UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MULUGETA HAILU et al.,

Plaintiffs,

v.

UNIQUE N. MORRIS-HUGHES, in her official capacity as Director of the DISTRICT OF COLUMBIA DEPARTMENT OF EMPLOYMENT SERVICES et al.,

Defendants.

Civil Action No 1:22-cv-00020

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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Defendants' Opposition presents a tepid defense to the case for a preliminary injunction. They do not address, and therefore do not dispute, most of the applicable legal principles and many of the material facts. The relevant case law and weight of the record evidence justify rejecting Defendants' position on the matters that they do contest. The Court should grant the motion.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS.

A. Plaintiffs are Likely to Succeed on the Merits of Their Claims That DOES Violated Their Rights to Adequate Notice.

Plaintiffs are likely to succeed on the merits of their claims that the Department of Employment Services (DOES violated their rights to adequate notice. Defendants do not dispute, and therefore tacitly concede, the following fundamental points of law establishing that DOES cannot terminate, seize, or deny unemployment benefits without providing adequate notice:

- Unemployment benefits are property interests protected by the Fifth Amendment's Due Process clause (Dkt. 2, Plaintiffs' Mem. in Supp. of Mot. for Prelim. Inj. (Pls' Mem.) at 15);
- DOES violates Due Process if it terminates, seizes, or denies benefits without providing the claimant with adequate notice (Pls' Mem. at 16);
- DOES violates the Social Security Act if it does not provide the claimant with adequate notice of the rationale for terminating or denying benefits, for determining that an overpayment occurred, and for determining that an overpayment qualifies for offset-seizure. Under the statute, such adequate notice must include a written determination with sufficient information to understand the basis for the determination, the facts on which the determination is based, the legal basis for the determination, when and how to file an appeal, and potential penalties or consequences (Pls' Mem. at 31-33); and
- DOES violates D.C. law if it does not provide the claimant with adequate written notice of the rationale for terminating or denying benefits, for determining that an overpayment occurred, and for determining that an overpayment qualifies for offset-seizure. (Pls' Mem. at 34-35).

Defendants attempt to distinguish Plaintiffs' case-law support for the principle that an adequate notice is one that discloses the rationale for terminating, seizing, or denying benefits. *Compare* Pls' Mem. at 16 *with* Defs' Mem. at 18-20. But we do not understand Defendants to

contest the central tenet of Due Process at issue — that notice must disclose the rationale for the government's action in order to be adequate. Defendants' apparent acceptance of that principle is understandable, because it is well established that to satisfy Due Process, "individuals faced with the deprivation of a property interest must be informed of the government's reason for the denial." *N.B. v. Dist. of Columbia*, 244 F. Supp. 3d 176, 181 (D.D.C. 2017).

1. Defendants Do Not Dispute the Material Facts Establishing That DOES Violated Due Process, the Social Security Act, and D.C. Law When It Seized Plaintiffs' Benefits Through Offset.

Defendants do not dispute the material facts establishing that DOES violated the foregoing legal requirements when it seized the benefits of Plaintiffs Hailu and Werede through offset.[1] Mr. Hailu testified that he did not receive two weeks of benefits (for the weeks ending May 15 and May 22, 2021) that the DOES online portal indicated were seized through offset. Dkt. 2-3, Declaration of Mulugeta Hailu (Hailu Decl.) ¶¶ 13, 15. He also testified that DOES never provided notice of the rationale for the underlying overpayment or for the separate decision that the overpayment qualified for offset. Pls' Mem. at 11; Hailu Decl. ¶ 14. Defendants concede that the same two weeks of benefits were seized through offset. Defs' Mem. at 8 & Ex. B at 1-2. And Defendants do not present any evidence that DOES provided Mr. Hailu with either an overpayment notice or a notice explaining why the overpayment qualified for offset.[2]

[1] Defendants' brief makes a conclusory statement that they issued notice to each Plaintiff explaining why benefits were not being provided, but that is just an assertion of counsel. Dkt. 20, Defs' Opp'n to Pls' Mot. for Prelim. Inj. (Defs' Mem.) at 1-2, 8-10. Defendants provide no *evidence* that conflicts with the material facts about offsets established in the testimony of Mr. Hailu and Ms. Werede.

[2] The determination notice that Defendants allege was sent to Mr. Hailu related to an earlier period (February 21, 2021 to May 8, 2021) — not the period of the offset later in May — and did not purport to address an offset. Defs' Mem. at 7, 15 and Ex. C. We discuss that alleged determination below in the discussion of DOES's premature termination of benefits.

Ms. Werede testified that she did not receive three weeks of benefits (for the weeks ending January 9, 2021 through January 23, 2021) and that the DOES online portal indicates the benefits were seized through offset. She also testified that DOES never provided notice of the rationale for the alleged overpayment underlying the offset — she only received an offset receipt, which did not explain the rationale for the offset or the underlying alleged overpayment. Plaintiffs' opening brief explained why this offset receipt fell far short of Due Process, Social Security Act and D.C. law notice requirements. Pls' Mem. at 19, 33, 35; Dkt. 2-4, Declaration of Mizan Werede (Werede Decl.) ¶¶ 10-14. Defendants do not contest that the offset-seizure of these benefits occurred. They also do not dispute that DOES failed to provide a notice regarding the alleged overpayment underlying the offset. And Defendants do not even respond to Plaintiffs' arguments that the offset receipt violated the Constitution, the Social Security Act and D.C. law by providing inadequate notice. Pls' Mem. at 19, 32-33, 34-35.[3]

2. Plaintiffs are Likely to Succeed on the Merits of Their Claims Regarding Termination and Denial of Benefits.

Plaintiffs Hailu, Perry and Woube also are likely to succeed on the merits of their claims regarding termination and denial of benefits. Defendants do contest some of the facts as to these claims, but the weight of the record evidence supports Plaintiffs.

a. Mr. Hailu is Likely to Succeed on the Merits.

Mr. Hailu testified that he did not receive any notice explaining the reason his benefits were terminated during a nine-week period that began in the middle of March 2021. Hailu Decl.

[3] Defendants' discussion of Ms. Werede largely focuses on a red herring: an alleged "bridge payment" of $2,200 and subsequent recoupment of the same sum. Defs' Mem. at 16. There is insufficient evidence of this alleged "bridge payment," and in any event it has no bearing on the unlawful recoupment alleged in the Complaint. Most importantly (and ironically), if the "bridge payment" and its recoupment did occur, Defendants do not say that they provided any notice about it and therefore have identified an additional instance of their inadequate notice practices.

