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, and MARISSA QUIGG,

Plaintiffs – Appellants,

v.

MICHIGAN UNEMPLOYMENT INSURANCE AGENCY, JULIA DALE, KIMBERLY BERRY, TERESA BURNS, and 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)

REPLY BRIEF OF PLAINTIFFS-APPELLANTS

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Defendants' brief is devoid of any claim that the Agency provided notice or any opportunity to be heard before withholding Plaintiffs' unemployment benefits. Defendants instead contend that the post-deprivation process they provided was adequate under the law. As demonstrated in Plaintiffs' opening brief and below, this position contradicts the requirements of the Fourteenth Amendment, the relevant statutes, and controlling precedent. Defendants provide no basis for this Court to depart from those requirements.

I. Challenges Faced by States During the Pandemic Do Not Warrant a Departure from the Law.

Defendants invoke a 2023 Office of Inspector General Report to highlight the challenges states faced administering unemployment compensation programs during the pandemic. Defs.' Br. 12–14. But not once does that report reference due process for claimants as a source of the numerous challenges it discusses. *See* RE 133-1, Page.ID#5669–5689. In fact, it identifies "the requirement that claimants be provided with due process prior to stopping payment" as an important means by which states could reduce fraud and "determine a payment [was] improper," *id*. at Page.ID#5671.

Defendants, moreover, overlook that the pandemic was also a crisis for individuals, imperiling access to fundamentals such as food, shelter, heat, and health care, rendering a withholding of the unemployment compensation promised

by Congress potentially devastating. *See, e.g.*, Br. Amici Curiae (Dkt. 26); Kreps Dep., RE 134-46, Page.ID#6370–6373.

The CARES Act accordingly accounted for the challenges to both states and individuals posed by the pandemic. *See Veltor Underground, LLC v. U.S. Small Bus. Admin.*, 143 F.4th 727, 738 (6th Cir. 2025) (Congress sought "to balance a number of objectives …. Yes, it wanted to distribute money quickly. But it also wanted to prevent waste and fraud in a program worth hundreds of billions of dollars."). Congress, then, has already weighed the interests Defendants invoke and mandated (in language that remained unchanged through two amendments) that the 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," 20 C.F.R. § 625.15; 15 U.S.C. § 9021(h) (incorporating same). And there is no question that recipients of regular unemployment compensation must "be given an opportunity for a hearing *before* [being] deprived of" such compensation, *Cahoo v. SAS Analytics Inc.*, 912 F.3d 887, 903 (6th Cir. 2019) ("*Cahoo I*") (citation omitted); *Cal. Dep't of Hum. Res. Dev. v. Java*, 402 U.S. 121, 123–24, 133 (1971) (same). Thus, "Congress has spoken in the plainest of words, making it abundantly clear that the balance has been struck," *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 194 (1978). "If the balance is to be struck anew, the decision must come from

Congress and not from the Court." *Manakee Pro. Med. Transfer Serv., Inc. v. Shalala*, 71 F.3d 574, 582 (6th Cir. 1995) (citation omitted).

II. The CARES Act Created Property Interests in PUA Benefits.

As discussed in Plaintiffs' opening brief, the Ninth Circuit, relying in part on *Cahoo I*, held that the CARES Act created property interests because "the relevant inquiry is not whether states have discretion to *participate* in" a state-federal benefits program, "but rather whether states have open-ended discretion[] to *award* [the] benefits," *Sterling v. Feek*, 150 F.4th 1235, 1250 (9th Cir. 2025) (quotation marks omitted). *See* Opening Br. 24–27, 57 (discussing same). In undertaking that inquiry, *Sterling* applies the same standard as this Court. *Compare* 150 F.4th at 1250 (CARES Act created property interests because it "uses mandatory language and establishes definite eligibility criteria that greatly narrow the discretion of [participating states]" (quotation marks omitted)), *with Med Corp. v. City of Lima*, 296 F.3d 404, 409 (6th Cir. 2002) (property interest turns on whether the statute uses "mandatory terms and … imposes substantive constraints on official discretion to award the benefit." (citation omitted)). As demonstrated in Plaintiffs' opening brief, Opening Br. 26–29, and below, the CARES Act meets that standard. None of the bases on which Defendants urge this Court to hold otherwise has merit.

First, Defendants invoke *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564 (1972). Defs.' Br. 38–39. But *Roth* simply rejects the existence of a property interest in continued employment beyond the express end date of an employment contract. 408 U.S. at 578. This case is not remotely analogous. Plaintiffs claim no entitlement to unemployment compensation for periods beyond the duration of the CARES Act. *See also Sterling*, 150 F.4th at 1248–49 (applying *Roth*).

Second, Defendants invoke the same smattering of unpublished district court and magistrate decisions relied on by the court below. Defs.' Br. 40–41. Plaintiffs explained how the district court erred in relying on those cases. Opening Br. 25 & n.10, 57 & n.17. Because Defendants nowhere address those arguments, Plaintiffs stand on them.

