.mi.gov/documents/2025-2026/publicact/pdf/2025-PA-0022.pdf <accessed February 26, 2025>.

III. The District Court correctly concluded that Claimants received due process.

Claimants' argument is based on the premise that this Court in *Cahoo I* held that there must be a hearing before any unemployment benefits are withheld. Therefore, the reasoning goes, if Claimants can show benefits were not paid before some sort of hearing occurred, they have established a due process violation. Claimants' premise is flawed.

This Court's commentary in *Cahoo I* on pre-deprivation hearings was in the context of a motion to dismiss, where the Court accepted all allegations as true and in the light most favorable to the plaintiffs. *Cahoo I*, 912 F.3d at 897, 903. But with the benefit of discovery comes the burden of identifying substantiating evidence to support your position. *Cahoo v. SAS Institute, Inc.*, 71 F.4th 401, 406 (6th Cir. 2023) (*Cahoo II*). Claimants have failed to do so.

In only one case, *Goldberg v. Kelly*, 397 U.S. 254 (1970), involving welfare benefits, has the Court held that a hearing closely approximating a judicial trial is necessary before governmental benefits may be terminated. *Id.* at 266–271. However, the pre-deprivation requirement in *Goldberg* was overturned by statutory amendment in 1996 wherein Congress pronounced that there was no entitlement to

"any individual or family to assistance under any State program funded under this part." 42 U.S.C. § 601(b); *see also State ex rel. KM v. W. Va. Dep't. of Health & Human Resources*, 575 S.E.2d 393, 402 (2002).

To determine whether a pre-deprivation hearing is required, the Supreme Court has indicated that courts should consider three factors:

> (1) "the private interest that will be affected by the official action";
>
> (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and
>
> (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." [*Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).]

In *Mathews*, the Supreme Court found that a pre-deprivation hearing was not required prior to the termination of disability benefits. *Id.* at 349.

Regarding the first factor—the private interest at issue—the Court explained that disability benefits, unlike the welfare benefits at issue in *Goldberg*, are not based on financial need. *Id.* at 340. The same is true here. PUA eligibility is not based upon financial need. Rather, eligibility is based on whether the individual lost work due to

COVID-19, whether they would be ineligible to receive state unemployment benefits, whether they met state able and available requirements, and whether they met one of the enumerated eligibility requirements. 15 U.S.C. § 9021(a)(3)(A).

Looking next to the third factor—the Government's interest—the requirement of a pre-deprivation hearing when UIA typically handles hundreds of thousands of claims (and currently over one million) would not be administratively feasible and would divert resources from ensuring other claims are being timely processed. This would be even more true during the pandemic when the volume of claims exploded.

In fact, under Michigan law, UIA can suspend unemployment benefits upon the issuance of an adverse decision without a pre-deprivation hearing. Mich. Comp. Laws § 421.27(1)(a). And UIA had a particularly significant interest in preventing fraud on the large, backdated claims that were unique to the pandemic. (Field Release, R. 118, Page ID ## 4541–4546.) As such, this factor weighs heavily in the Agency's favor.

Finally, looking to the second factor—the risk of erroneous deprivation—procedural due process guarantees "a 'fair procedure'

when depriving someone of life, liberty, or property." *EJS Props., LLC v. City of Toledo*, 698 F.3d 845, 855 (6th Cir. 2012) (citing *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992)). The notice and hearing requirements imposed by the Due Process Clause include a "reasonably definite statement of the charge" so that the interested party "can appear at the hearing and offer any objections." *Yang v. City of Wyoming, Michigan,* 793 F.3d 599, 608 (6th Cir. 2015) (quoting *Eaton v. Charter Twp. of Emmett,* 317 F. App'x 444, 448 (6th Cir. 2008)). "The Constitution judges the adequacy of notice from the perspective of the sender, not the recipient." *Id.* at 602 (quoting *Lampe v. Kash*, 735 F.3d 942, 944 (6th Cir. 2013)). Courts look at the aggregate of sender's efforts at providing notice to determine if they were "reasonable" under the "particular circumstances." *Id.* at 603, 605.

Here, the "particular circumstances" are a global pandemic leading to unprecedented numbers of claims (many under the brand new PUA program being implemented by states on the fly) where virtually every state struggled to pay claims timely. (OIG Report, R. 133–1, Page ID ## 5671.) And the monetary determinations issued by UIA all informed Claimants there were additional requirements for

eligibility. (*See* Kreps Monetary Determination, R. 118, Page ID # 4157; Boudrie PUA Monetary Determination, R. 118, Page ID # 4143.)