¶¶ 11, 12. The weight of the record evidence supports that testimony. Defendants assert that they sent him a determination notice containing the rationale for the termination (for the period from February 21, 2021 to May 8, 2021). Defs' Mem. at 7 and Ex. C. However, Defendants provide no testimony that they actually sent the notice, and the certificate of service is ambiguous, stating that it allegedly was "mailed/e-mailed to the above claimant address." Defs' Ex. C at 1. The Court need not credit a claim of service when statements in the certificate of service are internally inconsistent.[4]

In addition, the evidence of DOES's contemporaneous behavior further undermines the credibility of the already ambiguous certificate of service. For a period of many months, DOES repeatedly failed to answer Mr. Hailu's requests to provide him with a determination notice (or any other explanation of why his benefits were terminated). Defendants do not deny that DOES utterly failed to provide Mr. Hailu with any information in response to (1) inquiries by Mr. Hailu every two weeks for several months; (2) inquiries by Mr. Hailu's Legal Aid counsel approximately once a week for nine weeks; and (3) a discussion with a DOES customer service representative requesting a determination notice or overpayment notice. Hailu Decl. ¶¶ 18-20. Defendants do not explain why they failed to provide a copy of the determination document if it actually existed during the period of these inquiries. The logical explanation, consistent with Mr. Hailu's uncontradicted testimony, is that DOES had not sent the notice.

At any rate, even if it had been sent, the notice itself is inadequate as a matter of law. While the document provides cursory factual information, it fails to provide a proper legal basis for the

[4] *Kidd Int'l Home Care, Inc. v. Prince*, 917 A.2d 1083, 1085 & n.1 (D.C. 2007) (DOES certificate of service was "insufficient" because it indicated that Determination had been sent to the "claimant/employer"); *see also Rhea v. Designmark Serv., Inc.*, 942 A.2d 651, 654 (D.C. 2008) (DOES certificate of service claiming Determination was purportedly sent to the "claimant/employer" was "less than a paragon of accuracy or reliability").

benefits determination. For the legal basis, the determination notice states: "Under D.C. Official Code, Title § 51-109(1), all individuals seeking unemployment insurance benefits must provide information/documents upon request of the Agency." Defs' Ex. C at 1. But section 51-109(1) cannot be the legal basis for the denial of benefits here, because that provision simply addresses a claimant's obligation to file weekly claims for benefits — and Defendants do not dispute that Mr. Hailu met that obligation. *See* Hailu Decl. ¶ 9.

Because of this fundamental defect, the notice violates the Due Process requirement to explain the legal rationale for the deprivation of Mr. Hailu's benefits.[5] For the same reason, the notice also violates the Social Security Act, which requires written notice to include "the legal basis for the determination." Portia Wu, *UIPL No. 1-16*, at ¶ 4(a), U.S. DEP'T OF LAB., (Oct. 1, 2015), https://wdr.doleta.gov/directives/attach/UIPL/UIPL_01-16_Acc.pdf.; Pls' Mem. at 30-31.

b. Mr. Perry is Likely to Succeed on the Merits.

The weight of the evidence also supports Mr. Perry's claim that DOES's long delays have effectively denied him benefits without any notice. Mr. Perry testified that he filed a claim for benefits in June 2020 and has never received any benefits (or determination from DOES) covering the following 9 months (through February 2021). Pls' Mem. at 12; Dkt. 2-6, Declaration of William Perry (Perry Decl.) ¶¶ 7, 8. Defendants do not deny that he filed the claim in June 2020

[5] *See, e.g., Rodriguez by & Through Corella v. Chen*, 985 F. Supp. 1189, 1196 (D. Ariz. 1996) (holding that the law cited in a notice relating to Medicaid benefits must be accurate to satisfy procedural due process because "[p]roviding incorrect, cryptic or inaccessible citations without further guidance to low-income individuals is providing no [ ] guidance at all."); *Elkins v. Dreyfus*, No. C10-1366 MJP, 2011 U.S. Dist. LEXIS 86782, at *24 (W.D. Wash. Aug. 5, 2011) (holding that notices containing "erroneous citations to the relevant regulations" violated Due Process as "the citation to laws must be accurate and means provided to the recipient to access the relevant law.").

or that they have failed to send him notice regarding that claim in the twenty months since then. Defs' Mem. at 9.[6]

Mr. Perry also testified that he never received notice regarding his request for a redetermination filed in June 2021. *See* Perry Decl. ¶¶ 11, 15. That request challenged a DOES determination denying benefits for the period from February 28, 2021 to February 26, 2022. *See* Perry Decl. ¶¶ 9-10, Ex. A. Defendants do not dispute that he filed the request and acknowledge that DOES communicated with him about wage information (which is the subject of the redetermination request). Defs' Ex. K. Defendants also do not dispute that to date (eight months later) DOES has failed to issue a decision on the redetermination request. Defendants do not deny that Mr. Perry has now gone more than 77 weeks without receiving benefits. Perry Decl. ¶ 16. And Defendants do not contest the fact that egregious delays in providing public benefits can amount to a deprivation of property without Due Process. Pls' Mem. at 20-21. Mr. Perry is likely to succeed on the merits.

c. Mr. Woube is Likely to Succeed on the Merits.

Mr. Woube testified that he applied for benefits in April 2020, that he never received benefits for the period from April to mid-October 2020, and that DOES never responded to the

[6] Defendants assert that DOES provided a written determination to Mr. Perry, but that determination relates to a different claim filed in February 2020. Defs' Mem. at 13, 14 n.5 and Ex. J. Any DOES actions regarding that earlier claim are irrelevant to the procedural challenges at issue here.

