UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MULUGETA HAILU, *et al.*, **Plaintiffs,** **v.** **UNIQUE N. MORRIS-HUGHES, *et al.*,** **Defendants.**	**Civil Action No. 22-20 (APM)**

DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

Plaintiffs Mulugeta Hailu, Mizan Werede, William Perry, and Yohannes Woube request a preliminary injunction against the District of Columbia, Mayor Muriel Bowser, and Department of Employment Services (DOES) Director Unique Morris-Hughes (collectively, the District), seeking to compel the District to alter its administration of unemployment benefits and provide back payments and refunds to plaintiffs, even though they are not entitled to such relief. Plaintiffs fail to satisfy the demanding standards required for such a drastic preliminary remedy, and their motion should be denied.

First, plaintiffs have not demonstrated a likelihood of success on the merits of their claims. No plaintiff has adequately exhausted the prescribed administrative remedies for decisions on applications for benefits; the appeals of the three plaintiffs who approached the Office of Administrative Hearings (OAH) were each dismissed upon each plaintiff's failure to respond to judicial orders. Additionally, based on DOES records, plaintiffs have not established that they have been deprived of payments they were statutorily entitled to, or that they were not provided adequate notice of DOES actions in their respective cases. Not only did they receive adequate notice of the

denial and of their right to a hearing on it, three plaintiffs exercised that right only to abandon the process voluntarily. And the only decisions that have been delayed were in plaintiffs' favor, so any injuries are insufficient to merit standing. Further, plaintiffs have not established any liability against the District or any official under 42 U.S.C. § 1983 (Section 1983) for their alleged injuries.

As to the second preliminary injunction prong, plaintiffs' claims are all monetarily compensable, which is quintessentially not irreparable injury. The final two factors, the balance of the equities and the public interest, favor the District because plaintiffs' requested relief would excessively disrupt DOES agency procedure and processes that have already been overburdened by the ongoing and extreme impact of the COVID-19 pandemic on the District's administration of unemployment insurance payment programs. For these reasons, the motion should be denied in full. However, should the Court grant any relief, it should be limited to the four named plaintiffs, because an order mandating prospective alterations to DOES procedures would be unnecessary to redress any injury plaintiffs may have suffered.

BACKGROUND

I. The Federal and District Unemployment Compensation System

The District operates an unemployment compensation system, administered by DOES, to provide financial assistance to individuals who lose their employment through no fault of their own. *See* D.C. Code §§ 51-101, 510. The District's unemployment compensation system is controlled by federal law in addition to D.C. laws and regulations, and partially funded by the federal government. *See* 42 U.S.C. §§ 501. To receive federal funding, the District is required to comply with certain mandates. 42 U.S.C. § 503. These mandates include an income and eligibility verification system and enacting various other provisions indicated in federal legislation implementing the unemployment compensation program. *See id*.

For example, the District cannot provide benefits unless a claimant completes a weekly

certification for each week the claimant is seeking benefits. *See* D.C. Code § 51-109. A claimant's prior income must meet a specific threshold, the claimant must be physically able to work, and the claimant must be taking action to find employment. *See id*. and, *e.g.*, 42 U.S.C. § 503(a)(12) (a participating state must require this); *but see* Section II, below, for certain exceptions to this and other rules made during the pandemic. The District also requires a one-week waiting period of unemployment before an individual can qualify for benefits. D.C. Code § 51-109(5). The claimant also cannot have voluntarily left his or her previous employment without good cause or have been fired for misconduct. *See* D.C. Code § 51-110.

Once an individual submits an unemployment claim, a DOES employee "make[s] an initial determination" about whether the claimant is eligible for unemployment benefits and notifies the claimant of the initial determination of the claim. D.C. Code § 51-111(b); *see also* 7 DCMR § 305.5 ("When the Director has made a determination of an individual's right to benefits, he or she shall promptly notify the claimant and interested parties of the determination and the reasons for the determination."). A claimant may challenge a determination by DOES about his or her eligibility for benefits by appealing to the OAH. D.C. Code § 2-1831.03(b)(1).

The amount of an eligible claimant's weekly benefit is calculated based on the claimant's prior income. *See* D.C. Code. § 51-107(b). A claimant is typically eligible to receive 26 times the claimant's weekly benefit amount in one benefit year. D.C. Code. § 51-107(d). A benefit year is defined as the 52-week period "beginning with the first day of the first week with respect to which the individual first files a valid claim for benefits." D.C. Code § 51-101(6).

If a claimant receives benefits to which he or she was not entitled, states are required under federal law to recover that overpayment by "deduct[ing] from unemployment benefits otherwise payable" the amount of that overpayment. 42 U.S.C. § 503(g). However, the District has procured

for DOES some discretion about when and how to seek repayment of the excess benefits. *Id.* (g)(2); D.C. Code § 51-119(d). A claimant may appeal the determination of an overpayment to OAH or to the D.C. Court of Appeals. *See* D.C. Code §§ 51-119(d)(2); 112.

II. The Impact of the COVID-19 Pandemic

In March 2020, the District began mandating various restrictions on commercial activity in the District in response to the public health emergency caused by the COVID-19 pandemic. *See*, *e.g.*, Mayor's Order 2020-053, Closure of Non-Essential Businesses and Prohibition on Large Gatherings During Public Health Emergency for the 2019 Novel Coronavirus (COVID-19) (March 24, 2020). As a result, there was sudden and widespread job loss across the District, leading to a significant increase in the volume of unemployment claims. *Unemployment Compensation Claims Data*, D.C. DEP'T OF EMP'T SERVS. (Sept. 28, 2021), *available at* https://does.dc.gov/publication/unemployment-compensation-claims-data; *see also* Heather Long & Andrew Van Dam, *U.S. Unemployment Rate Soars to 14.7 Percent, the Worst Since the Depression Era*, WASH. POST (May 8, 2020), *available at* https://www.washingtonpost.com/business/2020/05/08/april-2020-jobs-report (both last accessed Jan. 25, 2022).