A plaintiff who brings a § 1983 procedural due process claim has the burden of pleading and proving that the state remedies for redressing the wrong are inadequate. *Vicory v. Walton*, 721 F.2d 1062, 1066 (6th Cir. 1983). Where a plaintiff fails to demonstrate the inadequacy of his state remedies, the case should be dismissed. *See Bass v. Robinson,* 167 F.3d 1041, 1050 (6th Cir. 1999).

The MES Act provides for a hearing on any decision issued by UIA. Mich. Comp. Laws § 421.33. Upon receipt of a decision denying benefits, a party can request review by UIA or transfer of the matter to an ALJ for a hearing. Mich. Comp. Laws § 421.32(a). The ALJ is tasked with affording all parties "a reasonable opportunity for a fair hearing" and issuance of a decision. Mich. Comp. Laws § 421.33. If either party disagrees with the decision of the ALJ, they can appeal to the Appeals Commission, the circuit courts, and through the appellate courts. Mich. Comp. Laws § 421.33(2), § 34, and § 38.

Here, several Claimants had their payments stopped based on the information they provided or their failure to follow UIA's instructions.

Every Claimant took advantage of the process offered to them. Especially given the circumstances at hand (an unprecedented global pandemic) every Claimant was afforded adequate process that complies with the Fourteenth Amendment.

A. Kreps (state claim)

Claimants assert Kreps' due process rights were violated when UIA withheld payments in August of 2020. (Doc. 23, p. 45.) But individuals are not eligible for unemployment benefits unless they "continue[] to report pursuant to unemployment agency rules." Mich. Comp. Laws § 421.28(1)(a); *see also* Mich. Admin. R. 421.210(1). UIA explicitly advised Kreps in his monetary determination that he had to meet additional requirements to be eligible for benefits, and, on the same date, advised Kreps that he needed to verify his identity, or his claim would be denied. (Monetary Determination, R. 118, Page ID # 4157; ID Verification Letter, R. 118, Page ID # 4159.) UIA provided Kreps with notice and opportunity to be heard, and he simply did not timely respond to UIA's instructions, not providing documentation until October of 2020. (Kreps Tr., R. 118, Page ID ## 4174–41758, 4179; Kreps ID documents, R. 118, Page ID # 4202,)

UIA then provided him with (re)determinations and a letter to arrange for payment. (Determination, R. 118, PageID # 4203; Redetermination, R. 118, Page ID # 4205; Payment letter, R. 118, Page ID # 4207.) Kreps did not follow the instructions or take reasonable steps in response to the instructions. Nor can UIA pay someone for whom it does not have valid bank account information and has not authorized payment by debit card. His failure to do so does not demonstrate a failure of Defendants to provide him with due process. His behavior, in refusing to follow written instructions or accept a debit card for thousands of dollars, can be characterized as unreasonable. As such, the District Court correctly found that Kreps received due process.

B. The Myrolds (state claims)

Patricia and Andrew Myrold were allegedly denied due process because their payments were stopped because of an "additional claim required" flag. (Doc. 23, pp. 43–44.)[12] But this flag is applied when a claimant reports they have returned to work. (Burton Decl'r., R. 118,

[12] This is an unpreserved argument by Claimants, having never mentioned "additional claim required" in the summary judgment briefing.

Page ID # 4342, ¶ 12.) An additional claim is therefore required to reestablish eligibility. Mich. Admin. R. 421.20(2)(a) (defining additional claim).[13] Patricia Myrold acknowledges that she was aware that she needed to file an additional claim, but she refused to do so. (Burton Decl'r., R. 118, Page ID # 4342, ¶ 15.) She had notice and an opportunity to receive payment, but unreasonably failed to do so. As such, the District Court correctly determined she received due process.

Similarly, UIA provided Andrew Myrold with adequate due process in that it provided him with written notice of the adverse decisions and instructions as to how to challenge the decisions. (Determinations, R. 118, Page ID ## 4227, 4231.) He took advantage of the instructions and pursued his appeals to Jackson County Circuit Court. As such, the District Court correctly found that Andrew Myrold received due process.