Furthermore, the record does not support Defendants' assertion they were unaware of the June 2020 claim until this litigation was filed. Defs' Mem. at 9. Mr. Perry testified that he repeatedly contacted DOES about the claim and then re-filed his claim cards on or around August 19, 2021; DOES's own records corroborate that filing. *Compare* Perry Decl. ¶¶ 7-8, 12 *with* Dkt. 20-11, Defs' Ex. K at 2 (entries for August 18 and August 23, 2021). Shortly thereafter, a DOES representative told Mr. Perry and his Legal Aid counsel that the claim was "lost in the system" because of an "IT issue." Perry Decl. ¶ 13. Defendants' brief acknowledges a "purge" of DOES records. Defs' Mem. at 9 n.4. The weight of the evidence establishes a likelihood that Mr. Perry will succeed in proving that he submitted the claim and that DOES has never acted on it.

application in writing. Dkt. 15, Updated Declaration of Yohannes Woube ("Woube Decl.") ¶¶ 6-8. Defendants assert that they sent several written determinations to Mr. Woube but do not offer any proof of that assertion (through a certificate of service or otherwise). Defs' Mem. at 13 and Ex. M. The record evidence supports Mr. Woube's claim. Defendants now appear to agree. The same day that Defendants filed their Opposition, DOES contacted Mr. Woube and represented that he would be paid benefits for all of the weeks at issue. However, on information and belief, payment has not occurred as of the filing of this Reply Brief. Therefore, notwithstanding the recent communication from DOES, Mr. Woube respectfully requests the Court to rule on his motion and grant him the requested relief.

3. Plaintiffs are Likely to Succeed in Proving That the Foregoing Violations Stemmed from a DOES "Practice, Custom or Policy."

Plaintiffs also are likely to succeed in proving that the foregoing violations stemmed from a DOES "practice, custom or policy."[7] The purpose of the "practice, custom or policy" requirement is to hold municipalities liable under 42 U.S.C. § 1983 only for their "*own violation[s]*" and to shield them from vicarious liability based on one-off violations by municipal employees. *Humphries*, 562 U.S. at 35-36 (emphasis in original). Accordingly, it generally will not suffice to demonstrate only a single instance of violative conduct by a single employee. *Ryan v. Dist. of Columbia*, 306 F. Supp. 3d 334, 347 (D.D.C. 2018)). On the other hand, a plaintiff need not prove that a municipality *always* follows a practice in order for it to be actionable. A pattern of a number of instances can be enough. *See, e.g.*, *Carter v. District of Columbia*, 795 F.2d 116, 124 (D.C. Cir. 1986) ("[e]gregious instances of misconduct, relatively few in number but following

[7] Court decisions often use the shorthand term "policy or custom" to refer to the prerequisite for municipal liability under section 1983, but the term also embraces municipal "practice" and "usage." *L.A. Cnty., Cal. v. Humphries*, 562 U.S. 29, 35 (2010). In this Reply, we use the term "practice, custom or policy."

a common design" may demonstrate actionable custom or practice); *McComb v. Ross*, 202 F. Supp. 3d 11, 18 (D.D.C. 2016) (11 complaints of police misconduct within 33 months demonstrated actionable custom or practice).

Plaintiffs are likely to meet this standard. Indeed, Defendants appear to concede the relevant points. In opposing preliminary relief, Defendants argue that "[P]laintiffs' requested relief would excessively disrupt DOES agency procedure and processes," and "would require a fundamental reworking of the notices the District sends to thousands of residents every month," thereby creating a "new burden." Defs' Mem. at 2, 26. If remedying the practices challenged here would require such fundamental institutional change, Defendants necessarily admit that the harms suffered by the individual Plaintiffs are not unique, unusual, or idiosyncratic, but instead are the result of DOES's practices, customs and/or policies that it — by its own admission — applies to "thousands of residents every month."

This concession is backed by the record evidence demonstrating that DOES's practice (of terminating, seizing, or denying benefits without adequate notice) is so widespread that it has been reported to the D.C. Council and experienced by more than 100 of Legal Aid's clients. Pls' Mem. at 25-26; Dkt. 2-8, Declaration of Jennifer Mezey (Mezey Decl.) ¶¶ 7-8, 10-11, 16-18.[8]

[8] Defendants do not dispute that it is DOES standard procedure to seize benefits through offset and provide an offset receipt that (1) does not explain the basis for the claimed overpayment; (2) does not explain why the claimed overpayment qualifies for offset; and (3) does not (according to OAH) qualify as a basis for hearing an appeal of the offset. Mezey Decl. ¶ 12 and Ex. E. Plaintiffs are likely to prove that these practices affect thousands of people. Just last week, DOES quantified the number of people whose benefits have recently been seized through offset. In Fiscal Year 2021, DOES seized the unemployment benefits of 5,064 individuals for alleged overpayments, and, in the first three months of Fiscal Year 2022, seized benefits from 617 individuals. Department of Employment Services, *Responses to Fiscal Year 2021-2022 Performance Oversight Questions* (February 8, 2022), Question 46, https://dccouncil.us/wp-content/uploads/2022/02/DOES-FY22-POH-Perfrmance-Questions-Responses-only.pdf.

Separately, Plaintiffs are likely to prove a "practice, custom or policy" by showing that DOES was "deliberately indifferent" because it "knew or should have known" that its actions and inactions risked violating claimants' rights — with no proof of wrongful intent required. Pls' Mem. at 25. DOES plainly should have known the notice and hearing requirements imposed on their agency by the Social Security Act and D.C. law, as well as the bedrock Due Process requirements that have governed public benefits for decades. And Defendants do not, and cannot, contest the fact that DOES officials not only should have known, but *have known*, that they have been violating these requirements for more than eighteen months. Pls' Mem. at 28. During oversight hearings, the D.C. Council plainly informed DOES about the notice issues now before the Court. Pls' Mem. at 26-27. So did the Legal Aid Society, through public testimony of its staff before the Council and hundreds of communications with DOES on behalf of specific clients (including Plaintiffs). Pls' Mem. at 27-28. Thus, Plaintiffs are likely to prove a "practice, custom or policy."[9]

Defendants also wholly ignore the fact that Plaintiffs need not prove a "practice, custom or policy" at all to prove likelihood of success on the merits of some claims. The "practice, custom or policy" requirement arises under section 1983, which does not apply to two of the four Counts in the Complaint that are at issue here. Pls' Mem. at 28, 33-35. Nevertheless, it is significant that Plaintiffs have proved a practice, custom or policy, because they seek a prospective injunction barring that practice, custom or policy, as discussed below.

