

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
9:12 am, May 12, 2025
JEFFREY P. COLWELL, CLERK

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The United States District Court District of Colorado 901 19th St, Denver, CO 80294 (303) 844-3433 Plaintiff: Joshua Abrams v. Defendant(s): Division of Unemployment Insurance, JOE BARELA JEFF FITZGERALD Etc.	▲ COURT USE ONLY ▲
Joshua Abrams, Pro Se abramslive@gmail.com 720-910-4829 1881 E 112th Pl, Northglenn Colorado 80233	Case Number: 1:24-cv-03390-RMR Division: Courtroom
Plaintiff's Second Emergency Motion for Injunctive Relief Regarding Unpaid 2023 Benefits	

Plaintiff respectfully submits this Second Emergency Motion for Injunctive Relief to address newly clarified and ongoing constitutional injuries that now pose an immediate threat to Plaintiff's survival. This motion supplements but is independent of the original Emergency Motion filed February 26, 2025, which sought relief for the unconstitutional withholding of Plaintiff's 2025 unemployment benefits. While those benefits have since been released, the structural harms remain unremedied and continue to produce compounding, irreparable damage.

This crisis began in 2023 when Defendants imposed a series of punitive "integrity holds" on Plaintiff's claim without issuing the legally required appealable determinations. This blocked Plaintiff's ability to seek any review or correction, effectively denying access to due process and meaningful petitioning rights. These same unresolved integrity issues rolled forward into 2025, where they again delayed benefits and depleted Plaintiff's last financial reserves. The \$6,000 in unpaid 2023 benefits remains outstanding and critical to Plaintiff's ability to avoid eviction,

access medicine, and remain stable as current unemployment payments are set to expire within four weeks.

These are not isolated administrative errors. They reflect ongoing systemic failures that violate the First and Fourteenth Amendments and Title II of the ADA failures that affect thousands of similarly situated Coloradans. Claimants continue to report stalled claims, no issued decisions, inaccessible appeal systems, and a total lack of ADA-compliant communication or accommodation pathways. Defendants' own declarations confirm they lack the staffing and procedures to meet even baseline constitutional and statutory obligations.

Plaintiff has already submitted comprehensive evidence and briefing, including sworn testimony, exhibits, and government records, detailing both personal and systemic violations. Defendants, despite being granted an extension, failed to rebut this record. Their omission must be treated as a concession. At this stage, the Court must decide whether to intervene meaningfully, to prevent not only further harm to this Plaintiff, but to halt a system that continues to violate the rights of thousands under color of law.

This situation is not sustainable. The Court is now the only meaningful forum available to prevent a foreseeable and preventable humanitarian disaster.

These systemic constitutional violations are not isolated to Plaintiff alone. They represent an entrenched and ongoing administrative failure affecting thousands of Colorado residents, many of whom, like Plaintiff, are disabled, indigent, or otherwise vulnerable. Through public forums including Reddit, Facebook, Nextdoor, Google Maps reviews, and claimant advocacy groups, Plaintiff has documented the widespread frustration and suffering of citizens who remain trapped in a system that denies them the most basic constitutional and statutory protections.

Hundreds of individuals describe near-identical patterns where applications indefinitely stalled under integrity holds; no appealable decision issued within the promised 7-day window; phone systems that disconnect or loop endlessly; document upload portals that are entirely unmonitored unless a live agent manually escalates the file an action that is statistically impossible for most claimants to obtain. In sworn declarations, Defendants themselves admit that the call center is severely understaffed and would require at least 60 additional agents just to support a callback system, which is currently unavailable. This systemic breakdown is not theoretical; it is lived daily by Coloradans already at the edge of survival.

Claimants report losing housing, falling into credit collapse, going without food or medicine, and being unable to treat medical conditions due to the unlawful withholding of benefits. The process disproportionately harms those least able to navigate bureaucratic barriers disabled individuals, non-native English speakers, elderly claimants, and low-income families with no access to legal assistance. The absence of accessible appeals pathways, meaningful communication channels, or standard due process safeguards has made the entire unemployment framework functionally unconstitutional. Claimants have no right to appeal if the agency never issues a disqualification; no right to be heard if they can't reach a representative; and no right to accommodations if the system provides no means to request them.