In March 2020, the federal government passed the Coronavirus Aid, Relief, and Economic Security (CARES Act), Pub. L. 116-36, 134 Stat. 281 (Mar. 27, 2020), which included provisions to expand unemployment benefits. *See* 15 U.S.C. §§ 9021-9034. These provisions of the CARES Act were subsequently modified and extended by, among others, the Continued Assistance for Unemployed Workers Act, Tit. II, Subtitle A, Sec. 1 of Pub. L. 116-20, 134 Stat. 1182 (Dec. 27, 2020), and the American Rescue Plan (ARP) Act, Pub. L. 117-2, 135 Stat. 4 (Mar. 11, 2021), §§ 9011-31. *See Unemployment Ins. Program Letter No. 14-21*, U.S. DEP'T OF LABOR (Mar. 15, 2021), *available at* https://wdr.doleta.gov/directives/attach/UIPL/UIPL_14-21.pdf;

Unemployment Ins. Program Letter No. 09-21, U.S. DEP'T OF LABOR (Dec. 30, 2020), *available at* https://wdr.doleta.gov/directives/attach/UIPL/UIPL_9-21_acc.pdf.

The CARES Act also created three adjuncts to the traditional unemployment compensation program. The Pandemic Unemployment Assistance program (PUA) provided employment benefits to individuals who were ineligible for traditional unemployment compensation. *See* 15 U.S.C. § 9021(a)(3)(A). In accordance with this program, DOES directed claimants who were denied regular unemployment insurance benefits to apply for PUA. *See Pandemic Unemployment Assistance (PUA): Frequently Asked Questions (FAQs)*, D.C. DEP'T OF EMP'T SERVS., *available at* https://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/DOES_PUA_FAQs.pdf (last accessed Jan. 25, 2022).

The Pandemic Emergency Unemployment Compensation program (PEUC) provided unemployment benefits to qualifying individuals who had exhausted their rights to regular unemployment compensation. *See* 15 U.S.C. § 9025(a). And the Federal Pandemic Unemployment Compensation program (FPUC) provided additional unemployment compensation to qualifying claimants. *See* 15 U.S.C. § 9023(b). From the implementation of the Act until July 31, 2020, FPUC provided qualified individuals an additional $600 in unemployment benefits each week. 15 U.S.C. § 9023(b)(3)(A)(i). By presidential memorandum, this was extended at $300 per week for six weeks. *See* Patrick Carey *et al.*, *Applying for and receiving unemployment insurance benefits during the coronavirus pandemic*, U.S. DEP'T OF LABOR (Sept. 2021), *available at* https://www.bls.gov/opub/mlr/2021/article/applying-for-and-receiving-unemployment-insurance-benefits-during-the-coronavirus-pandemic.htm; *Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019*, THE WHITE HOUSE (Aug. 8, 2020), *available at*

https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-authorizing-needs-assistance-program-major-disaster-declarations-related-coronavirus-disease-2019/ (each last accessed Jan. 28, 2022). Then, from December 26, 2020 to September 6, 2021, FPUC was revived under the Continued Assistance for Unemployed Workers Act at the same $300 of additional benefits each week. 15 U.S.C. § 9023(b)(3)(A)(ii).[1]

In addition to these new programs, the District and the federal government implemented several changes to the typical claimant requirements and claims processes. First, the CARES Act waived any waiting period for unemployment under applicable state law. 15 U.S.C. § 9021(e). The District also suspended the requirement that claimants actively search for work. D.C. Act 23-247, COVID-19 Response Emergency Amendment Act of 2020, 67 D.C. Reg. 3093 (Mar. 20, 2020). While implementing these new programs and evolving requirements, DOES received over 250,000 claims for unemployment between March 2020 and September 2021. *See Unemployment Compensation Claims Data* at 4, above.

In September 2021, the provisions of the CARES and ARP Acts related to unemployment compensation expired. As a result, PUA, FPUC, and PEUC ended. *See End of Federal Benefits Frequently Asked Questions (FAQs)*, D.C. OFF. OF UNEMPLOYMENT COMPENSATION, *available at* https://unemployment.dc.gov/sites/default/files/dc/sites/unemployment/page_content/attachments/End%20of%20Federal%20Benefits%20FAQs.pdf (last accessed Jan. 25, 2022). Claimants who are not eligible for regular unemployment, or whose unemployment claims have been exhausted,

[1] The CARES Act also modified the existing extended benefits program to provide extended benefits to claimants who exhausted regular unemployment benefits and PEUC. *See* 15 U.S.C. § 9025(a); *Unemployment Ins. Program Letter No. 24-20*, U.S. DEP'T OF LABOR (May 14, 2020), at 3 (Sec. 4(b)), *available at*: https://wdr.doleta.gov/directives/attach/UIPL/UIPL_24-20.pdf; *Federal Unemployment Benefits Ending Factsheet*, D.C. DEP'T OF EMP. SERVS.. *available at* https://does.dc.gov/sites/default/files/dc/sites/does/publication/attachments/Extended%20Benefits%20Fact%20Sheet.pdf.pdf (both last accessed Jan. 27, 2022).

may no longer be eligible for unemployment benefits. *See id*.

III. Plaintiffs' Allegations

A. Mulugeta Hailu

Plaintiff Hailu alleges that he applied for unemployment benefits in May 2020 and began receiving unemployment benefits that month. Hailu Decl. [2-3] ¶¶ 6, 8. Mr. Hailu contends that he stopped receiving benefits for a period of 11 weeks from March 2021 until May 2021. *Id.* ¶ 11. Mr. Hailu alleges that he never received notice that DOES was stopping his benefits or notice of any related offset. *Id.* ¶¶ 12-14.

DOES records show that a claims examiner contacted Mr. Hailu by email on February 25, 2021, advising him that the identity information he had previously provided was not verified by the DOES employment verification process. Ex. A, January 5, 2022 Email to Hailu, at 2. The claims examiner advised Mr. Hailu to provide additional documentation of his identity by March 4, 2021 and that his unemployment benefits would be interrupted if Mr. Hailu did not timely provide such documents. *Id.* DOES continued to issue unemployment benefits to Mr. Hailu through March 8, 2021. Ex. B, Hailu Benefit Payment History, at 2.[2] On March 11, 2021, DOES sent a determination letter to Mr. Hailu advising him that he had been held ineligible for benefits effective February 21, 2021, due to his failure to provide the requested documents verifying his identity. Ex. C, Hailu Determination Letter.

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[2] The column headed "CHECK DOI" shows the date of issue for each payment as an 8-digit number, two digits for day, two for month, and four for year; when the payment is made by means other than check, "CHECK NBR" indicates this as "DEBITCD" for payments made to a debit card or "DIRDEP" for direct deposit. The amount of the total payment is list under "TOT CHKS", with "AMT PYD" indicating the portion of that from traditional unemployment insurance. For example, Mr. Hailu received a payment of $779 on August 3, 2020, representing $179 in unemployment compensation and $600 of FPUC; the following week, after the expiration of FPUC, he received $479, representing the same $179 and $300, the amount authorized by executive order, because that was for the benefit week ending (BWE) August 1, 2020. The column "OP Amount" indicates how much of a given payment was later classified as an overpayment.