Third, Defendants contend that the CARES Act is "fundamentally different" from other programs such as Social Security Act unemployment compensation and Medicaid. Defs.' Br. 41. Defendants point to states' widespread participation in those programs; the degree and duration of states' economic reliance on them; and the challenges states would face in withdrawing from them. *Id*. at 42–46. Under these circumstances, Defendants contend, states are "effectively compel[led]" to continue participation in those programs. *Id*. at 45.

This Court and the Supreme Court have repeatedly held otherwise. *See* Opening Br. 23–24, 56 (discussing cases). And Defendants cite not a single case

suggesting that the degree of states' economic reliance on federal-state spending programs, or the difficulties states could face withdrawing from them, are in any way material to whether those programs create property interests. *See* Defs.' Br. 42–46.

Rather, as noted, the analysis turns on whether the statute confers the benefit "in mandatory terms and … imposes substantive constraints on official discretion to award the benefit," *City of Lima*, 296 F.3d at 409 (citation omitted); *see also Mikel v. Quin*, 58 F.4th 252, 261 (6th Cir. 2023) ("A statute places substantive limits on official discretion when it (1) contains mandatory language (2) requiring specific substantive outcomes (3) when specific substantive predicates are met.").

The CARES Act operated in precisely these ways. It set forth numerous substantive predicates to qualify as a "covered individual," 15 U.S.C. § 9021(a)(3), and mandated that if those predicates are met, "the Secretary *shall provide* to any covered individual unemployment benefit[s]," *id*. at § 9021(b) (emphasis added), "through agreements with States," *id*. at § 9021(f). As Plaintiffs explained in their opening brief, the Act then incorporates mandatory conditions under which a covered 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)[.]

Opening Br. 27–28 (emphasis added); *see also* 15 U.S.C. § 9021(h) (incorporating same).

Defendants do not mention this highly relevant text anywhere in their brief. Yet it clearly "impose[d] substantive constraints on official discretion to award the benefit," *City of Lima*, 296 F.3d at 409 (citation omitted), by "requiring specific substantive outcomes … when specific substantive predicates are met," *Quin*, 58 F.4th at 261. Nothing more is required to establish protected property interests.

But there is more: Congress *literally wrote due process protections into the statute*, requiring that rights to PUA benefits "shall be protected in the same manner" as regular UI benefits "are protected under the applicable State law," 20 C.F.R. § 625.15; and that due process protections for PUA claimants "shall be consistent with … the Social Security Act," *id*. at § 625.10(e)(2).[1] Defendants again nowhere acknowledge these provisions in their brief.

And there is more still. Property interests do not arise solely from statutes but also from "existing rules or understandings … that secure certain benefits,"

[1] Both state law and the Social Security Act mandate pre-deprivation process for regular unemployment compensation. *See* Opening Br. 6–9 (discussing the pre-deprivation due process requirements of the Social Security Act under *Java*, 402 U.S. at 121, and Michigan's incorporation of same into MESA).

Roth, 408 U.S. at 577. Michigan's CARES Act Agreement with the Department of Labor required that the Agency "will make payments of benefits in accordance with the provisions of" the PUA program, and "will perform all of the functions and duties" required by that program, Agreement, RE 134-44, Page.ID#6333, ¶¶ I, II, including specifically those set forth in "20 CFR Part 625," *id*. at Page.ID#6337, ¶ I, reproduced in the block quote above, *supra* pp. 5-6.

The Agreement further required that "[t]he Agency will apply the [requirements of] section 303(a)(l) of the Social Security Act (42 U.S.C. 503(a)(l)) to the functions undertaken pursuant to this Agreement," Agreement, RE 134-44, Page.ID#6335. ¶ X, which undoubtedly requires a pre-deprivation opportunity to be heard, *see Java*, 402 U.S. at 123–24. And Michigan's receipt of the funding was expressly *conditioned* on its compliance with those requirements: "no further benefits will be payable" if the State does "not comply with all of the requirements" of the PUA program. Agreement, RE 134-44, Page.ID#6333, ¶ III.

Moreover, while Michigan could withdraw from the CARES Act, the Agreement expressly required the Agency to make the payments *unless and until* Michigan withdrew. *See id.* at Page.ID#6335, ¶ XI ("If the Agreement is terminated …, the Agency will process and pay benefits *for all weeks of unemployment which end prior to the date of termination*[.]" (emphasis added)).

Thus, it cannot credibly be argued that Agency officials enjoyed "unconstrained discretion," *City of Lima*, 296 F.3d at 410, to withhold PUA payments simply because Michigan theoretically could (though did not) withdraw from the CARES Act at some future date. Plaintiffs had property interests in PUA benefits. This Court should reverse the district court's contrary ruling, thereby adhering to the statutory text, avoiding an unwarranted circuit split, and preserving the consistency of its own jurisprudence governing the property interest analysis.