[9] The Court should easily reject Defendants' suggestion that District policy automatically coincides with D.C. law and that District policy could not violate D.C. law. Defs' Mem. at 23-24. The "'existence of written policies of a defendant are of no moment in the face of evidence that such policies are neither followed nor enforced.'" *Daskalea v. Dist. of Columbia*, 227 F.3d 433, 442-43 (D.C. Cir. 2000) (quoting *Ware v. Jackson Cnty. Mo.*, 150 F.3d 873, 882 (8th Cir. 1998)). "A 'paper' policy cannot insulate a municipality from liability where there is evidence . . . that the municipality was deliberately indifferent to the policy's violation." *Daskalea*, 227 F.3d at 442.

B. Plaintiffs are Likely to Succeed on the Merits of Their Claims Regarding OAH's Refusal to Hear Appeals.

1. Plaintiffs are Likely to Prevail on the Legal Issues Underlying Their OAH Claims.

Plaintiffs also are likely to succeed on the merits of their claims that OAH's refusal to hear appeals without a written DOES determination violates Due Process, the Social Security Act and D.C. law. To begin with, Defendants do not dispute the following fundamental points of law:

- Due Process, the Social Security Act, and D.C. law all require the District to provide claimants with notice and the opportunity to be heard if they are finally deprived of unemployment benefits (Pls' Mem. at 14, 16, 30-31, 33-34);
- Termination, offset-seizure, and denial of benefits constitute such a final deprivation of benefits (Pls' Mem. at 22); and
- OAH is the forum for the hearing that is required when DOES takes the foregoing actions (Pls' Mem. at 22).

In addition, Defendants do not even attempt to provide a legal justification for OAH's practice of refusing to hear appeals on the ground that the claimant has not provided a written DOES determination. Significantly, Defendants ignore the fact that nothing in the D.C. Code *requires* a written DOES decision for OAH to hear an appeal of the decision. Pls' Mem. at 23. OAH has authority to hear administrative appeals of the "whole or any part of the final disposition" of a DOES unemployment-benefits decision (without reference to whether or not that decision is written). D.C. Code §§ 2-1831.01(12) and 2-502(11). Conditioning the scheduling of a hearing on the production of a specific kind of written evidence not only violates D.C. law, but similarly leaves the claimant without the opportunity for a hearing required by Due Process and the Social

Security Act. This action is particularly egregious when, as in this case, DOES has a practice of not issuing the very writings that OAH makes a prerequisite to a hearing.[10]

2. Plaintiffs Are Likely to Prevail on the Factual Issues Underlying Their OAH Claims.

In the end, the crux of the parties' dispute about OAH is a factual issue: whether OAH in fact has the practice, custom, or policy of denying appeals when a claimant cannot provide a writing from DOES memorializing the rationale for a termination, denial, or offset-seizure of benefits. The record evidence strongly supports the conclusion that OAH does have one.

Defendants do not address the clear-cut statement in OAH's appeal form proclaiming the policy that it will not hear an appeal without a written DOES decision:

> Please submit with this form a copy of the Claims Examiner's Determination or other DOES decision you are appealing. You may submit this form first, but we cannot schedule a hearing or proceed with your case until you submit a copy of the DOES decision you are appealing.

[10] Defendants also make the blunderbuss (and inaccurate) assertion that OAH's practices and procedures must be constitutional and lawful because "[c]ourts have repeatedly held that 'OAH and District of Columbia Court of Appeals proceedings clearly satisf[y] the procedural requirements of due process.'" Defs' Mem. at 21. Although Defendants use the word "courts" in the plural in making that assertion, they cite to a single judicial decision over ten years old. *Youngin's Auto Body v. District of Columbia*, 775 F. Supp. 2d 1, 8 (D.D.C. 2011). But that case does not purport to opine on the legality of all OAH procedures. To the contrary, it limits its discussion to the specific OAH proceedings at issue in that case — which specifically included what is lacking here — namely "a full evidentiary hearing before an Administrative Law Judge." *Id*. In fact, the only court with the power to directly review OAH decisions frequently finds OAH practices and procedures unlawful, including its practices during the COVID-19 pandemic. That court has issued two such decisions in the past two weeks alone. *See Meriedy v. Tenleytown Trash*, No. 21-AA-66, 2022 D.C. App. LEXIS 60 (D.C. Ct. App. Feb. 10, 2022) (reversing OAH refusal to provide a hearing because there was insufficient evidence of notice); *Young v. Dep't of Empl. Servs.*, No. 21-AA-97, 2022 D.C. App. LEXIS 49 (D.C. Ct. App. Feb. 3, 2022) (reversing OAH denial of unemployment benefits because OAH failed to provide claimant with "full and reasoned consideration.").

Dkt. 2-7, Declaration of Jeffrey S. Gutman (Gutman Decl.) ¶ 4 and Att. A. OAH's own public statements corroborate this policy. In a report that OAH submitted to the D.C. Council Committee on Government Operations and Facilities (the agency responsible for overseeing OAH's performance and budget) prior to its performance hearing on February 10, 2022, OAH expressly states that a hearing will not be scheduled unless and until an individual provides a Claims Examiner's Determination:

> When an appeal is filed without a determination, the Appellant is issued a More Information Order ("MIO"). The MIO requires the appellant to provide the determination. When the Appellant answers the MIO *and provides the determination*, the case is scheduled for a hearing. If the Appellant does not respond to the MIO, *the case is dismissed*.

Office of Administrative Hearings, FY 22 Performance Oversight Questions, Question 47(b), available at https://dccouncil.us/wp-content/uploads/2022/02/Pre-Hearing-Responses-OAH.pdf (emphasis added). OAH's report is consistent with the testimony of D.C. unemployment practitioners. *See* Gutman Decl. ¶ 7; Mezey Decl. ¶ 20.

Defendants do not offer any testimony from OAH *denying* that the foregoing practice, custom, or policy exists. To the contrary, Defendants' Opposition attached an *additional* DOES policy document specifying the very same practice:

> You must include a copy of the determination you are appealing, if mailing. You must bring with you a copy of the determination you are appealing, if filing in person.

Defs' Mem. at 14 and Ex P.