On March 26, 2021, Mr. Hailu filed an appeal with OAH but did not provide a copy of the determination letter. Ex. D, Hailu Order for More Information. On April 27, 2021, the OAH Administrative Law Judge (ALJ) issued an Order for More Information, requiring that Mr. Hailu provide the letter. *Id.* On July 6, 2021, OAH dismissed Mr. Hailu's hearing request because Mr. Hailu did not respond to the Order for More Information. Ex. E, Hailu Final Order.

Mr. Hailu's benefit year ended May 8, 2021. Ex. C. Even though there is no record that Mr. Hailu provided the requested documents, DOES reinstated Mr. Hailu's eligibility for benefits after his initial benefit year ended on May 8, 2021. Ex. B at 1. Because Mr. Hailu had been issued benefits for the weeks ending February 27, 2021 and March 6, 2021, two weeks after he became ineligible for benefits on February 21, the first two weeks of his restored payments were withheld to offset that overpayment. Ex. B at 1, 2.

B. Mizan Werede

Plaintiff Werede alleges that she applied for unemployment benefits in March 2020 and began receiving benefits in May 2020, including back payments. Werede Decl. [2-4] ¶¶ 6, 8. Ms. Werede contends that she received benefits consistently until January 2, 2021, when she stopped receiving benefits for eleven weeks. *Id.* ¶¶ 9, 19. Ms. Werede alleges that she received some but not all the retroactive benefits she was due and is still missing $2,964 in benefits.[3] *Id.* ¶ 12. She alleges that she never received notice about the rationale for this offset. *Id.* ¶¶ 11, 13-14.

DOES records show that Ms. Werede received unemployment insurance benefits effective April 11, 2020. Ex. F, Werede Payment Benefit History. After the initial expiration date of PEUC, some claimants were initially unable to submit certifications for continuing payments, due to issues

[3] DOES payment records show that a payment of $444, for the benefit week ending September 11, 2021, was issued to Ms. Werede on January 12, 2022, after plaintiffs' motion was filed. Ex. F, Werede Benefit Payment History, at 1.

with DOES payment system. Ex. G, PEUC Email. DOES emailed claimants who might have been affected by this issue, including Ms. Werede, about the problem and provided instructions on how to submit claims through an alternate method. *Id.* To prevent additional delays in Ms. Werede's receipt of benefits, DOES issued a "bridge" payment of $2,220 to Ms. Werede on or around February 5, 2021. Ex. H, Werede Case Notes, at 1 ("2/5/2021 – 'BRIDGE PAYMENT MADE FOR PEUC AMOUNT = $2,220 BY DIRECT DEPOSIT'"). When the certification submission problems were resolved, DOES then reduced her retroactive benefits payment by this same amount once, to avoid making duplicate payment. Ex. F at 2.

C. William Perry

Plaintiff Perry alleges that he applied for unemployment benefits beginning in June 2020 and did not receive a determination until approximately March 2021. Perry Decl. [2-6] ¶¶ 7, 9. In March 2021, Mr. Perry received a notification that he had been found monetarily ineligible. *Id.* ¶ 9.

Mr. Perry initially applied for unemployment benefits in February 2020 and DOES informed him he was determined to be ineligible because he had "failed to provide evidence to show that his reason for quitting was connected with the work and that a reasonably prudent person in the same or similar circumstance would have quit available work." Ex. I, Perry Determination Letter (Mar. 19, 2020). The District was unaware until the filing of the Complaint that Mr. Perry allegedly applied for unemployment benefits again in June 2020 and that this claim was not processed.[4]

Mr. Perry filed a subsequent unemployment compensation claim on March 4, 2021, and

[4] The digital case notes for Mr. Perry have no records between July 2018 and a nearly blank entry for June 3, 2021. Ex. K, Perry Case Notes, at 2. A note from August 31, 2021, mentions a purge that may explain this.

DOES informed him that he was ineligible because it had insufficient funds. Ex. J, Perry Monetary Determination Form (Mar. 7, 2021). DOES worked with Mr. Perry throughout April 2021 to obtain documents to support Mr. Perry's unemployment compensation claim. On April 30, 2021, DOES received the remaining documents and determined that he was monetarily ineligible for unemployment compensation. DOES then advised Mr. Perry to apply for PUA, providing him with an application, but has no records indicating that Mr. Perry ever completed a PUA application.

Mr. Perry filed a request for an appeal with OAH on February 21, 2021. Ex. L, Perry Final Order. The ALJ issued an Order for More Information on March 17 and, after receiving no response, issued a final order dismissing the hearing request on June 21, 2021. *Id.*

D. Yohannes Woube

Plaintiff Woube alleges that he applied for unemployment benefits beginning in April 2020. Am. Woube Decl. [15] ¶ 6. Mr. Woube contends that he received no notice about the status of his unemployment claims until he received unemployment benefits in December 2020 for six weeks. *Id.* ¶ 8. Mr. Woube alleges he filed for PUA in July 2021. *Id.* ¶ 10.

DOES determined that Mr. Woube was monetarily ineligible for regular unemployment compensation on April 16, 2020, July 31, 2020, October 15, 2020, and April 19, 2021. Ex. M, Woube Monetary Determination Forms. In November 2020, Mr. Woube applied for PUA and was found eligible for and received payments covering the period back to the week ending October 17, 2020. Ex. N, Woube Benefit Payment History.

On April 19, 2021, Mr. Woube filed a request for an appeal with OAH. Ex. O, Woube Final Order. OAH issued an Order for More Information on May 10, 2021. *Id.* Mr. Woube did not respond to the Order for More Information and OAH dismissed the hearing request on July 16, 2021. *Id.* at 2.