III. Plaintiffs Did Not Receive Pre-Deprivation Notice and Opportunity To Be Heard.

In their opening brief, Plaintiffs set forth in detail the record evidence establishing that (1) each Plaintiff was determined to be eligible for either PUA or UI benefits; (2) each was thereafter deprived of those benefits; and (3) no Plaintiff received pre-deprivation notice or an opportunity to be heard. Opening Br. 34–50; *id.* at 11–15. Defendants dispute none of this. They instead set forth a profusion of details for each Plaintiff (spanning 18 pages) regarding the Agency's eligibility determinations and re-determinations, its provision of opportunities for appeal, and Plaintiffs' alleged failures to seize those opportunities or otherwise meet program requirements. *See* Defs.' Br. 15–25, 52–60.

What that profusion of details obscures is the complete absence of any evidence of *pre*-deprivation process for any Plaintiff. But what it cannot obscure is the absence of any assertion in Defendants' brief that such process was, in fact,

provided to any Plaintiff. Defendants indeed spend not a word defending the district court's erroneous conclusion that pre-deprivation process was provided. *See* Opening Br. 51–52 (discussing same).

Nor could they. As Plaintiffs explained, for Plaintiffs Brainer, Foster, the Myrolds, Quigg, and Shipe, Defendants admitted that those Plaintiffs "experienced a suspension of weekly benefits … without … [notice of] the reason for the suspension," Opening Br. 12–13 (emphasis omitted) (quoting Pls.' Reply Supp. Mot. Summ. J., RE 88, Page.ID#2660). Plaintiffs confirmed the truth of this admission with respect to each of those Plaintiffs, setting forth the dates of the payment stoppage and their first notice of the issue giving rise to the stoppage, which in each case post-dated the stoppage. *See* Opening Br. 34–35 (P. Myrold); 35–36 (A. Myrold); 37–38 (Quigg); 41–42 (Brainer); 42–43 (Foster); 43–45 (Shipe).[2]

[2] Defendants' assertions (never confirmed) that certain Plaintiffs did not meet eligibility requirements are irrelevant. *See Nationwide Recovery, Inc. v. City of Detroit, Mich.*, 163 F.4th 977, 989 (6th Cir. 2026) ("[P]rocedural due process [is] an absolute right because it doesn't depend on the merits of a claimant's substantive assertions." (quotation marks omitted)). Defendants' contention that the Agency's initial monetary determinations "informed Claimants there were additional requirements for eligibility," Defs.' Br. 50–51, fares no better. With exceptions not invoked by Defendants, "MESA does not require the Agency to issue any additional 'determinations' in connection with an application for benefits," *Dep't of Licensing & Regul. Affs./Unemp. Ins. Agency v. Lucente*, 508

For Ms. Myrold, Defendants do not mention the payment stoppage, much less when it occurred; they simply allege that she failed to adequately address the issue giving rise to the stoppage, despite having "notice" of it. Defs.' Br. 54. Yet the evidence Defendants cite, *id*., confirms that it was provided only after "Ms. Myrold called … to ask about her unpaid weeks," Burton Decl., RE 118, Page.ID#4342, ¶ 14—i.e., the notice was given after the payments stopped. Defendants do not dispute this; they simply do not acknowledge it.

For Mr. Myrold, Defendants claim that he received "notice of the adverse decisions and instructions as to how to challenge the decisions," Defs.' Br. 54. But the determinations they cite relate only to benefit weeks "beginning July 05, 2020," and were provided on July 30, 2021, and October 6, 2022. *See* A. Myrold Docs., RE 118, Page.ID#4227, 4231. Defendants neither dispute nor acknowledge that Mr. Myrold's payments were stopped more than a year earlier on April 18, 2020, Opening Br. 35 (citing RE 134-53, Page.ID#6457). Nor do they address the

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Mich. 209, 220 (2021). *See also* May 3, 2022 Decision of Michigan Unemployment Insurance Appeals Commission, No. 22-001042 at 3 (en banc) (Agency's initial "monetary determination constitutes a determination that the claimant meets the two requisite conditions for being a covered individual and is therefore eligible for PUA."), available at https://bit.ly/4vkIhpN.

benefits due between April 18 and July 4, 2020, which Mr. Myrold has never received, and with respect to which no determination has ever been issued.

For Quigg, Defendants assert that her PUA payments "were suspended so UIA could review Quigg's large, backdated claim," Defs.' Br. 55. They make no claim that she was given any pre-deprivation notice of that suspension, *see id*., nor do they address Plaintiffs' evidence that Quigg first received notice "six months *after* the Agency suspended her payments," Opening Br. 38 (citing RE 134-55, Page.ID#6490).[3]

For Brainer, Defendants contend that "he did not receive benefits after April 18, 2021, because he did not certify for them." Defs.' Br. 57. They do not acknowledge that he was flagged with a stop payment indicator on that date, resulting in an immediate halt in payments, Opening Br. 41; or that he received no notice of that stoppage "until more than six months later on December 3, 2021," *id*. (citing evidence of same), which notice addressed eligibility issues related to the circumstances of his unemployment with no mention of certification issues, RE 134-49, Page.ID#6424.