Defendants do assert that a literal interpretation of the applicable regulation leaves open the option of not dismissing such appeals. Defs' Mem. at 20. But Defendants do not offer any proof that OAH ever actually exercises that option. Defendants also fault Plaintiffs Hailu, Perry and Woube for not responding to OAH's request for a written decision (and fault Plaintiff Werede

for not appealing at all). *Id*. at 13. Based on the record evidence, it obviously would have been futile to file an OAH appeal or respond to an OAH request for a written decision when Plaintiffs had never received a written decision from DOES. A plaintiff has standing to challenge a government policy regarding public benefits even if the plaintiff did not apply for them, as long as there is a substantial showing that the application would have been futile. *Safari Club Int'l v. Jewell*, 842 F.3d 1280, 1286 (D.C. Cir. 2016). Plaintiffs have made a substantial showing that further communication with OAH would have been futile, because OAH ordered them to produce documents that they did not have. Since Plaintiffs did not even need to apply for benefits to challenge the OAH policy, they certainly did not need to pursue futile efforts at OAH (concerning the applications that they did file) before filing suit.

3. There Was No Obligation to Exhaust Administrative Remedies before Filing This Case.

The Court also should reject Defendants' assertion that Plaintiffs needed to exhaust administrative remedies further at OAH before filing this case. Defendants inexplicably ignore the settled law establishing that no exhaustion was necessary before Plaintiffs filed their section 1983 claims (Counts II through IV of the Complaint). Pls' Mem. at 30 n.11. For the remaining Counts of the Complaint (not asserted under section 1983), the foregoing discussion of futility proves that Plaintiffs were not required to exhaust administrative remedies. No exhaustion is required where, as here, "'following the administrative remedy would be futile because of [the] certainty of an adverse decision.'" *James v. United States Dep't of Health & Hum. Servs.*, 824 F.2d 1132, 1138 (D.C. Cir. 1987) (quoting *Randolph-Sheppard Vendors of Am. v. Weinberger*, 795 F.2d 90, 105 (D.C. Cir. 1986) (emphasis in original)); *see also* Pls' Mem. at 30 n.11.

C. The Merits of Plaintiffs' Applications for Benefits are Irrelevant to the Merits of Plaintiffs' Procedural Claims at Issue in this Motion.

The Court also should reject Defendants' assertion that Plaintiffs' procedural rights turn on the merits of their applications for benefits. Defs' Mem. at 15-18. The merits of those applications are irrelevant to the merits of Plaintiffs' notice and hearing claims at issue here. It would turn Due Process upside down if an agency could unilaterally prejudge the merits of an application before deciding which, if any, procedural protections apply. The whole purpose of procedural rights is to provide a fair process regardless of whether an applicant ultimately prevails on the merits.

Plaintiffs' right to procedural Due Process depends on whether they have a "legitimate *claim* of entitlement" — not on whether they actually *win* a claim of entitlement.[11] Plaintiffs' procedural rights under the Social Security Act and D.C. law also are not contingent upon the merits of claimants' applications for benefits. The rights are there to assure a fair outcome in adjudicating the applications (whatever the outcome may be). It is the role (and duty) of OAH to provide a hearing on the merits of Plaintiffs' claims for benefits, and this Court's role is to ensure that such a hearing is provided (not to conduct the hearing itself).

[11] *NB v. Dist. of Columbia*, 794 F.3d 31, 41 (D.C. Cir. 2015) (emphasis added) (quoting *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972)); Pls' Mem. at 15. A legitimate claim of entitlement means that "a person would be entitled to receive the government benefit *assuming* she satisfied the preconditions to obtaining it." *Id*. (emphasis added). If (as in this case) the "'statute or implementing regulations place 'substantive limitations on official discretion' to withhold award of the benefit upon satisfaction of the eligibility criteria," there is a "legitimate claim of entitlement, as to which the Due Process Clause affords protection." *Id*. at 42.

II. PLAINTIFFS WILL CONTINUE TO SUFFER IRREPARABLE HARM UNLESS THE COURT ISSUES A PRELIMINARY INJUNCTION.

A. Defendants Do Not Dispute That Violation of Plaintiffs' Due Process Rights Constitutes Irreparable Harm.

Plaintiffs also have shown that they will continue to suffer irreparable harm unless the Court issues an injunction. Defendants do not even address (and therefore tacitly concede) that a violation of Plaintiffs' Due Process rights, in and of itself, constitutes irreparable harm sufficient to support the issuance of a preliminary injunction. Pls' Mem. at 35-36.[12] In fact, "even *the allegation* of a deprivation of constitutional rights [via the failure to provide sufficient notice] triggers a finding of irreparable harm for preliminary injunction purposes." *Strouchler v. Shah*, 891 F. Supp. 2d 504, 521 (S.D.N.Y. 2012) (emphasis in original). But Plaintiffs do not rest simply on allegations. The significant evidence discussed above shows that Plaintiffs are highly likely to prove such violations, thereby proving irreparable harm *per se*.

B. Plaintiffs' Loss of Essential Subsistence Benefits Also Constitutes Irreparable Harm.

Plaintiffs' loss of unemployment benefits is an independent irreparable harm. For two reasons, the Court should reject Defendants' assertion that the deprivation of Plaintiffs' unemployment benefits is merely "monetary loss" that is "compensable" and therefore not irreparable. Defs' Mem. at 25.

First, a loss of unemployment benefits is not simply a loss of money — it is a fundamental deprivation of economic support leading directly to dire consequences that cannot be remedied at a later time. As the Supreme Court explained in *Cal. Dep't of Hum. Resources Dev. v. Java*, 402

[12] *Kissi v. Panzer*, 664 F. Supp. 2d 120, 123 (D.D.C. 2009) ("Because the plaintiff's opposition fails to address the defendants' arguments, the Court may treat the defendants' motion as conceded.").

U.S. 121 (1971), unemployment benefits serve "to maintain the recipient at subsistence levels." *Java*, 402 U.S. at 131-132. Recipients of unemployment benefits are not receiving a windfall, with excess to stash away for a rainy day. Unemployment benefits provide the only means to subsist from week to week while the claimant searches for work. Thus, the deprivation of such benefits results in an immediate snowball effect of extreme consequences — including the inability to pay for food and housing suffered by all four Plaintiffs. *See* Hailu Decl. ¶ 22; Perry Decl. ¶ 17; Werede Decl. ¶ 24; Woube Decl. ¶¶ 21 and 23. The Supreme Court acknowledged this reality when discussing welfare benefits in *Goldberg v. Kelly*, noting that "termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate." 397 U.S. 254, 264 (1970) (emphasis omitted).