[13] The additional claim is necessary so UIA can receive information regarding the new separating employer, reason for separation, make appropriate determinations regarding benefit charges and provide the new separating employer an opportunity to protest. *See* Mich. Comp. Laws § 421.19 & §.20 (regarding benefit charges and calculation of tax rate); (Kratz Decl'r., R. 133–1, Page ID 6004, ¶ 4.)

C. Quigg (state and PUA)

UIA provided Quigg with adequate due process on her state claim in that it provided her with written notice of her disqualification and instructions as to how to challenge the decisions. (Determination and Redetermination, R. 118, Page ID ## 4212, 4214.) She took advantage of the instructions, albeit late, and ultimately ceased her appeals. (Denial of Request and MOAHR Order, R. 118, Page ID ## 4216, 4218–4224.) As such, the District Court correctly concluded that she had been provided with due process.

While the District Court did not reach Quigg's PUA claim given its decision that Claimants did not have a property interest in PUA benefits, the result is no different. Payments were suspended so UIA could review Quigg's large, backdated claim per DOL recommendations. (Burton Decl'r., R. 133-1 Page ID # 6036–6038, ¶ 5; Field Release, R. 118, Page ID ## 4541–4546.) But she ultimately received a decision, which was later found void. (CRM Notes, R. 134-55, Page ID # 6490.) Due process does not require perfect determinations free of error. *Chernin v. Welchans*, 844 F.2d 322, 329 (6th Cir. 1988).[14]

[14] It is worth noting that the issue in *Cahoo I* was adjudication of fraud claims without human intervention, 912 F.3d at 892–893, while with

D. Boudrie (PUA claim)

Claimants assert Boudrie's payments were improperly stopped on August 29, 2020. (Doc. 23, p. 48.) No payment was issued for weeks ending August 29, 2020, through September 19, 2020, because she refused her employer's offer to return to work. (Boudrie Tr., R. 118, Page ID 4353–4354; Certifications, R. 118, Page ID 4358–4359.) In other words, she admitted her ineligibility to the UIA through her certifications. Information provided by Boudrie herself to UIA that she is not eligible for benefits is presumably reliable. Claimants have cited to no authority for the proposition that a pre-deprivation hearing is required in such a scenario.

UIA provided Boudrie with adequate due process in that it provided her with written notice of the adverse decision and instructions as to how to challenge the decision. (Determination, R. 118, Page ID # 4360.) She took advantage of the instructions and filed a timely protest. (Protest, R. 118, Page ID # 4362.) As such, she cannot demonstrate that UIA failed to provide her with due process.

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respect to Quigg the issue is human intervention allegedly taking too long while UIA was overwhelmed with an unprecedented number of claims.

E. Brainer (PUA claim)

On appeal, Claimants now assert that Brainer was denied due process when his payments were stopped on April 18, 2021. (Doc. 23, p. 50.) But the only injury Brainer actually alleged was the seizure of $532 under the resolved Count III. (Sec. Am'd Compl., R. 36, Page ID ## 1264–1265, 1296–1301, ¶¶ 115–123, 276–301.) And even if Brainer had asserted a claim under Count I (he did not), he did not receive benefits after April 18, 2021, because he did not certify for them. (Burton Decl'r, R. 133-1, Page ID ## 6036–6038, ¶ 7.) Due process does not require Brainer to be paid for benefits he never claimed in the first place. Therefore, even if Brainer had a property interest in PUA benefits, he received due process.

F. Holifield (PUA claim)

Claimants argue that Holifield's due process rights were violated when payments on her claim were suspended in July of 2020. (Doc. 23, pp. 48–49.) UIA provided Holifield with adequate due process in that it provided her with written notice of the adverse decisions by October of 2020 and instructions as to how to challenge the decisions. (Determination, R. 188, Page ID # 4377.) She took advantage of the

instructions and was ultimately successful before the Appeals Commission after a change in the law. (Decision, R. 118, Page ID # 4377–4379.) The relatively brief delay in issuance of the adverse decisions was permissible in the unique circumstances of a global pandemic.[15] Again, due process does not require perfect process. *Chernin* 844 F.2d at 329. As such, even if Holifield has a property interest in PUA benefits, she received due process.