This conduct is indefensible not merely as a litigation tactic, but as a failure of professional responsibility and constitutional duty. While Defendants may vigorously defend against claims, they are not permitted to disregard uncontested evidence or to weaponize procedural mechanisms to deepen the harms they are duty-bound to resolve. The deliberate refusal to acknowledge claims of systemic harm, when armed with full knowledge and ample legal resources, is not

advocacy, it is complicity. This Court should treat the un rebutted supplemental record as admitted, and weigh this omission heavily in favor of injunctive relief.

In contrast, the Defendants represented by two separate attorneys paid by the State of Colorado have failed to engage in good faith. They do not acknowledge the harm. They do not dispute the facts presented in critical filings. They instead construct artificial narratives, rely on theoretical frameworks that are proven non functional, mischaracterize the record, and seek refuge in strained interpretations of immunity, exhaustion, and procedural diversion. In doing so, they knowingly add to the burden suffered by the very citizens they are charged to serve. They have violated not only federal law, but the moral oath that accompanies public service.

Meanwhile, Plaintiff's pending appointment of counsel under 28 U.S.C. § 1915(e)(1) remains unaddressed, even as the State directs public funds toward defending unconstitutional systems with 2 separate attorneys while investing nothing in investigating or rectifying the harm suffered by its most vulnerable citizens and forcing further reliance and demand on a Plaintiff who's already indigent and disabled and self represented reveals a new 14th amendment equal access violation if justice continues to and cannot correct this imbalance. The disparity between Plaintiff's unrepresented status and the State's taxpayer-funded counsel implicates equal protection under *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

Congress created unemployment insurance to stabilize families, protect public health, and avert cascading economic ruin. Defendants' continued reliance on abstract legal defenses while refusing to engage the substance of this reality speaks not only to the weakness of their legal position, but to the broader institutional indifference that this action seeks to correct.

Plaintiff filed an Amended Complaint, followed by an Emergency Injunction on February 26, 2025, and supplemental briefing on March 25, 2025. Defendants were granted an extension to respond. Their April 28 response failed to rebut the March 25 brief or address core constitutional claims. This omission, under Tenth Circuit precedent, may be deemed a concession. This second motion seeks injunctive relief for unresolved constitutional injuries, including ongoing denial of \$6,000 in underpaid benefits.

Factual Background

Plaintiff applied for unemployment benefits and properly included his out-of-state wages, as required under federal law. The Division, however, failed to include those wages in the benefit calculation, resulting in a significant underpayment. Despite repeated attempts to correct this error via phone, fax, and in person Plaintiff was denied any meaningful process or avenue for review. Rather than addressing the miscalculation, Division representatives instructed Plaintiff that the only way to “recalculate” his benefits was to withdraw his existing application and file a new one, even though his original application was complete and legally sufficient.

These systemic failures culminated in Plaintiff being forced out of sheer desperation to attend in-person appointments that were advertised as offering meaningful relief in 2023, but in practice did not. As an indigent, disabled individual with no access to legal representation or reliable communication, Plaintiff had no choice but to board overcrowded public buses and trains to reach CDLE offices, only to be placed in unsanitary, unventilated rooms containing a single shared landline telephone. These rooms offered no direct human assistance, no ADA-compliant accommodation, and no cleaning or sanitization between uses despite the ongoing pandemic and visible signs of illness among other claimants. Plaintiff was exposed to and contracted

COVID-19 and later developed conjunctivitis after using this shared equipment, resulting in serious and prolonged medical hardship that interfered with job seeking efforts, worsened his disability, and caused further economic destabilization. The Defendants offer no justification for these hazardous and dehumanizing conditions, instead asserting broad immunity that does not shield them from injunctive relief or consequences for ongoing constitutional and statutory violations. These physical harms were a direct and foreseeable result of a deliberately inaccessible, constitutionally deficient process that disproportionately injures the most vulnerable those already sick, homeless, or disabled under the color of administrative legitimacy.

Subsequently, the Division issued a determination that Plaintiff had been denied the right to withdraw his application. Plaintiff contacted the appeals hotline and was informed that this was the only appealable issue on file. With no way to challenge the underpayment directly, Plaintiff submitted an appeal not to withdraw the application, but expressly to challenge the Division's error in calculating benefits. Plaintiff's intent was clearly stated in both the appeal form[See **Exhibit A**] and the accompanying documents. Nevertheless, the appeal was denied by the magistrate on procedural grounds, based solely on an untimely request to withdraw[See **Exhibit B**] despite the fact that Plaintiff had never requested to withdraw at all.