Second, when discussing the case law regarding irreparable harm, Defendants dodge the critical distinctions between subsistence benefits and garden-variety monetary payments. The two cases that Defendants cite to support their "compensable loss" argument have nothing to do with public benefits.[13] And Defendants do not even respond to the cases, cited by Plaintiffs, holding that loss of vital subsistence benefits is irreparable harm.[14] Plaintiffs have demonstrated the irreparable harm necessary to justify a preliminary injunction.

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[13] Defs' Mem. at 25. *See Destefano v. Children's Nat'l Med. Ctr.*, 121 A.3d 59, 68 (D.C. 2015) (holding that "emotional harm" was compensable in a negligence action against a hospital and private parking company); *Robert Half Int'l Inc. v. Billingham*, 315 F. Supp. 3d 419, 432 (D.D.C. 2018) (granting a motion for preliminary injunction in a breach of contract action by an employer against a former employee for violation of a non-compete agreement).

[14] Pls' Mem. at 36-38. *See Islam v. Cuomo*, 475 F. Supp. 3d 144, 153 (E.D.N.Y. 2020) (holding that even a brief loss of subsistence benefits "results in injury that cannot be rectified through the payment of benefits at a later date."); *Westenfelder v. Ferguson*, 998 F. Supp. 146, 157 (D.R.I. 1998) (holding that Plaintiffs had shown irreparable harm when their welfare benefits were reduced by 30%, noting that "the deprivation of these amounts works immediate hardships which

III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST JUSTIFY ENTERING A PRELIMINARY INJUNCTION THAT BOTH REMEDIES PLAINTIFFS' PAST HARMS AND PROSPECTIVELY REQUIRES PROGRAM-WIDE COMPLIANCE WITH FEDERAL AND D.C. LAW.

The foregoing analysis justifies entry of a preliminary injunction that remedies Plaintiffs' past harms by requiring Defendants to provide Plaintiffs with the unemployment benefits terminated, seized, or denied without lawful process. Dkt. 2, Pls' Mot. for Prelim. Inj. at 1. But the Court should not stop there. The preliminary injunction also should require Defendants to comply with federal and D.C. law on a program-wide basis in the future when addressing the claims of Plaintiffs or any other claimant. *See Humphries*, 562 U.S. at 31, 36, 39 (federal court has authority under section 1983 to issue a prospective injunction prohibiting violative municipal practice, custom or policy).

A. Plaintiffs Have Standing to Seek a Program-Wide Prospective Injunction.

The Court should reject Defendants' assertion that Plaintiffs lack standing to seek a preliminary injunction prospectively prohibiting the District's practice of depriving claimants of benefits without the notice and hearing required by federal and D.C. law. Defs' Mem. at 27-28. An individual plaintiff has standing to seek prospective declaratory and injunctive relief preventing an ongoing government practice that threatens the individual with a future "'injury that is certainly impending or a substantial risk that the future harm will occur.'" *Jibril v. Mayorkas*, No. 20-5202, 2021 U.S. App. LEXIS 37675, at *14 (D.C. Cir. Dec. 21, 2021) (citations omitted). Under those circumstances, there is an Article III case or controversy as to the overall practice that is separate and distinct from the case or controversy as to the individual's past harms from the practice. The

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cannot be remedied by a later judgment in their favor")). *See also Reynolds v. Giuliani*, 35 F. Supp. 2d 331, 340 (S.D.N.Y. 1999) (holding that "there simply is no question that plaintiffs have established the risk of immediate and irreparable harm" resulting from delayed payments of benefits under the Medicaid and Food Stamp Act).

Court has authority to issue an injunction addressing both disputes. Accordingly, even when an individual's claim concerning past harms from a government practice becomes moot, the individual's challenge to the overall practice can remain live and subject to prospective declaratory and injunctive relief. *Id.*; *Payne Enters., Inc. v. United States*, 837 F.2d 486, 491 (D.C. Cir. 1988); *Better Gov't Ass'n v. Dep't of State*, 780 F.2d 86, 88, 91, 96 n.53 (D.C. Cir. 1986). The Court has authority to award prospective declaratory and injunctive relief concerning the overall practice if the harm from it is "certainly impending" or a "substantial risk." *Jibril*, 2021 U.S. App. LEXIS 37675, at *11-13, 18, 27 (individual plaintiffs had standing to seek prospective declaratory and injunctive relief against alleged government practice that violated their Fifth Amendment due process rights); *see also Payne*, 836 F.2d at 495 (granting individual plaintiff declaratory relief, and remanding for consideration of prospective injunctive relief, concerning challenged government policy or practice).

Here, Plaintiffs have standing to seek the program-wide preliminary injunction, because there is a substantial risk that they will be harmed in the future from Defendants' violative notice and hearing practices. The showing required to establish standing increases at successive stages of a case. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). When a motion for preliminary injunction is filed together with the complaint (as occurred here), a Plaintiff satisfies standing requirements if it demonstrates a "'substantial likelihood' of standing" under the standard applicable to a motion to dismiss. *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 913 (D.C. Cir. 2015) (citation omitted). A Plaintiff satisfies that standard merely by "plausibly allege[ing]" the facts to establish standing, with the court drawing reasonable inferences in the Plaintiff's favor. *Jibril*, 2021 U.S. App. LEXIS 37675, at *3, 6, 19, 24. In this case, Plaintiffs have met that standard

in their pleadings addressing future harm from the custom, policy or practice challenged here. *See* Dkt. 1, Complaint ¶¶ 37, 44, 62-64, 84-86, 97-99.[15]

Plaintiffs have gone much farther than simply meet the pleadings standard. There is significant evidence outside the pleadings establishing a substantial risk that Plaintiffs Perry and Werede will be injured in the future from Defendants' notice and hearing practices. Defendants are defiantly contesting any need to change their ways in the future (Defs' Mem. at 26), making it highly likely that their notice and hearing practices will continue unabated. That means future claimants will be injured by them unless this Court intervenes. The record evidence establishes a substantial risk that Mr. Perry and Ms. Werede will be among the future claimants so injured when they file future claims for unemployment benefits.[16] And they need not establish that such future benefits claims might occur immediately. In a recent case, the D.C. Circuit held that future harm from a government policy was sufficiently "imminent" to establish standing even though the harm had actually occurred only once (more than two years before the Court's ruling) and may not occur again for "the next year or two." *Jibril*, 2021 U.S. App. LEXIS 37675, at *1, 19-20, 23, 27.[17]

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[15] For purposes of the standing analysis, the court should "assume the merits in favor of the plaintiff." *Waterkeeper Alliance v. EPA*, 853 F.3d 527, 533 (D.C. Cir. 2017). In this case, that means that the Court should assume that Defendants have a practice, custom, or policy that violates the Fifth Amendment, the Social Security Act, and D.C. law.