G. Foster (PUA Claim)

Claimants argue that Foster's due process rights were violated when payments on her claim stopped after the week ending December 12, 2020. (Doc. 23, p. 51–52.) But Foster was paid for 39 weeks of benefits (Burton Decl., R. 133–1, Page ID ## 6036–6038, ¶ 8), and the documentation referenced by Claimants does not reflect that she certified for any weeks thereafter, (Previously certified weeks, R. 134–51, Page ID ## 6436–6437). Upon being found ineligible for PUA benefits she had already been paid in April 2021, she was ultimately

[15] If not for this short delay, the Appeals Commission may have decided her case prior to the change in the law that resulted in a ruling in her favor.

successful before the Appeals Commission after a change in Michigan law. (5/7/2021 MOAHR decision, R. 133–1, Page ID ## 5951–5955; 07/29/2022 Decision of the UIAC, R. 133–1, Page ID ## 5956–5957.) Due process does not require Foster to be paid for benefits she never claimed in the first place. UIA provided her with written notice of the adverse decision and instructions as to how to challenge the decisions, in which she was ultimately successful. Therefore, even if Foster had a property interest in PUA benefits, she received due process.

H. Shipe (PUA Claim)

Claimants argue that Shipe's due process rights were violated when payments were not made on her claim and she was found ineligible three months after filing. (Doc. 23, pp. 52–54.) Of course, the DOL recommended UIA review large, backdated claims. (Field Release, R. 118, Page ID ## 4541–4546.) UIA provided Shipe with adequate due process in that it provided her with written notice of the adverse decisions by January 2021, and Shipe's appeal was ultimately successful. (11/28/2022 ALJ Order, R, 133–1, Page ID ## 5961.) Again, the relatively brief delay in issuance of the adverse decisions was permissible in the unique circumstances of a global pandemic. Due

process does not require perfect process. *Chernin* 844 F.2d at 329. As such, even if Shipe has a property interest in PUA benefits, she received due process.

IV. Even if this Court believes there is an issue of fact as to whether Claimants received due process, summary judgment was appropriate as to Defendants Dale, Berry, and Burns.

The Claimants allege that Dale, Berry, and Burns individually violated the individual Plaintiffs' procedural due process rights in denying payment. But Dale, Berry, and Burns cannot be individually liable to claimants because qualified immunity applies. Moreover, neither Dale, Berry, nor Burns are or were responsible for processing unemployment claims, reviewing claims, or paying claims. None are or were responsible for suspending payments or stopping payments by any means. Therefore, there is no basis for their individual liability. *See Cahoo II*, 71 F.4th at 411.

A. Defendants are entitled to qualified immunity regarding Claimants with PUA claims.

It is well established that "government officials performing discretionary functions are generally shielded from liability for civil

damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Conduct violates an established law only when, at the time of the challenged conduct, "the contours of the right are sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

Plaintiffs must demonstrate that the right the official is alleged to have violated must have been "clearly established" in a "more particularized, and hence more relevant, sense." *Anderson*, 483 U.S. at 639. The Court analogized that while the right to due process of law is "quite clearly established," it is too general an inquiry to establish the government actors understood that their conduct violated that right. *Id.* To determine whether a constitutional right is clearly established, the Court must "look first to decisions of the Supreme Court, then to decisions of this court and other courts within our circuit, and finally to decisions of other circuits." *Hamilton v. Myers*, 281 F.3d 520, 531 (6th Cir. 2002) (quotation omitted).

Claimants once again attempt to conflate PUA benefits with traditional state unemployment benefits, but, as covered exhaustively in this brief, they are not the same. Undeterred, Claimants argue that there is a clearly established property right in PUA benefits under *Cahoo I* because "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." (Doc. 23, p. 63.) Claimants stretch *Cahoo I* beyond the breaking point.

First, *Cahoo I* opens by noting that to receive benefits "claimants must demonstrate they were employed by a covered employer . . . and that they satisfy wage and income requirements." *Cahoo I*, 912 F.3d at 892. In other words, the exact qualifications PUA claimants lack. *See* Pub. L. 116–136, § 2102(a)(3). Second, *Cahoo I* necessarily could not have encompassed PUA benefits because it was decided more than a year before the CARES Act was passed. And Claimants' use of the generic phrase "unemployment benefits" poses the question at too high a level of generality. *See Godawa v. Byrd*, 798 F.3d 457, 467 (6th Cir. 2015) (citing *Plumhoff v. Rickard*, 572 U.S. 765, 779 (2013)). The

question presented is not about "unemployment benefits" but PUA benefits under the CARES Act. *See Yerkes v. Ohio State Highway Patrol*, No. 22-3030, 2022 WL 17753528, at *5 (6th Cir. Dec. 19, 2022).