For Ms. Shipe, Defendants acknowledge that she was not notified of the Agency's determination of her ineligibility (later reversed) until three months *after*

[3] Defendants also address Quigg's regular UI payments, but she did not make a UI-based claim in the district court and does not do so here. Opening Br. 48.

the Agency began withholding her payments. Defs.' Br. 59. Defendants' invocation of the pandemic, *id*., cannot justify that delay. *See Hicks v. Comm'r of Soc. Sec.*, 909 F.3d 786, 799 (6th Cir. 2018) ("[H]owever weighty the governmental interest may be …, the amount of [pre-deprivation] process required can never be reduced to zero[.]" (citation omitted)).

For Ms. Foster, Defendants dispute her eligibility based on certification issues, Defs.' Br. 58, and assert that "[d]ue process does not require Foster to be paid for benefits she never claimed," *id*. at 59. They do not acknowledge that she was flagged for suspected fraud (erroneously it turned out, Opening Br. 43) and subject to an immediate payment stoppage, *id*. at 42. And while Defendants state that she was given "notice of the adverse decision," Defs.' Br. 59, they omit mention of when this occurred, *see id*., which was "four months *after* halting her payments," Opening Br. 43 (citing RE 134-51, Page.ID#6441).

For Boudrie, Defendants dispute her eligibility, Defs.' Br. 56, but again, such arguments are irrelevant to the due process analysis, *see supra* n.2. Defendants acknowledge that her payments were stopped on August 29, 2020, Defs.' Br. 56, and while they assert that the Agency "provided her with written notice of the adverse decision," *id*. (citing RE 118, Page.ID#4360), nowhere do they dispute that the notice they refer to was issued "more than two months *after* the cessation of her payments," Opening Br. 39 (citing RE 118, Page.ID#4360).

For Kreps, Defendants invoke issues surrounding the verification of his identity up to October 2020. Defs.' Br. 52. They acknowledge that his identity was confirmed in April 2021, *id*. at 53 (citing RE 118, Page.ID#4205), but assert that "Kreps did not follow the instructions" to receive payment, *id*. While Defendants omit this from their account, that April 2021 notice provided that "benefits payable as result of this determination *will be paid*," Opening Br. 36 (quoting RE 118, Page.ID#4206), and contained *no* instructions as to any additional steps needed to receive payment. Instead, the Agency issued the instructions Defendants refer to on "March 4, 2022—i.e., nearly a year *after* the Agency confirmed his identity and his eligibility," *id*. at 36–37 (citing RE 118, Page.ID#4207). Defendants neither acknowledge nor dispute this.

Finally, as to Holifield, Defendants admit that Holifield's payments "were suspended in July of 2020" yet she received no notice until "October of 2020," Defs.' Br. 57. Defendants dismiss those four months as a "brief delay" in the context of the pandemic, *id*. at 58; but as noted, "however weighty the governmental interest may be …," pre-deprivation process "can never be reduced to zero," *Hicks*, 909 F.3d at 799. The Brief of Amici Curiae filed in this matter well underscores the devastating consequences such delays had for individuals and families during the pandemic, Dkt. 26 at 31–41, as does the testimony of Plaintiffs, *see, e.g.*, RE 134-46, Page.ID#6370–6373.

IV. The Fourteenth Amendment Requires Pre-Deprivation Notice and Opportunity To Be Heard.

Having conceded that they did not provide pre-deprivation process, Defendants contend that "UIA can suspend unemployment benefits upon the issuance of an adverse decision without a pre-deprivation hearing," Defs.' Br. 49 (citing M.C.L. § 421.27). But Defendants did not even issue adverse decisions before stopping payment. *See infra* pp. 8-13. Moreover, Section 421.27 does not, and *cannot*, allow for a suspension of benefits absent a pre-deprivation hearing because the United States Constitution entitles recipients of unemployment benefits administered by the Agency to "a hearing *before* [being] deprived of" such benefits, *Cahoo I*, 912 F.3d at 901–02 (citation omitted).

Defendants nevertheless contend that "the pre-deprivation requirement in *Goldberg* [*v. Kelly*, 397 U.S. 254 (1970),] was overturned by statutory amendment," Defs.' Br. 47. But that amendment was specific to an unrelated statute,[4] so it hardly signals Congress's rejection of *Goldberg*. *See, e.g., Atkins v. Parker*, 472 U.S. 115, 124–25 (1985) (1964 Food Stamp Act "contained no fair-hearing requirement …. In 1971, however, *in response to … Goldberg* … Congress amended the Act to include a fair-hearing provision[.]" (emphasis added)).

[4] *See* 42 U.S.C. § 601(b) ("*This part* shall not be interpreted to entitle any individual or family to assistance under any State program funded under *this part*." (emphasis added)).