IV. Plaintiffs' Claims

The plaintiffs bring six different claims. In Count I, plaintiffs accuse defendants Morris-Hughes and Bowser of violating the Due Process Clause of the Fifth Amendment by not providing "adequate notice of the reasons for denying or terminating their unemployment benefits." Compl. ¶ 40. Count II alleges a Section 1983 claim against the District for allegedly having "a policy, custom, or practice" of violating the Due Process Clause by not providing "adequate notice of the reasons for denying or terminating their unemployment benefits" and "of procedures through which they can contest denial or termination of their benefits." *Id.* ¶¶ 52-54. Count II also alleges "a policy, custom, or practice" of seizing benefits without adequate notice. *Id.* ¶¶ 60-61. Count III alleges the District has violated the notice and hearing provisions of 42 U.S.C. § 503. Count IV alleges the District has denied plaintiffs "timely determinations of unemployment benefits and timely payment thereon." *Id.* ¶ 92. Count VI alleges the same under D.C. Code § 51-111(b) and 7 DCMR § 305.1 *Id.* ¶ 113. Count V alleges the District has violated "D.C. Code § 51-111(b) and 7 D.C. Mun. Reg. §§ 305.6 and 306.1 by denying or terminating unemployment benefits of Plaintiffs without issuing a written decision explaining the reasons that Defendant denied or terminated the benefits." *Id.* ¶ 104.

LEGAL STANDARD

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Sherley v. Sebelius*, 644 F.3d 388, 393 (D.C. Cir. 2011) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). "The moving party must make a clear showing that four factors, taken together, warrant relief: likely success on the merits, likely irreparable harm in the absence of preliminary relief, a balance of the equities in its favor, and accord with the public interest." *Archdiocese of Wash. v. Wash. Metro. Area Transit Auth.* (*Archdiocese II*), 897 F.3d 314, 321 (D.C. Cir. 2018) (quotation omitted), *reh'g*

denied 910 F.3d 1248 (D.C. Cir. 2018). Because preliminary injunctive relief is such an extraordinary remedy, a plaintiff seeking such relief must prove all four prongs of the standard before relief can be granted. *See In re Navy Chaplaincy*, 738 F.3d 425, 428 (D.C. Cir. 2013); *Winter*, 555 U.S. at 22.

ARGUMENT

I. Plaintiffs Have Not Demonstrated a Likelihood of Success on the Merits.

Demonstrating a likelihood of success on the merits is a free-standing requirement for a preliminary injunction, *Sherley*, 644 F.3d at 393 (quotation omitted), and "a failure to show a likelihood of success on the merits is alone sufficient to defeat a preliminary-injunction motion." *Smith v. Henderson*, 944 F. Supp. 2d 89, 96 (D.D.C. 2013). Importantly, the Court need not conclude that plaintiffs will lose on the merits; only that they have not met the extraordinary burden of showing that success is not just a "possibility" but that it is "*likely*." *Winter*, 555 U.S. at 20-22 (emphasis original); *accord Sweis v. United States Foreign Claims Settlement Comm'n*, 950 F. Supp. 2d 44, 48 (D.D.C. 2013).

A. Plaintiffs Fail To State a Claim Because They Failed To Exhaust Their Administrative Remedies.

There is a "common law rule of long-standing that, in litigation involving a government agency, 'no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.'" *Owens v. D.C. Water & Sewer Auth.*, 156 A.3d 715, 719-20 (D.C. 2017) (quoting *Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 50-51 (1938)); *accord Aziken v. D.C. Alcoholic Beverage Control Bd.*, 29 A.3d 965, 969 (D.C. 2011) ("[A]dministrative and judicial efficiency require that all claims be first raised at the agency level to allow appropriate development and administrative response before judicial review.") (as quoted in *Barry Farm Tenants & Allies Ass'n v. D.C. Zoning Comm'n*, 182 A.3d 1214, 1217 n.3

(D.C. 2018)). Although a Court may excuse failure to exhaust, it should do so only in exceptional circumstances. "Where, as in [cases dealing with unemployment insurance], the statute demonstrates Congress' intent to require administrative determination in advance of judicial consideration of a claim, the claimant must make a strong showing of compelling circumstances justifying equity's intervention in order to persuade us to excuse a failure to exhaust and examine the claim's merits." *Barnett v. D.C. Dep't of Emp't Servs.*, 491 A.2d 1156, 1161 (D.C. 1985) (quotation omitted).

Here, none of the plaintiffs alleges he or she has exhausted administrative remedies. Instead, plaintiffs offer a single footnote for the proposition that exhaustion is not required where it is futile. Pls.' Mot. at 43 n.11. But plaintiffs have not demonstrated any such futility. As far as the District has been able to determine, plaintiff Merede did not even seek OAH review; her declaration [2-4] makes no allegation that she did so. Plaintiffs Hailu, Perry, and Woube each initiated an appeal at OAH and had his appeal dismissed in July 2021 because each "did not respond to the [ALJ's] Order for More Information." Exs. E (Hailu), L (Perry), and O (Woube OAH Final Order). Mr. Woube contends "OAH dismissed my hearing request because I was unable to provide them with a determination by [a] claims examiner." Am. Woube Decl. [15] ¶ 17. The actual OAH Order, however, issued after Mr. Woube retained counsel at Legal Aid, *id.* ¶¶ 17-18, indicates that the dismissal was because he had "not responded to the [ALJ's] Order for More Information." Ex. O at 2. Neither Mr. Hailu's nor Mr. Perry's declaration mentions his OAH appeal but each, too, was dismissed for failure to comply with an order to provide more information. Exs. E (Hailu) at 2, L (Perry) at 2.

DOES had explained in writing the determination months prior to the Orders for More Information. Exs. C (Hailu), J (Perry), and M (Woube). Even if each plaintiff had somehow not

received it,[5] each was instructed by the ALJ on how to procure a copy from DOES. Exs. E (Hailu), L (Perry), and O (Woube). Despite this, and despite being represented by counsel before or soon after their appeals were dismissed, none alleges he asked DOES for a determination letter or any other document necessary to comply with the ALJ's order. None of these plaintiffs alleges that he attempted to provide OAH with any other document or explanation or allege he was unable to provide the document as ordered by the ALJ. Rather, each plaintiff alleges he or she, or their counsel, attempted to petition DOES for an appeal of the determinations despite knowing, and having clear instructions, that this was not the proper procedure to appeal. *See*, *e.g.,* Ex. P, *Claimant's Rights and Responsibilities*, at 9 (describing the process for OAH appeal), *also available at* https://does.dc.gov/sites/default/files/dc/sites/does/publication/attachments/01_03_20_UI%20Claimant%27s%20Rights%20and%20Responsibilities.pdf (last accessed Jan. 28, 2022). No plaintiff has appealed either the DOES or OAH decisions to the D.C. Court of Appeals.

Plaintiffs have, therefore, not shown that administrative remedies were unavailable to them or that there is any other reason the Court should exempt them from the common duty to exhaust. For this reason, they have not shown the requisite likelihood of success on the merits.