[16] Standing requirements are satisfied as long as there is a single plaintiff with standing to seek each form of relief requested in the complaint. *J.D. v. Azar*, 925 F.3d 1291, 1324 (D.C. Cir. 2019).

[17] The Court should reject Defendants' assertion that there can be no future harm to any of the Plaintiffs because the pandemic-based benefits programs (PEUC, PUA and FPUC) — under which Plaintiffs have applied for the benefits at issue in this case — are not available for new claims in the future. Defs' Mem. at 25. That reasoning only applies to Plaintiffs Hailu and Woube, who, as taxicab drivers, were eligible for the pandemic-based programs giving rise to their claims but are not eligible for regular unemployment benefits, because they are independent contractors. The Court's authority to remedy their injuries therefore relates to their past and present injuries flowing from the claims they have filed in the past, not any claims they might file in the future. Defendants' reasoning does not apply to Plaintiffs Perry and Werede, who applied in the past for pandemic-related programs but are likely to apply in the future for regular unemployment benefits. When

To begin with, Plaintiffs Perry and Werede both face the overall risks arising from the weak job market of the District of Columbia. The most recent data available (for December 2021) indicate that the District's unemployment rate of (5.8%) is higher than the rate in 44 states.[18] That risk is heightened given their specific occupations.

There is a substantial risk that Mr. Perry could apply for unemployment benefits, well within the time frame found "imminent" in *Jibril*, and then suffer harm from Defendants' continuing practices. Mr. Perry has been a construction worker for his entire adult career. Because of the fluctuating nature of that work, he has a history of occasional layoffs and reliance on unemployment benefits. He has applied for unemployment benefits during two different periods over the past four years. Perry Decl. ¶ 19. This history in and of itself is substantial proof that he will likely suffer future harm. *See, e.g., Dist. of Columbia v. U.S. Dep't of Agric*., 444 F. Supp. 3d 1, 45 (D.D.C. 2020) (individual plaintiffs' "evidence that they have struggled to find work 'in the past'" demonstrates "with enough certainty" that "this difficulty is 'likely to occur again,' triggering a loss of [food stamp] benefits" constituting irreparable harm).

And the future portends a substantial and continuing risk of periodic layoffs necessitating Mr. Perry's reliance on unemployment benefits. By its very nature, construction work fluctuates from month to month.[19] In addition, the unemployment rate for construction workers skyrocketed

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they do so, they will be subject to the same unlawful practices, customs, and policies that gave rise to this lawsuit because those practices, customs, and policies apply equally to regular unemployment benefits and to benefits under the pandemic-related programs.

[18] *Unemployment Rates for States* (December 2021), BUREAU OF LABOR STATISTICS, https://www.bls.gov/web/laus/laumstrk.htm.

[19] In each year from 2017-2021, the highest month of construction-industry unemployment had a rate more than double the lowest month of construction-industry unemployment. *Unemployment Rate - Construction Industry, Private Wage and Salary Workers, Series ID LNU04032231*, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/data/ (data extracted Feb. 2, 2022).

at the beginning of the pandemic, and though the rate has recently decreased, it is materially higher than the general unemployment rate.[20] And there still are fewer construction jobs now than there were at the beginning of the pandemic.[21]

There also is a substantial risk that Ms. Werede will apply for unemployment benefits in the near future and suffer harm from Defendants' notice and hearing practices at that time. She has worked as a food server in the hospitality industry, most recently at the Willard Hotel. The hospitality industry suffers from dramatic instability, characterized by a sharp reduction in eating and drinking places and commensurate high unemployment rates among those seeking work in the industry, particularly in the District of Columbia. In March 2021, the National Restaurant Association reported that the District "had 50% fewer eating and drinking places jobs in February 2021 than it did in February 2020."[22] In July 2021, the American Hotel & Lodging Association described high unemployment in the leisure and hospitality injury and "rank[ed] D.C. the third hardest hit among big cities in the [urban hotel] category, behind San Francisco and Boston."[23] A month later, a Lending Tree report indicated that "[t]he restaurant industry is least likely to recover

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[20] The unemployment rate in the construction industry reached over 16% in April 2020. *Id*. The unemployment rate currently remains disproportionately high in the construction industry, with a rate of 5% for construction workers in December 2021, compared to the national average of 3.9% for the same month. *News Release: The Employment Situation – December 2021*, BUREAU OF LABOR STATISTICS (Jan. 7, 2022), https://www.bls.gov/news.release/pdf/empsit.pdf.

[21] In December 2021, construction employment was still "88,000 below its February 2020 level." *News Release: The Employment Situation – December 2021*, BUREAU OF LABOR STATISTICS (Jan. 7, 2022), at 4, https://www.bls.gov/news.release/pdf/empsit.pdf.

[22] *Restaurant Jobs Remain Below Pre-Pandemic Levels in Every State and DC*, NATIONAL RESTAURANT ASSOCIATION (Mar. 26, 2021), https://restaurant.org/education-and-resources/resource-library/restaurant-jobs-remain-below-pre-pandemic-levels-in-every-state-and-dc/.