Defendants further assert that their withholding of pre-deprivation process is constitutional under *Mathews v. Eldridge*, 424 U.S. 319 (1976). Defs.' Br. 48–52. But *Mathews*' balancing framework does not condone zero pre-deprivation process and instead is "used to determine whether *additional* process (i.e., beyond the minimum) is required," *Hicks*, 909 F.3d at 797 (citation omitted). When minimum pre-deprivation process is absent, *Mathews'* second factor—"the risk of an erroneous deprivation"—"is too high" and that factor "is *dispositive* … no matter how small the interest or how great the governmental burden," *id*. at 800 (emphasis added). That is, pre-deprivation process "may not be balanced away," *id*. at 797 (quotation marks omitted).

The process at issue in *Mathews* accordingly passed constitutional muster because, while not a full evidentiary hearing, it provided notice and an opportunity to be heard "prior to the cutoff of benefits," 424 U.S. at 346; *see also Sexton v. Comm'r of Soc. Sec.*, No. 23-5981, 2024 WL 1994918, at *3 (6th Cir. May 6, 2024) (discussing *Mathews* and *Hicks* and stating that "the government must implement certain procedures *before* depriving claimants of that interest." (emphasis added) (citation omitted)).[5]

Here, Defendants admit Plaintiffs were subject to "a suspension of weekly

[5] That pre-deprivation process is required for permanent and temporary deprivations alike is "well settled," *Cox v. Drake*, 241 F. App'x 237, 241 (6th Cir. 2007) (citation omitted).

benefits" without notice of "the reason for the suspension," Opening Br. 13 (quoting RE 88, Page.ID#2660), after MiDAS flags triggered "an *immediate halt* in benefit payments," *id*. at 12 (quoting RE 134-18, Page.ID#6123). These admissions, and the facts set forth above and in Plaintiffs' opening brief further confirming the lack of pre-deprivation process, are "dispositive" under *Mathews*. *Hicks*, 909 F.3d at 800.

Defendants' *Mathews* balancing analysis is, in any event, meritless. They contend that PUA benefits are "not based upon financial need." Defs.' Br. 48. This ignores the plain text of the statute. 15 U.S.C. § 9021(a)(3)(A)(i)–(ii) and (B)(i)–(ii) (defining "covered individual" to include persons who are "not eligible" for other unemployment compensation and are "unemployed, partially unemployed, or unable or unavailable to work" due to COVID-19, but excluding those who have "the ability to telework with pay" or are "receiving paid sick leave or other paid leave benefits"). Nor can the "particular circumstances" of the pandemic, Defs.' Br. 50 (citation omitted), justify a denial of pre-deprivation process under *Mathews*. As noted above, Congress has already balanced the interests of states and individuals in the context of the pandemic and sustained the pre-deprivation notice and hearing requirement. *See supra* Section I. That requirement "may not be balanced away," *Hicks*, 909 F.3d at 797 (quotation marks omitted).

V. That UI and PUA Benefits Require Pre-Deprivation Process was Clearly Established When the Deprivations Occurred.

While the district court did not reach the factual questions of whether the individual Defendants' conduct violated Plaintiffs' rights for qualified immunity purposes, it did find that those rights were clearly established. Opening Br. 16–17, 52–53. Defendants dispute that proposition for PUA benefits. Defs.' Br. 60–64. Their argument boils down to this:

> The generic phrase 'unemployment benefits' poses the question at too high a level of generality …. The question presented is not about 'unemployment benefits' but PUA benefits under the CARES Act …. [T]here was no clearly established property interest in PUA benefits at the time of the alleged denial of due process [because] …. there was *no case law on PUA benefits at all*[.]

Id. at 62–63 (citations omitted).

However, "neither a materially similar, fundamentally similar, or case directly on point—let alone a factually identical case—is required[.]" *Baynes v. Cleland*, 799 F.3d 600, 614 (6th Cir. 2015) (quotation marks omitted). "The relevant inquiry is whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Cahoo I*, 912 F.3d at 898 (quotation marks omitted). This clarity can derive "from direct holdings, from specific examples described as prohibited, or from the general reasoning that a court employs." *Id*. (citation omitted).

That standard is met here. *Cahoo I* is unequivocal that recipients of

unemployment benefits "have constitutionally-protected property interests," *id*. at 900, and must "be given an opportunity for a hearing *before* [being] deprived of" such benefits, *id*. at 903 (citation omitted). This, the Court held, was "clearly established" by cases such as *Goldberg* and *Sherbert v. Verner*, 374 U.S. 398 (1963), *id*. Notably, neither *Goldberg* nor *Sherbert* involved benefits conferred under the statute that conferred those at issue in *Cahoo*, Opening Br. 54–55. Yet their holdings "naturally extended" to those benefits and "gave Agency supervisors fair warning" that a deprivation of them "without pre-deprivation notice and a hearing …. violated the Constitution," *Cahoo v. SAS Inst., Inc.*, 71 F.4th 401, 409 (6th Cir. 2023) ("*Cahoo II*") (citations and quotation marks omitted).