B. Plaintiffs Fail To Establish a Substantial Likelihood of Success on Their Claim that Each Was Entitled to, But Did Not Receive, Unemployment Insurance (Count II).

Plaintiffs' claims are all based on the allegation that the District failed to provide unemployment insurance payments to which each plaintiff was due. But establishing eligibility for unemployment insurance is a complicated process and plaintiffs' mere allegations are insufficient

[5] The fact that Mr. Perry attaches and discusses his Monetary Determination letter indicates that he did receive it. *See* Decl. of William Perry [2-6] ¶ 9, Ex. A.

to overcome the evidence that plaintiffs received all benefits to which they were entitled.

1. Mulugeta Hailu

Plaintiff Hailu concedes that he was found eligible and received benefits for the same week in May 2020, when he applied for them. Hailu Decl. ¶¶ 6, 8. He also concedes that he received those benefits through "the week[ ] ending … March 6, 2021." *Id.* ¶ 10. He stopped receiving benefits then because of his failure to provide the proof of identification required by DOES, as mandated by the federal government's unemployment program guidance. UIPL 09-21, *above at* 5, at 9 ("New Requirement for States to Verify Identity of Applicants for PUA"). The District sent Mr. Hailu two notices—first, a request for the information *via* email on February 25, 2021, and then the determination letter holding him ineligible for the remainder of the benefit year by regular mail to his address of record on March 11, 2021. Exs. A, C. This address was adequate for Mr. Hailu to receive the password necessary to log in and complete his weekly certifications to receive benefits through March 6, 2021. It is similar to the address OAH had for him in April and July 2021. Exs. D at 2, E at 4.[6] However, it differs from the mailing address on the Complaint. *Compare* Exs. C, D, and E *with* Compl. at 1. If Mr. Hailu did not receive the mail because he failed to provide the District with his new address, that is not evidence of an error by, let alone of liability for, the District. *See, e.g.*, *Malone v. Robinson*, 614 A.2d 33, 39 (D.C. 1992) (liability may lie with the claimant who fails to provide a change of address). The District did not learn of his change of address until the Complaint was served. Even though Mr. Hailu has still not provided the proof of identity, the District began providing him benefits again once a new benefit year had begun. Ex. B at 1.

[6] The correct address appears to be [redacted]

2. Mizan Werede

Plaintiff Werede also concedes that she received benefits for a full year. Werede Decl. [2-4] ¶¶ 6-8. Ms. Werede does not, however, note that she received a bridge payment of five times her usual amount on or around February 5, 2021, to address the computer issue that might otherwise have prevented her from receiving benefits for the next five weeks. Exs. F, H. Ms. Werede may not have "know[n] why the overpayment occurred," Werede Decl. ¶ 13, but she received the money by direct deposit. Ex. H at 1. Even if Ms. Werede did not receive the email explaining the PEUC issue, she received the benefits to which she was due; thus, Ms. Werede has not shown the requisite substantial likelihood of success on the merits because she was not deprived of any payment. Ms. Werede's request that the overpayment amount be waived is not a matter for a court; under District of Columbia law, "[w]hether to waive any or all of the overpayment amount is a matter for the DOES Director." *D.C. Dep't of Emp't Servs. v. Smallwood*, 26 A.3d 711, 716 (D.C. 2011).

3. William Perry

Plaintiff Perry's March 4, 2021 application for benefits found him ineligible because his employer had not provided DOES with base period wages to support his claim. Perry Decl. [2-6] ¶ 9. Mr. Perry does not dispute that the determination was correct based on the wages the District had "listed in the determination," but only that he had "earned wages in the base period that were not listed." *Id.* Mr. Perry does not mention that the District worked with him throughout April 2021 to obtain the necessary documentation, or that he repeatedly told the District that he had found the documents but needed additional time to provide them in full. Mr. Perry also does not mention, and may not know, that, despite his statements that he had the documents, the District had continued to attempt to collect them by its own means and succeeded on April 30, 2021. The information DOES received confirmed Mr. Perry's ineligibility for traditional unemployment

insurance so the District instead urged him to apply, and sent him the application, for PUA. Mr. Perry did not complete the application or otherwise respond. Under its agreement with the Department of Labor, the District cannot provide benefits to someone who does not apply. *See*, *e.g.*, *How Do I File for Unemployment Insurance?*, U.S. DEP'T OF LABOR ("To receive unemployment insurance benefits, you need to file a claim with the unemployment insurance program in the state where you worked."), *available at* https://www.dol.gov/general/topic/unemployment-insurance. Thus, Mr. Perry has not demonstrated the requisite substantial likelihood of success, because he has not demonstrated that he is entitled to any payments.

4. Yohannes Woube

Plaintiff Woube also mistakenly conflates unemployment insurance with PUA; unfortunately, he was ineligible for the former but not the latter. Am. Woube Decl. [15] ¶¶ 6, 10; Ex. M (noting an October application unmentioned in either Woube declaration and that the July 2021 application was also for UI rather than PUA). When he applied for PUA benefits in November 2021, his application was approved, and he received benefits backdated to the week ending October 17, 2020. Ex. N. As a result, Mr. Woube has similarly failed to demonstrate a likelihood of success on the merits because he has not shown that he was deprived of any payments to which he was entitled.

C. Plaintiffs Fail To Establish a Substantial Likelihood of Success on Their Claim that Each Was Entitled to, But Did Not Receive, Adequate Notice of the Alleged Denial of Benefits (Count I).

The District's records show that adequate notice was sent to each plaintiff explaining what was happening and why. *See*, *e.g.*, Exs. A, C, H, I, J, M. Further, the record indicates that each plaintiff received communications from the District. *See*, *e.g.*, above at 15 (describing need of receipt to access online system), Werede Decl. [2-4] at 8, Woube Decl. [2-5] ¶ 13, Note 5 (Perry).

Plaintiffs contend they requested a determination notice from the District, but not that they informed the District that they had not received the original notice. *Compare, e.g.*, Pls.' Mot. at 11–14 (alleging for each plaintiff that he or she did not receive notice or a determination) *with* Hailu Decl. [2-3] ¶¶ 19-20 ("asked for the determination notice"). The District has no record of any mailing or emailing of notice to any plaintiff having been returned as undeliverable. The notices sent to plaintiffs all describe the right to a hearing and the process of seeking one. *See*, *e.g.*, Ex. C at 3-6.[7] And, in fact, three of the plaintiffs appealed to OAH, indicating by their invocation of an appeal process that they were appealing a decision of which they had notice. Exs. E, L, O. The three then chose not to respond to the judge's orders that they provide additional information. *See* Section I.A. Notably, none alleges having done anything to inform the ALJ of their allegations here that the District had not provided adequate documentation or notice; they simply did not respond to the orders for more information. *Id.* For these reasons, plaintiffs have not, at this point, established the requisite substantial likelihood of success as to whether the District "provide[d] notice reasonably calculated to afford the party an opportunity to be heard." *OMB v. Webb*, 28 A.3d 602, 605 (D.C. 2011) (quotation omitted).