[23] Jeff Clabaugh, *Hotel Industry Is Recovering, but Not Necessarily in DC*, WTOP NEWS (July 12, 2021), https://wtop.com/business-finance/2021/07/hotel-industry-is-recovering-but-not-necessarily-in-dc/.

in 2021 in Washington, D.C. The nation's capital is near the bottom in nearly all the metrics examined. Specifically, consumer spending at restaurants and hotels and time spent away from home at retail and restaurants are both second-to-last in D.C. among the 50 metros."[24]

These local statistics are fully consistent with nation-wide statistics. During the pandemic, the unemployment rate in the hospitality industry peaked at 39.3%.[25] A 2021 report by the Congressional Research Service indicates that "[t]he leisure and hospitality sector lost the largest number of jobs since January 2020, and persons last employed in this sector have consistently exhibited some of the highest unemployment rates [of any sector] throughout the pandemic."[26] A March 2021 news report stated that "the leisure and hospitality industry in the U.S. has lost 3.1 million jobs during the pandemic that have yet to return. That is about one third of all unemployed persons in the U.S."[27] This trend of high unemployment has persisted: the unemployment rate in the hospitality industry was 6.7% in December 2021 compared to the national average of 3.9%.[28] Similarly, the seasonally-adjusted level of employment in the "food services and drinking places"

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[24] Kamaron McNair, *COVID-19 Devastated the Restaurant Industry, but Here's Where It's Most Likely to Recover*, LENDINGTREE (Aug. 30, 2021), https://www.lendingtree.com/business/best-places-to-open-a-restaurant/.

[25] *Unemployment Rate - Leisure and Hospitality, Private Wage and Salary Workers, Series ID LNU04032241*, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/data/ (data extracted Feb. 2, 2022).

[26] *Unemployment Rates During the COVID-19 Pandemic*, CONGRESSIONAL RESEARCH SERVICE (Aug. 20, 2021), https://sgp.fas.org/crs/misc/R46554.pdf.

[27] Jeff Clabaugh, *Hotel Industry Is Recovering, but Not Necessarily in DC*, WTOP NEWS (July 12, 2021), https://wtop.com/business-finance/2021/07/hotel-industry-is-recovering-but-not-necessarily-in-dc/.

[28] *Unemployment Rate - Leisure and Hospitality, Private Wage and Salary Workers, Series ID LNU04032241*, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/data/ (data extracted Feb. 2, 2022); *News Release: The Employment Situation – December 2021*, BUREAU OF LABOR STATISTICS (Jan. 7, 2022), https://www.bls.gov/news.release/pdf/empsit.pdf.

industry declined by approximately 2.5 million from February 2020 to December 2020. By December 2021, employment was still down 653,000.[29]

Finally, once they have applied for unemployment benefits, Mr. Perry and Ms. Werede face a *continuing risk* that their benefits will be denied, and that they will not be able to do anything about it given the practices of DOES and OAH. They would, of course, be exposed to this injury if DOES were to deny their applications for benefits at the outset. But even if DOES initially granted their applications, Mr. Perry and Ms. Werede would face a continuing risk that their benefits might be terminated or offset, exposing them to injury from the practices of DOES and OAH challenged here. That is because they must file weekly continued claim forms, any one of which might cause DOES to terminate benefits. A recent court decision described this continuing risk of injury at the New York unemployment-benefits agency:

> Unemployment insurance benefits, once granted, are not necessarily static. Claims for benefits are subject to appeal from the employer, which could result in the denial of future benefits. . . . And, every claimant is required to certify weekly that they are unemployed and meet the eligibility requirements to continue to receive benefits. . . . As a result, there is a real potential that the [unemployment benefits agency] could . . . find Individual Plaintiffs ineligible for unemployment insurance.

Islam, 475 F. Supp. 3d at 155. Plaintiffs have met their burden of proving a substantial likelihood of standing to seek a prospective program-wide injunction.

[29] *Current Employment Statistics Highlights Dec. 2020 (2020)*, at 6, BUREAU OF LABOR STATISTICS, https://www.bls.gov/ces/publications/highlights/2020/current-employment-statistics-highlights-12-2020.pdf; *News Release: The Employment Situation – December 2021*, at 3, BUREAU OF LABOR STATISTICS (Jan. 7, 2022), https://www.bls.gov/news.release/pdf/empsit.pdf.

B. A Prospective Program-Wide Injunction Would Substantially Further the Public Interest, and any Inconvenience to the District is Justifiable.

The Court also should enter a program-wide preliminary injunction, because it would substantially further the public interest in assuring that critically-important subsistence benefits are not denied, reduced, or terminated without essential procedural protections. The program-wide elements of the requested preliminary injunction are straightforward and simply require Defendants to comply with basic notice and hearing requirements mandated by the Fifth Amendment, the Social Security Act and D.C. law. Those program-wide elements would:

> (a) prohibit[ ] Defendants from denying, terminating or reducing (through offset) unemployment beneficiaries' benefits in the future without first providing a written rationale in a form acceptable to the District's Office of Administrative Hearings ("OAH") to initiate an appeal of those actions; [and] (b) require[ ] OAH to hear administrative appeals of decisions denying, terminating or reducing unemployment benefits regardless of whether the District has issued such decisions in writing.

Pls' Mot. at 1; Pls' Mem. at 40. Defendants' reaction to these requirements is quite telling. Remarkably, Defendants complain that following these straightforward obligations (grounded in Due Process) would fundamentally disrupt the current unemployment-benefits program:

> The preliminary injunctive relief that plaintiffs seek . . . 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. [citation omitted]. 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.

Defs' Mem. at 26; *see also id*. at 2. If following simple notice and hearing requirements would turn the bureaucracy upside down, the program is systemically infected by an inability to follow fundamental requirements of Due Process, the Social Security Act, and D.C. law. If DOES can come up with a reason to terminate, seize, or deny a claimant's benefits, why would it be so

disruptive to put the reason down on paper (and send it to the claimant in a form that would provide an opportunity to be heard on appeal)? The District should not terminate, seize, or deny benefits in the first place if it cannot concurrently provide lawful notice and an opportunity to be heard.

The combined unlawful practices of DOES and OAH have had, and are continuing to have, a devastating impact on the public interest. As a direct result of these practices, numerous Legal Aid clients have been unable to timely pay for their housing, utility bills, food, medication, transportation, and other basic needs. Dozens of Legal Aid clients with unpaid benefits have been homeless (including two recent clients living out of their cars), Mezey Decl. ¶ 21, at least some of whom experienced the notice violations at issue in this case. And the public harm from Defendants' practices extends well beyond Legal Aid's clients. Legal Aid only has the resources to represent a small fraction of the people facing the practices challenged here. Mezey Decl. ¶ 24. One can only imagine the intractable harms faced by low-income claimants who have no lawyer.

Persistent public criticism of the District has not solved the problem. And systemic violations of fundamental rights warrant a systemic solution. We respectfully submit that it is time for the Court to step in.

CONCLUSION

The Court should grant Plaintiffs' motion for preliminary injunction.

Respectfully Submitted,

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