The law does not require the level of particularity Defendants assert. Indeed, "just as a court can generalize too much, it can generalize too little," and "it defeats the purpose of § 1983 to define the right too narrowly." *Ouza v. City of Dearborn Heights, Mich.*, 969 F.3d 265, 280 (6th Cir. 2020) (citation omitted). What is required is "a reasonably particularized definition" of the right. *Kent v. Oakland Cnty.*, 810 F.3d 384, 395 (6th Cir. 2016) (citation omitted). Thus, "merely a restatement of" the constitutional right, such as the "right to be free from unreasonable searches and seizures" is too general. *Colson v. City of Alcoa, Tennessee*, 37 F.4th 1182, 1190 (6th Cir. 2022) (citations omitted). By contrast, "unduly tight handcuffing, a *type* of excessive force, is a *type* of Fourth

Amendment violation …. This level of particularity in defining the constitutional right easily meets the standards set out by the Supreme Court," *Baynes*, 799 F.3d at 614 (emphasis added).

The same is true here. Defendants do not dispute that PUA benefits are unemployment compensation. And deprivation of unemployment compensation—a *type* of property interest—absent pre-deprivation process is a *type* of Fourteenth Amendment violation, and cases like *Goldberg*, *Sherbert*, and *Cahoo I* gave Defendants ample fair warning of that fact. Moreover, because the CARES Act utilized explicit mandatory language to constrain the discretion of state officials, *see supra* pp. 5-6, precedents such as *City of Lima* compounded that fair warning.

Finally, it defies reason to suggest that Defendants did not have fair warning that PUA compensation required pre-deprivation notice and an opportunity to be heard. *Cahoo I* had confirmed that requirement for regular unemployment compensation, 912 F.3d at 902–03, and *Java* specifically held that Sections 503(a)(1) and 503(a)(3) of the Social Security Act required a pre-deprivation hearing, 402 U.S. at 123–24. The CARES Act unambiguously mandated that the right to PUA benefits "shall be protected in the same manner and to the same extent as the rights of persons to regular unemployment compensation," 20 C.F.R. § 625.15, and the "opportunity for hearing …shall be consistent with … the Social Security Act, 42 U.S.C. 503(a)(1) and 503(a)(3)," *id*. at § 625.10(e)(2); *see also*

Gardner v. Williams, 56 F. App'x 700, 704 (6th Cir. 2003) (finding right clearly established where "the statutory language" conferring it "is unambiguous").

VI. Whether the Individual Defendants Violated Plaintiffs' Constitutional Rights for Purposes of Qualified Immunity Is an Issue for the District Court.

As noted, the district court reached only the "clearly established" prong of the qualified immunity analysis at the motion to dismiss stage. It did not further address qualified immunity at summary judgment and thus made no findings on, and did not otherwise examine, the parties' disputed versions of the facts pertaining to the conduct of the individual Defendants. Opening Br. 16–17, 52–53. A remand of those factual issues is therefore appropriate. "As a general rule, this Court does not address on appeal issues that were not raised *and ruled upon* in the district court" absent "exceptional circumstances or where application of the rule would result in a plain miscarriage of justice." *United States v. Poole*, 407 F.3d 767, 773 (6th Cir. 2005) (emphasis added) (quotation marks omitted). Defendants point to no exceptional circumstances, and a plain miscarriage of justice would not result from a remand. To the contrary, the interests of justice would be served: "District courts are far more familiar with the factual record in their cases than are the courts of appeals, and this knowledge can generate useful insights into the issues surrounding qualified immunity." *Brown v. Crowley*, 312 F.3d 782, 788 (6th Cir. 2002); *see also, e.g.*, *Morgan v. Bd. of Pro. Resp. of the Supreme Ct. of Tenn.*,

63 F.4th 510, 521 (6th Cir. 2023) (where district court did not resolve qualified immunity, the "issue is not properly before us"); *Taylor v. Keith*, 338 F.3d 639, 647 (6th Cir. 2003) (where district court did not resolve qualified immunity, "we decline to consider this claim in the first instance").

The applicable standard underscores the appropriateness of permitting the district court to address the issue. The analysis turns on whether the individual Defendants "at least implicitly authorized, approved, or knowingly acquiesced in the unconstitutional" deprivation, *Peatross v. City of Memphis*, 818 F.3d 233, 242 (6th Cir. 2016). Courts "view the facts and draw reasonable inferences in the light most favorable to the nonmoving party—which, in qualified immunity cases, usually means adopting ... the plaintiff's version of the facts," *Raimey v. City of Niles, Ohio*, 77 F.4th 441, 447 (6th Cir. 2023) (quotation marks omitted). Courts accordingly "may not resolve genuine disputes of fact" in favor of the party asserting immunity, *Alford v. Deffendoll*, 165 F.4th 490, 496 (6th Cir. 2026) (citation omitted), and "where the legal question of qualified immunity turns upon which version of the facts one accepts, the jury, not the judge, must determine liability," *Green v. Throckmorton*, 681 F.3d 853, 864 (6th Cir. 2012) (citation omitted).