When framed properly, the answer to the question is obvious: there was no clearly established property interest in PUA benefits at the time of the alleged denial of due process. Recall that each Claimant asserts that their due process rights were violated through stopped payments between May 2020 and April 2021. (Doc 23, pp. 34–54.)

So at the time Dale (not even employed by UIA yet), Berry, and Burns allegedly violated the due process rights of the PUA Claimants, there was *no case law on PUA benefits at all*, much less the conflicting caselaw (with numerous district courts finding there is no property interest in PUA benefits and the Ninth Circuit concluding there is) that exists today. And, indeed, UIA staff members (including attorneys) disagreed at the time regarding CARES Act provisions and requirements. (9/27/2020 Burns email, R. 118, Page ID ## 4548–4551; Gray Tr., R. 118, PageID ## 4573, 4576–4577.) Given the establishment of a new law with new beneficiaries, which resulted in two extensions, over 60 UIPLs, and confusion among staff, any

constitutional rights attached to PUA benefits were not clearly established.

B. Dale, Berry, and Burns cannot be held liable under a theory of respondeat superior, and there is no evidence that their conduct violated Claimant's constitutional rights.

While the District Court granted summary judgment because it concluded (correctly) that no due process violations occurred, even if due process violations in general are assumed, there is no basis for individual liability as to Dale, Berry, and Burns. This Court "may affirm on any ground supported by the record." *Abercrombie & Fitch Stores, Inc.*, 280 F.3d at 629.

The other part of the two-step qualified immunity analysis is whether the officer's conduct violated that right. *Cahoo I*, 912 F.3d at 897. There is no respondeat superior liability on § 1983 claims. *Skinner v. Govorchin*, 463 F.3d 518, 525–526 (6th Cir. 2006). To impose liability for a constitutional violation, the state defendant must be actively involved in the violation of the plaintiffs' federal rights. *Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999). Mere knowledge of a constitutional violation is not enough. Thus, a defendant can be liable

in his or her individual capacity only if he or she participated in, condoned, encouraged, or knowingly acquiesced in the alleged constitutional violation. *Id.* The right to control an employee who violates a plaintiff's constitutional rights is not sufficient. *Id.*; *Doe v. Clairborne Co., Tenn.,* 103 F.3d 495, 507, 511 (6th Cir. 1996).

Claimants, with the benefit of discovery, had the burden below to identify substantiating evidence in the record that Dale, Berry, and Burns violated their constitutional rights. *Cahoo II*, 71 F.4th at 406. Claimants failed to do so.

1. Julia Dale.

Each Claimant asserts that their due process rights were violated through stopped payments sometime between May 2020 and April 2021. (Doc 23, pp. 34–54.) But Dale did not work at UIA until she became Director in October of 2021. (Dale Tr., R. 118, Page ID # 4586). Because she was not part of UIA when the alleged violations of due process occurred, she necessarily could not have participated in, condoned, encouraged, or knowingly acquiesced in the purported violations of due process. Nor can Claimants possibly muster any evidence to the contrary, since Dale was not questioned about any of the

Claimants, nor did Claimants take a Rule 30(b)(6) deposition from any Agency claims examiners to ascertain any facts regarding the individual Plaintiffs' files outside of documentation.

2. Kimberly Berry.

Berry simply had no responsibilities related to claimant benefits, instead dealing with the employer side of operations, hiring, and getting staff working from home during the pandemic. (Berry Tr., R. 118, Page ID ## 4627–4630, 4633–4634, 4651–4652, 4674.) Berry lacks knowledge regarding policies and procedures relating to any stopping of payments. (*Id*., Paged ID ## 4641–4642, 4645–4651, 4654–4656, 4661–4662, 4665–4667, 4672–4673, 4676.)

Berry was not responsible for processing PUA unemployment claims, reviewing claims, or paying claims. Nor was she responsible for suspending payments or stopping payments by any means. Claimants have completely failed to demonstrate Berry was directly involved in or responsible for the conduct of which they complain.