Plaintiffs' attacks on the adequacy of the notices are also based on a misunderstanding of the cases on which they rely. They contend that, "the notice must disclose the rationale for the deprivation." Pls.' Mot. at 29. But the cases they cite do not say that. *Gray Panthers v. Schweiker*, 652 F.2d 146, 165 (D.C. Cir. 1980), is about "opportunity for an 'oral hearing'" and does not say that a "rationale" must be provided. Further, plaintiffs concede they were told they had been found

[7] Plaintiffs contend they "are likely to prove that Defendants never sent any notice at the time they determined that an overpayment occurred." Pls.' Mot. at 31. Although plaintiffs may contend that they did not *receive* the notices, plaintiffs offer no suggestion as to how they can know what the District sent.

disqualified or ineligible and each had the opportunity for an oral hearing at OAH; three plaintiffs took advantage of that opportunity. *See* Section I.A. Plaintiffs' citation to *Ralls Corp. v. Comm. on Foreign Inv. in the U.S.*, 758 F.3d 296, 318 (D.C. Cir. 2014), is similarly immaterial because it discusses what is needed in preparation for such a hearing, not what must be in the notice.

Further, *Reeve Aleutian Airways, Inc. v. United States of Am.*, 982 F.2d 594, 599 (D.C. Cir. 1993), stands in direct contradiction to plaintiffs' position. There, the plaintiff "was told explicitly what the dispute was about, although perhaps not what factors weighed most heavily … ." *Id.* In essence, the plaintiff in *Reeve* was given the agency's determination but not the underlying rationale for that decision, an omission the court found "was negligible in this case" because the plaintiff was "represented by counsel," as were the plaintiffs here. *Id.* at 599-600. The D.C. Circuit additionally noted that, "in concluding that the actual notice was adequate to avoid serious risk of erroneous deprivation, we also take into account the Notification Letter's offer of follow-up contact through which Reeve could request additional information." *Id.* at 600. The same is true here. *See*, *e.g.*, Ex. C at 3-6. Each plaintiff contends that he or she followed up and contacted DOES to request additional information, indicating that they understood how to do so. Just as "Reeve's contemporaneous behavior belie[d] its assertion that the notice employed [t]here left it shadowboxing with [the agency], unaware of the matters in dispute and thus unable to mount a meaningful defense," the plaintiffs here engaged with the District in multiple attempts to address the specific problems with their applications—Mr. Perry, for example, contending that he found and provided documentation of his wages—so it is not the case that they did not know "the matters in dispute." The *results* of the dispute were not to their benefit but the record demonstrates that they were given ample opportunity to make the appropriate applications, provide the requisite documents, and take statutorily-provide appeals. In short, that plaintiffs were unable to prevail

does not mean that they were not afforded adequate notice.

Further, plaintiffs wrongly cite *Barry v. Little*, 669 A.2d 115, 124 (D.C. 1995), as holding that "'boilerplate' statement did not satisfy Due Process notice requirements," Pls.' Mot. at 32-33, but that opinion actually says only that the ruling as to adequacy was not challenged on appeal. *Little*, 669 A.2d at 124 n.21 (noting "[t]he record on appeal is ambiguous [even] as to whether this was a concession that the notice was constitutionally inadequate or only statutorily inadequate"). As the District prevailed in *Little* on other grounds, that concession is meaningless. *See id.* at 120-24.

D. Plaintiffs Fail To Establish a Substantial Likelihood of Success on Their Claim that They Were Denied the Right to a Hearing on the Alleged Denial of Benefits (Counts III and V).

Plaintiffs' argument about the alleged denial of a right to a hearing, *see*, *e.g.*, Compl. ¶¶ 66-87, 101-109, is based on an apparent misunderstanding of the OAH regulation to which they cite. It is appropriate for OAH to expect someone challenging a DOES determination to "file a copy of the determination that the party is appealing … ." Pls.' Mot. at 35-36 (quoting 1 D.C. Mun. Regs. § 2981). Providing documentation is a sensible way for an ALJ to understand the basis of the appeal and of the underlying decision. But plaintiffs' contention that the sentence, "[i]f the copy is not provided, OAH may dismiss the case," actually means, "[i]f the copy is not provided, OAH shall dismiss the case," *id.*, requires far more support than plaintiffs offer to create a substantial likelihood of success on the merits. Plaintiffs cite Professor Jeffrey Gutman's declaration to allege "During 2021, there have been periods when OAH refused to hear a significant number of the hundreds of appeals filed each month, because DOES had not issued a written decision." *Id.* But Professor Gutman does not say this. Rather, he says that when a claimant fails to file the determination letter the ALJ orders them to provide it. Gutman Decl. ¶ 7. Professor Gutman does not say how many such appellants provide the letter, or explain why they have not, or how OAH

then proceeded with those cases, versus how many chose, as the three plaintiffs here, to ignore the ALJ's order.[8]

Any plaintiff could have made these due process allegations, that the District had not provided adequate notice or was denying the right to a hearing by not issuing determination letters, to the ALJ. Plaintiffs presume that, had one told an ALJ that the claimant was not providing the determination letter because none existed or because the District would not provide one, the ALJ would *choose* to dismiss the appeal. But none of the four plaintiffs made any such attempt and plaintiffs offer nothing suggesting that any ALJ would take such an action. Further, no plaintiff appears to have appealed the OAH dismissal to the D.C. Court of Appeals on the grounds now presented to this Court, that the District and ALJ had each denied him due process. Courts have repeatedly held that "OAH and District of Columbia Court of Appeals proceedings clearly satisf[y] the procedural requirements of due process." *Youngin's Auto Body v. District of Columbia*, 775 F. Supp. 2d 1, 8 (D.D.C. 2011). Plaintiffs have not shown that is not the case here, so they have not demonstrated that they are substantially likely to prevail on Counts III or V of the Complaint. Furthermore, plaintiffs even concede that it is debatable whether they have a private right of action to maintain Count III. Pls.' Mot. at 44 n.13. A preliminary injunction should not issue given such uncertainty.