Plaintiff had the 'technical' right to appeal and escalate that denial further, but doing so would have been futile and harmful to the Plaintiff. It was clear from the magistrate's ruling that the scope of any review was artificially limited to the withdrawal determination and would not address the actual issue: the underpayment of benefits. Pursuing that appeal would not only fail to resolve the harm, but also risked further delay or jeopardizing the limited benefits Plaintiff was already receiving. Refiling the same application at a later date would likewise not remedy the due process violations that had already occurred.

Defendants now argue that Plaintiff failed to exhaust administrative remedies by not continuing to appeal the withdrawal determination which is a procedurally unrelated and substantively irrelevant issue. This defense deflects from the constitutional violation itself: that Plaintiff was denied any process to challenge the actual harm. The system forced Plaintiff into a false choice between sabotaging his claim or forfeiting his right to petition. That is not administrative exhaustion; it is a textbook example of an unconstitutional process designed to prevent appeal, block redress, and obscure accountability.

Legal Argument

Plaintiff clearly meets the four-factor standard for issuance of preliminary injunctive relief under Fed. R. Civ. P. 65, as articulated by the Tenth Circuit in *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792 (10th Cir. 2019). Specifically, Plaintiff demonstrates: (1) substantial likelihood of success on the merits; (2) irreparable harm absent the injunction; (3) a favorable balance of equities; and (4) that an injunction serves the public interest.

(1)Likelihood of Success on the Merits : Plaintiff's claims arise under the *Ex Parte Young* doctrine, which allows federal courts to grant prospective relief against ongoing constitutional violations by state officials. See *Verizon Md., Inc. v. Pub. Serv. Comm'n*, 535 U.S. 635, 645 (2002). Plaintiff has extensively documented, through sworn testimony and undisputed administrative records, multiple violations of federal law, including due process, First Amendment rights, and Title II of the Americans with Disabilities Act (ADA).

Under *Goldberg v. Kelly*, 397 U.S. 254 (1970), and *Mathews v. Eldridge*, 424 U.S. 319 (1976), due process mandates that claimants receive clear and timely notice of benefit denials and a meaningful opportunity to contest such denials. Here, Plaintiff was subjected to three separate

integrity holds by Defendants in 2023 without ever receiving formal notices or appealable determinations especially on the 3rd. Defendant deflects it's duty without argument simply referencing the Plaintiff returned to work in the late quarter, notable well after the 7 day required time to issue a determination and even with employment doesn't nullify their obligation to issue notices and decisions, especially since they used that as justification in delaying and denying benefits in 2025 for a completely new claim. This systemic failure to provide legally required notice and meaningful appeal mechanisms constitutes an ongoing violation of Plaintiff's due process rights.

Defendants' actions inherently violated Plaintiff's Fourteenth Amendment right to due process. By effectively blocking Plaintiff from accessing meaningful and relevant appeals, Plaintiff was never afforded the opportunity to present evidence, documentation, or legal authority challenging the erroneous calculations that resulted in his underpayment of benefits. Specifically, Defendants improperly excluded out-of-state wages that federal law explicitly required them to include. Plaintiff had no mechanism to correct these errors or receive an appealable determination regarding this deprivation, thus constituting a direct violation of Plaintiff's due process rights under the Fourteenth Amendment by depriving Plaintiff of property without any meaningful opportunity to be heard.

Plaintiff's First Amendment right to petition for redress has been effectively nullified by Defendants' procedural framework, which conditions the appeal process upon receipt of a particular type of predetermined administrative notice. Such notices frequently do not exist, are never generated, or are issued exclusively for irrelevant matters. Consequently, claimants face a scenario wherein legitimate grievances related to underpayment, employer disputes, or integrity issues cannot be appealed because Defendants restrict appeals exclusively to narrowly defined

and selectively issued administrative determinations. Specifically, Plaintiff was compelled to appeal an irrelevant determination concerning the withdrawal of an application, a determination entirely unrelated to the substantive issues of underpayment and integrity held by Plaintiff.