Claimants' claimed "smoking gun" with regard to Berry is a three-word email from Berry approving a field release. (Dec. 2, 2020 Berry Email, R. 134-10, Page ID # 6088.) Claimants assert that "Berry

authorized [UIA]'s protocols that triggered the withholding of the unemployment compensation payments at issue." (Doc. 23, p 13.) But this argument makes no sense. Only two Claimants (Brainer and Foster) even assert that the alleged improper withholding of payments began after December 2, 2020. (Doc 23, pp. 34–54.) Therefore, the field release approved by Berry could not have been the "protocol that triggered the withholding" of the payments to the Myrolds, Kreps, Quigg, Boudrie, Holifield, or Shipe.

Nor do Claimants elucidate for the Court the contents of the field release, how it directed Agency personnel to violate claimants' due process rights in general, or how it led to the improper withholding of payments from Claimants Brainer or Foster. Claimants fail to do so because it does not. (Dec. 2, 2020 Field Release, R. 134-8, Page ID 6074–6076.) It simply sets forth examples of what constitutes reasonable suspicion of fraud and gives guidance on how to resolve the issues as they arise. (*Id.*) Nothing in this field release directs employees to violate claimant's due process rights. In short, Claimants' supposed smoking gun is a dud, and there is no basis for individual liability as to Berry.

3. Teresa Burns.

As to Teresa Burns, Claimants cite nothing more than the fact she is the Administrative Manager for Internal Controls. (Doc. 23, p. 13.) But while Internal Controls oversees UIA's policies and procedures, it does not manage, process, or adjudicate claims, nor is it responsible for the suspension of benefits. (Burns Tr., R. 118, Page ID # 4471).

In other words, Burns was not responsible for processing PUA unemployment claims, reviewing claims, or paying claims. Nor was she responsible for suspending payments or stopping payments by any means. Claimants have completely failed to demonstrate Burns was directly involved in or responsible for the conduct of which they complain.

CONCLUSION AND RELIEF REQUESTED

For the reasons stated above, the Agency respectfully requests that the District Court be affirmed in its entirety.

Respectfully submitted,

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Dated: March 19, 2026

CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limit,
Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B)(i) because, excluding the part of the document exempted by Federal Rule of Appellate Procedure 32(f), this brief contains no more than 13,000 words. This document contains 12,970 words.

2. This document complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Word 365 in 14-point Century Schoolbook.

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CERTIFICATE OF SERVICE

I certify that on March 19, 2026, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

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DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Defendants-Appellees, per Sixth Circuit Rule 28(a), 28(a)(1)-(2), 30(b), hereby designated the following portions of the record on appeal:

Description of Entry	Date	Record Entry No.	Page ID No. Range
Opinion & Order Granting in Part and Denying in Part Defendants' Motion to Dismiss	07/12/2023	R. 33	1194–1219
Second Amended Complaint	07/25/2023	R. 36	1237–1306
Claimants' Motion for Partial Summary Judgment	07/24/2024	R. 71	1826–1861
Agency Response to Motion for Partial Summary Judgment	08/28/2024	R. 83	2431–2460
Unemployment Insurance Program Letter (UIPL) No. 16-20)	04/05/2020	R. 83–2	2463–2505
UIPL No. 16-20, Change 1	04/27/2020	R. 83–3	2507–2531
UIPL No. 16-20, Change 2	07/21/2020	R. 83–4	2533–2545
UIPL No. 16-20, Change 3	08/27/2020	R. 83–5	2547–2551
UIPL, No. 23-20	05/11/2020	R. 83–6	2553–2565
Timothy Kolar Dep. Tr.	08/01/2024	R. 83–7	2567–2616
UIPL 28-20	08/31/2020	R. 85	2639–2655
Stipulated Order Dismissing Plaintiff Zachary Brazil	10/24/2024	R. 99	3101–3102

Agency Motion for Summary Judgment	11/04/20024	R. 110	3319–3369
Motion for Class Certification	11/04/2024	R. 111	3373–3415
Boudrie PUA Monetary Determination	04/23/2020	R. 118	4143–4144
Holifield PUA Monetary Determination	04/23/2020	R. 118	4149–4150
Kreps Monetary Determination	08/05/2020	R. 118	4157–4158
Kreps Verify Your Identity letter	08/05/2020	R. 118	4159–4160
Kreps Dep. Tr.	07/09/2024	R. 118	4161–4201
Kreps ID documents	09/23/2020; 10/06/2020	R. 118	4202
Kreps Determination	10/12/2020	R. 118	4203–4204
Kreps Redetermination	04/13/2021	R. 118	4205–4206
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