E. Plaintiffs Fail To Establish a Substantial Likelihood of Success on Their Claim that the District Failed To Make Timely Decisions (Counts IV and VI).

Plaintiffs allege that the District failed to make timely decisions on their rights to benefits

[8] Although plaintiffs cite only Paragraph No. 7, the few other paragraphs and attachments are equally silent on these questions. It is unclear what Professor Gutman or plaintiffs expect the Court to make of the fact that DOES has no records responsive to his FOIA request. Gutman Decl. ¶¶ 8-9. This fact is not evidence of what claimants have done at OAH or how OAH has responded to situations Professor Gutman did not raise in his FOIA request or his declaration.

as required by 42 U.S.C. § 503 (Count IV) and D.C. Code § 51-111(b) and 7 DCMR § 305.1 (Count VI). But plaintiffs do not allege any specific decision the District made untimely that did not redound to plaintiffs' benefit. For example, Mr. Hailu received benefits for two weeks despite not having provided the requisite proof of identification, and began receiving benefits again on the start of the next benefit year, when District policy would have prevented the award of benefits until he had met his obligation. *See* Section I.B.1. Plaintiffs contend "Mr. Perry applied for benefits in early June 2020," Pls.' Mot. at 34, but the District has no record of this application; its records do show timely decisions on Mr. Perry's applications in February 2020 and March 2021. *See* Section I.B.3.

F. Even If Plaintiffs' Claims Were Correct, They Do Not Establish a Pattern or Practice of the District That Is Sufficient to Support Municipal Liability Under Section 1983.

Even if the Court were to find that plaintiffs sufficiently pled a violation of a right enforceable under Section 1983, the Complaint fails to provide any basis to establish municipal liability because plaintiffs have not alleged facts to support a claim that any District pattern or practice caused the injuries. *See Baker v. District of Columbia*, 326 F.3d 1302, 1306 (D.C. Cir. 2003). Local governments, including the District, are "persons" for purposes of Section 1983, but municipal liability cannot be predicated on a *respondeat superior* theory. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690-91 (1978). Rather, "[p]laintiffs who seek to impose liability on local governments under § 1983 must prove that 'action pursuant to official municipal policy' caused their injury." *Connick v. Thompson*, 563 U.S. 51, 60 (2011) (quoting *Monell*, 436 U.S. at 691).

The D.C. Circuit has identified four ways official municipal policy can be demonstrated: (1) express municipal policy; (2) actions of a final municipal "policymaker"; (3) persistent conduct by non-policymakers (*i.e.*, "custom" with force of law); and (4) "deliberate indifference" to a risk of constitutional injury. *See Baker*, 326 F.3d at 1306-07 (citations omitted). Each theory has its

own "elements," which a Section 1983 plaintiff bears the burden of pleading. *Blue v. Dist. of Columbia*, 811 F.3d 14, 20 (D.C. Cir. 2015); *accord Hodges v. Dist. of Columbia*, 975 F. Supp. 2d 33, 54 (D.D.C. 2013) ("The fact that [a] claim arises under section 1983 does not relieve [plaintiff] of the obligation to satisfy the criteria established in *Iqbal* and *Twombly*."). Additionally, under any theory, a municipal liability claim separately requires proof of causation—specifically, an "affirmative link" between the alleged municipal policy and the alleged constitutional violation, "such that [the former] was the moving force behind the [latter]." *Baker*, 326 F.3d at 1306.

The Complaint contains no factual allegations to demonstrate the existence of any District policy or practice that caused plaintiff's' alleged injuries. Plaintiffs baldly allege, for example, that the District "has a policy, custom, or practice of denying or terminating beneficiaries' benefits without providing them with adequate notice of the reasons for the denial or termination … ," Compl. ¶ 53, but plaintiffs do not identify any official District policy that caused these alleged injuries. To the contrary, their theory of the case rests on the District's alleged failure to follow the official policies that are in place. *See, e.g.*, Compl. ¶¶ 68, 104; *see also Davis v. District of Columbia*, 800 F. Supp. 2d 28, 35 (D.D.C. 2011) (no *Monell* liability when alleged injury was allegedly caused by actions "in violation of" official policy because "policy was not in any way the 'moving force' behind the alleged violations") (emphasis original). Plaintiffs cite to allegations made by Councilmember Elissa Silverman and plaintiffs' counsel, Pls.' Mot. at 38-41, but such bald, general allegations are not adequate to establish sufficient likelihood of success on the merits.

Similarly, although plaintiffs bring this suit against two policymakers in their official capacities, the Complaint fails to plead any particular action taken by an identified policymaker that caused the alleged violations. Plaintiffs' allegation that an OAH policy caused some violation is based on a misunderstanding of that policy. *See* Section I.D. "This pleading defect is fatal."

Faison v. District of Columbia, 907 F. Supp. 2d 82, 85 (D.D.C. 2012) (Sullivan, J.), *summarily aff'd* Civil Appeal No. 13-7021, 2013 U.S. App. LEXIS 23150 (D.C. Cir. Oct. 23, 2013) (*per curiam*)).

II. Plaintiffs Hailu, Werede, and Woube Do Not Adequately Allege They Will Suffer Irreparable Harm if a Preliminary Injunction Is Denied.

The D.C. Circuit has held that "failure to demonstrate irreparable harm is 'grounds for refusing to issue a preliminary injunction, even if the other three factors entering the [preliminary injunction] calculus merit such relief.'" *Nat'l Min. Ass'n v. Jackson*, 768 F. Supp. 2d 34, 50 (D.D.C. 2011) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006) (observing that there is "a high standard for irreparable injury")). Although the factors relevant to a preliminary injunction "interrelate on a sliding scale … the movant must, at a minimum, demonstrate that irreparable injury is *likely* in the absence of an injunction." *Bill Barrett Corp. v. U.S. Dep't of Interior*, 601 F. Supp. 2d 331, 334-35 (D.D.C. 2009) (internal quotation marks and citations omitted) (emphasis in original).[9] "[P]roving irreparable injury is a considerable burden, requiring proof that the movant's injury is certain, great and actual—not theoretical—and imminent, creating a clear and present need for extraordinary equitable relief to prevent harm." *Power Mobility Coal. v. Leavitt*, 404 F. Supp. 2d 190, 204 (D.D.C. 2005) (internal citations and quotation marks omitted). If a party fails to make a sufficient showing of irreparable injury, a court may deny a motion for preliminary relief without considering the other factors. *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1995).