With respect to Defendant Berry, Defendants' version of the facts is that she "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," Defs.' Br. 66. Plaintiffs' version of the facts is that Defendant Berry, as Deputy Director of the Agency—far from having "no responsibilities related to claimant benefits"—was the official that other Agency personnel looked to for her "review, edit, denial or approval" of the very "Reasonable Suspicion" standards applied to trigger payment stoppages, and that she exercised those responsibilities. Dec. 2, 2020 Berry Email, RE 134-10, Page.ID#6088 ("This is approved."); *see also* Dec. 2, 2020 Field Release, RE 134-8, Page.ID#6074–6076 (reasonable suspicion standards approved by Berry). Defendants note that Berry approved those standards after several Plaintiffs had already been subjected to payment stoppages, Defs.' Br. 67. But those standards were a revision of the Agency's pre-existing standards, RE 134-8, Page.ID#6074, which (in Plaintiffs' view) a reasonable juror could infer that Berry, who had been Deputy Director since 2018, had also approved given her demonstrated responsibility to do so.

A reasonable juror could likewise, in Plaintiffs' view, conclude that Berry was aware that those standards she approved were triggering payment stoppages without prior notice and an opportunity to be heard. Those stoppages, after all, were not isolated accidents. They were the product of Agency policy requiring—upon a finding of reasonable suspicion via a MiDAS flag—"an immediate halt" in benefit payments without notice to the claimant, resulting in nearly a million such

payment stoppages between March 2020 and August 2023. *See* Opening Br. 11–14 (citing record evidence). As this Court pronounced in *Cahoo I*—when Defendant Berry was serving as Deputy Director with decision-making authority over the Agency's fraud protocols—"MiDAS rendered a staggeringly high ratio of false fraud determinations … and failed to provide adequate notice or an opportunity to be heard," such that "every reasonable Agency employee should have realized that the flawed MiDAS system resulted in unconstitutional deprivations of protected property interests," 912 F.3d at 904.[6]

Deputy Director Berry not only should have but *did* realize that such deprivations were occurring. She was, for example, party to internal communications early in 2020 regarding the need to "fix the issue of claimants not being paid due to [MiDAS] indicators and indefinite stops," which issue was not being addressed "*until the claimant contacts us*," and that "changes are needed in order to stop this from continuing," Apr. 29, 2020 Abdo Email, RE 139-16, Page.ID#7010 (Berry copied) (emphasis added). But the needed changes were not made and the problems, by Defendants' own admission, continued until at least August of 2023—i.e., the entirety of Berry's 2018–2022 tenure as Deputy Director,

[6] This Court did not retreat from these findings in *Cahoo II*. It simply held that the remaining claims before the Court were (unlike here) limited to deprivations that occurred after due process had been provided. "Had this program been used [as here] to deprive these individuals of benefits without any process, we would rule the same way again." 71 F.4th at 411.

see Opening Br. 3–4, 12–13. Defendants point to no evidence that Berry took action to stop them. Under these circumstances, Plaintiffs submit that a juror could reasonably infer that Berry—second-in-command at the Agency with clear decision-making authority with respect to fraud protocols and on clear notice of the payment stoppages those protocols were triggering—"at least implicitly authorized … or knowingly acquiesced in the" deprivations at issue. *Peatross*, 818 F.3d at 242. However, Plaintiffs recognize that these fact-intensive determinations are more appropriate for the district court to render in the context of the voluminous factual record, with which it is "far more familiar," *Brown*, 312 F.3d at 788.

The same reasoning applies to Defendant Burns. Defendants' version of the facts is that "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." Defs.' Br. 68. Plaintiffs' version of the facts is that Burns served as "Administrator for Internal Controls and supervisor of the Compliance and Legal departments for the Agency at all relevant times" and in those roles was "responsible for ensuring that the Agency's internal procedures comply with the law." Opening Br. 4. Defendants do not dispute this; and Defendant Burns testified that if she "became aware" of a potential legal problem with the Agency's procedures, it was "my job" to ensure that it was addressed. Burns Dep. RE 134-27, Page.ID#6172 (Tr. 11:25–12:4–5); *see also*

Burns Dep., RE 118, Page.ID#4452–4453 (Tr. 17:23–25–18:1–7). Defendant Burns was party to internal Agency communications delving in extensive detail into the Agency's procedures for rendering fraud determinations and its corresponding protocols for continuing or withholding payments, Sept. 23, 2020 Anderson Email, RE 118, Page.ID#4548–4551 (Berry also copied), which included reference to "the legal argument that we are non-compliant" and the author's express deference to Defendant Burns because "I didn't go to law school and Teresa did," *id*. at Page.ID#4549. Defendant Burns was well aware that "[i]f the state has already approved payment before the suspicion arose, then payment is due and cannot be stopped on until the suspicion (issue) is investigated and a determination issued," and stated that "[w]e want a rule change" and "we are asking for the change," because the Agency was not complying with that requirement, Feb. 1, 2021 Burns Email, RE 134-21, Page.ID#6130–6131. Defendant Burns expressed doubt that "we are going to get a federal amendment to allow states to withhold payment based on a suspicion of" fraud, *id*. at Page.ID#6131. Yet, while federal law was not changed, the Agency's policy of using MiDAS to trigger "an immediate halt" in payments absent pre-deprivation process—which "every reasonable Agency employee should have realized … resulted in unconstitutional deprivations of protected property interests," *Cahoo I*, 912 F.3d at 904—remained unchanged, resulting in nearly a million such deprivations between March 2020 and August

2023. *See* Opening Br. 11–14 (citing record evidence). Defendants have cited no evidence that Defendant Burns, the Agency's highest ranking legal official with the admitted responsibility to address the Agency's non-compliance with federal law, did anything to stop those deprivations despite her awareness of them. Under these circumstances, Plaintiffs submit that a reasonable juror could infer that Defendant Burns "at least implicitly authorized … or knowingly acquiesced in" the deprivations at issue, *Peatross*, 818 F.3d at 242, but again recognize that these fact-intensive determinations are more appropriate for the district court, given its greater familiarity with the record. *Brown*, 312 F.3d at 788.

Finally, Defendants contend that because Defendant Dale did not work at the Agency when the initial deprivations occurred (she started in October 2021), she "could not have participated … or knowingly acquiesced in" them. Defs.' Br. 65. This argument overlooks that, for many Plaintiffs, the Agency's withholding of payments *continued* into Director Dale's tenure. *See* Opening Br. 34–45. A continuous violation exists where a defendant's "wrongful conduct continued" after the initial deprivation, the injury "continued to accrue … and, had defendants at any time ceased their wrongful conduct, further injury to plaintiffs could have been avoided." *Kuhnle Bros., Inc. v. Cnty. of Geauga*, 103 F.3d 516, 522 (6th Cir. 1997). Here, Dale acknowledged 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 141:7–13). Despite this knowledge, Dale canceled the Agency's proposed plans to release the withheld payments. *See* Mar. 20, 2023 Bayes Email, RE 134-35, Page.ID#6213 ("Director Dale has approved canceling[.]"); Opening Br. 4 (citing additional record evidence). Under these circumstances, Plaintiffs submit that a reasonable juror could infer that Defendant Dale "at least implicitly authorized, approved, or knowingly acquiesced in the" continuation of the deprivations at issue, *Peatross*, 818 F.3d at 242, but again recognize that these fact-intensive determinations are more appropriate for the district court. *Brown*, 312 F.3d at 788.

VII. Plaintiffs Did Not Abandon Count II.

Defendants' contention that Plaintiffs abandoned Count II, Defs.' Br. 35–36, is incorrect. Defendants moved for summary judgment on Count II (along with Counts III and IV) only to the extent "they relate to the *Zynda* [*v. Arwood*, No. 15-cv-11449 (E.D. Mich.)] settlement agreement," Defs.' Mot. Summ. J., RE 110, Page.ID#3351. But as the district court recognized, the only reference to *Zynda* in the body of Count II is "a statement that the Agency 'consented to the jurisdiction of this Court … under *Zynda*,'" Op. & Order, RE 142, Page.ID#7089 (quoting Second Am. Compl., RE 36, Page.ID#1295, ¶ 272). The court did not further address Plaintiffs' Count II allegations because it concluded that (1) the PUA

claims did not implicate property interests, and (2) Plaintiffs had been provided due process for the initial deprivations of UI benefits. Op. & Order, RE 142, Page.ID#7078–88. The district court granted summary judgment against Plaintiffs solely on those bases without rendering any appealable conclusions specifically regarding Count II allegations not related to *Zynda*.

CONCLUSION

Plaintiffs request that the Court reverse the decision below and remand the matter to the district court to address the factual qualified immunity issues and class certification.

Dated: April 9, 2026

Respectfully submitted,

/s/ David M. Blanchard

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CERTIFICATE OF COMPLIANCE

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Date: April 9, 2026

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

CERTIFICATE OF SERVICE

I certify that on April 9, 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: April 9, 2026

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

ADDENDUM

DESIGNATION OF ADDITIONAL DISTRICT COURT DOCUMENTS

Plaintiff–Appellant, per Sixth Circuit Rule 30(g), hereby additionally designates the following portions of the record on appeal:

Description of Entry	**Date Filed**	**Record Entry No.**	**Page ID No.**
Defendants' Exhibits to Motion for Summary Judgment	11/14/2024	RE 118	4452–4453, 4548–4551
Dec. 2, 2020 Field Release	12/18/2024	RE 134-8	6074–6076
Burns Deposition (Excerpts)	12/18/2024	RE 134-27	6172
Kreps Deposition (Excerpts)	12/18/2024	RE 134-46	6370–6373
Apr. 29, 2020 Abdo Email	01/02/2025	RE 139-16	7010