As discussed in detail above, plaintiffs Hailu, Werede, and Woube allege temporary loss of unemployment insurance or PUA benefits but acknowledge receipt of some unemployment

[9] The D.C. Circuit has not "decide[d] whether the 'sliding scale' approach remains valid after *Winter*." *Archdiocese II*, 897 F.3d at 334.

benefits during the relevant time. Plaintiff Perry was repeatedly found ineligible for traditional unemployment insurance and never applied for PUA. *See* Section I.B.4. None of the plaintiffs allege that they are currently eligible for ongoing or prospective benefits. Mr. Woube began full time employment in February 2021 and has not submitted a claim since that time. Am. Woube Decl. [15] at ¶ 5. Plaintiffs Hailu and Werede received benefits until September 2021, when PUA, PEUC and FPUC expired and extended benefits ended. Hailu Decl. [2-3] ¶ 10; Werede Decl. [2-4] ¶ 20. Although plaintiffs allege that they suffered monetary losses during those lapses, such alleged losses would be compensable; indeed, plaintiffs seek such compensation as part of both the Complaint and their motion for preliminary injunction. Compl. at 32; Prop. Order [2-9] at 2. To the extent any plaintiff can establish "emotional harm," *see*, *e.g.*, Hailu Decl. [2-3] ¶ 25, that, too, is compensable. *Destefano v. Children's Nat'l Med. Ctr.*, 121 A.3d 59, 68 (D.C. 2015). It is well established that "[l]osses which may be adequately compensated by money damages or other corrective relief are inadequate" to demonstrate the irreparable injury requisite to justify a preliminary injunction. *Robert Half Int'l Inc. v. Billingham*, 315 F. Supp. 3d 419, 432 (D.D.C. 2018) (quoting *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297-298). The Court should hold that plaintiffs have failed to show that they are at risk of irreparable injury.

III. The Balance of Equities and Public Interest Weigh Against Granting Plaintiffs' Motion for Injunctive Relief.

Even if a movant demonstrates a likelihood of success *and* irreparable injury, the Court still "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Amoco Prod. Co. v. Gambell*, 480 U.S. 531, 542 (1987). In addition to considering the merits of the plaintiffs' arguments and alleged injuries, the Court must also balance the equities between the parties and consider the public interest. *See Open Tech. Fund v. Pack*, 2020 U.S. Dist. LEXIS 116376, *45 (D.D.C. July 2, 2020) (Howell,

C.J.). Those two factors "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

The preliminary injunctive relief plaintiffs seek—which is comparable to if not greater than the permanent relief they seek, *compare* Proposed Order [2-7] *with* Compl. at 30-23[10]—would require a fundamental reworking of the notices the District sends to tens of thousands of residents every month, placing a tremendous burden on the DOES system already stressed by the demands of providing assistance during the pandemic. *See Unemployment Compensation Claims Data* at 4, above. This new burden, and the complications inherent in the implementation, could well lead to new, unforeseen problems for beneficiaries and for the District in administering the program, without making any appreciable change in plaintiffs' circumstances.[11] *See* Section IV.

Further, the District faces "irreparable harm because '[a]ny time [it] is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.'" *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 571 U.S. 1061, 1062 (2013) (Scalia, J., concurring in denial of application to vacate stay) (quoting *Maryland v. King*, 567 U.S. 1301 (2012) (Roberts, C. J., in chambers) (in turn quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U. S. 1345, 1351 (1977) (Rehnquist, J., in chambers)) (alterations original). This harm is only magnified by the fact that the unemployment insurance and PUA programs at issue were originally created and operated by the United States itself. *See* Background Sections I, II, above. The public has an interest in leaving the administration of its government programs to the government officials it has elected. Until plaintiffs have proven that the District

[10] Although the Complaint breaks the injunctive relief out into nine parts, the Proposed Order encompasses the same relief in three and adds conditions.

[11] Furthermore, PUA, the program through which plaintiffs Woube and Hailu received benefits, has ended and an injunction would have no effect on that program.

has not adequately administered its unemployment assistance programs as required by law, the Court should not allow plaintiffs to dictate how the rest of the residents of the District of Columbia are served by their government.

IV. If the Court Is Inclined To Provide Plaintiffs Any Relief, It Should Be More Limited Than Plaintiffs Seeks.

Even if the Court were inclined to grant some sort of relief at this early stage, any such preliminary injunctive relief should not extend beyond these plaintiffs. Plaintiffs' proposed order [2-9] asks the Court to enjoin how the District handles notice for all "unemployment beneficiaries' benefits in the future." *Id.* at 1. "In awarding a preliminary injunction," however, "a court 'need not grant the total relief sought by the applicant but may mold its decree to meet the exigencies of the particular case.'" *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017) (quoting 11A C. Wright, A. Miller, & M. Kane, Federal Practice and Procedure §2947, at 115 (3d ed. 2013)). Indeed, the Supreme Court has "caution[ed]" against granting statewide injunctions that extend beyond "the plaintiff's particular injury." *Gill v. Whitford*, 138 S. Ct. 1916, 1934 (2018). Exceptions can be made but only where the plaintiff represents the rights of third parties, which plaintiffs here do not. *See Whitman-Walker Clinic, Inc. v. United States HHS*, Civil Action No. 20-1630, 2020 U.S. Dist. LEXIS 159951, at *142 (D.D.C. Sept. 2, 2020) (Boasberg, J.) (discussing *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994) and *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)). The broad relief plaintiffs seek is unwarranted at this stage and awarding it would contravene established Article III principles.

In particular, plaintiffs' arguments address only alleged difficulties they themselves have faced. The Complaint and plaintiffs' declarations do not detail any alleged injuries to others. Plaintiffs make no effort to address the different facts around any other putative beneficiary of unemployment benefits, and have done nothing to establish standing to assert the rights of any

third-party. *See Ctr. for Democracy & Tech. v. Trump*, Civil Action No. 20-01456 (TNM), 2020 U.S. Dist. LEXIS 232972, at *19 (D.D.C. Dec. 11, 2020). Plaintiffs cite the allegations of Professor Gutman, Pls.' Mot. at 35-36, but he offers only allegations and legal conclusions, attaching and relying on a FOIA request and its response noting that there were no responsive documents. Plaintiffs are not entitled to preliminary injunctive relief, but if the Court is inclined to grant any relief, it should be limited to the District's administration of benefits to one or more of the four named plaintiffs.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' Motion for Preliminary Injunction.

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Respectfully submitted,

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