Defendants assert Plaintiff failed to exhaust administrative remedies, but exhaustion is excused where remedies are constitutionally unavailable or where pursuing them would cause further harm. The only available appeal route concerned ‘withdrawing’ an application Plaintiff never sought to withdraw. Pursuing that irrelevant appeal would have worsened Plaintiff’s situation and left the underlying issue, the underpayment completely untouched. This structural denial of access itself constitutes a due process violation Defendants now assert, without legal basis, that Plaintiff’s inability or refusal to engage in an irrelevant and detrimental appeal process constitutes a failure to exhaust administrative remedies.

Defendants’ argument in this respect not only lacks legal merit but exposes their bad faith and deliberate attempts to evade accountability for systemic constitutional violations. To suggest Plaintiff failed to exhaust remedies when no meaningful remedy was ever made available is legally untenable and factually disingenuous. Further, the Defendants’ insistence on forcing Plaintiff into pursuing harmful and irrelevant appeals underscores their deliberate disregard for constitutional rights and statutory obligations. This approach highlights the Defendants’ unwillingness to provide genuine administrative relief, and instead demonstrates their reliance on obstructionist tactics designed to frustrate valid constitutional claims. Consequently, Plaintiff and numerous similarly situated individuals lack any viable means to contest the wrongful deprivation of essential unemployment benefits. This functional denial directly infringes upon the fundamental right of access to courts, clearly established in *Bounds v. Smith*, 430 U.S. 817 (1977).

Plaintiff has a substantial likelihood of prevailing on ADA claims. Defendants acknowledge in their own declarations that the system lacks any formal, accessible mechanism for disabled claimants to request necessary accommodations, leaving individuals unable to use phone services or travel physically without meaningful access to critical unemployment services. This systemic deficiency violates the ADA's mandate that public entities provide accessible and effective accommodation methods. See *Tennessee v. Lane*, 541 U.S. 509 (2004).

(2) Irreparable Harm : Plaintiff has suffered, and continues to suffer, significant irreparable harm due to Defendants' actions. Courts consistently recognize constitutional violations as inherently irreparable because they damage fundamental rights beyond mere monetary loss. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Plaintiff's documented harm includes the denial of essential unemployment benefits, loss of medical coverage through Medicaid resulting in significant medical expenses, housing instability, damaged credit, and severe emotional distress all ongoing injuries stemming directly from Defendants' constitutional and statutory violations.

These harms are tangible, immediate, and not compensable by retrospective monetary relief alone. Each day without an injunction exacerbates Plaintiff's deteriorating health, economic security, and overall well-being. Plaintiff's sworn affidavits and supporting documentation already submitted into evidence substantiate these irreparable harms.

(3)Balance of Equities : The balance of equities decidedly favors Plaintiff. Defendants face minimal, if any, burden in complying with constitutional and statutory mandates already required by law. Any administrative adjustments necessary to issue overdue benefit determinations, provide a functional appeals process, and accommodate disabled individuals are routine responsibilities of state agencies.

Conversely, Plaintiff faces dire and immediate threats to survival absent injunctive relief. The equities thus overwhelmingly favor immediate judicial intervention to prevent further deterioration of Plaintiff's condition and secure compliance with clear constitutional and federal obligations.

(4)Public Interest : The requested injunctive relief undeniably serves the public interest.

Upholding constitutional rights, ensuring due process, guaranteeing accessibility for disabled individuals, and requiring government agencies to follow statutory obligations benefit not only Plaintiff but also countless similarly situated Coloradans facing systemic barriers.

Public records, performance reports, social media shows widespread citizen complaints, and Defendants' admissions confirm a broader crisis affecting thousands. Addressing these systemic failures will directly enhance public welfare by strengthening the integrity and fairness of Colorado's unemployment benefits system.

Defendants cite *Free the Nipple–Fort Collins v. City of Fort Collins*, 916 F.3d 792 (10th Cir. 2019), in a manner that not only mischaracterizes its legal framework, but trivializes the depth and urgency of the harm at issue here. That case involved a limited equal protection challenge regarding the public display of the female chest, a matter of expression with abstract implications and no direct economic consequence.

By contrast, Plaintiff's case concerns widespread, ongoing constitutional violations that deprive individuals of their basic ability to survive. Plaintiff has more than satisfied the *Free the Nipple* standard for preliminary injunctive relief including likelihood of success, irreparable harm, equitable balance, and the public interest but this case goes well beyond the expressive rights at issue in *Free the Nipple*. Here, every day of delay threatens to push vulnerable claimants further

into poverty, eviction, untreated illness, or institutional harm. These harms are not theoretical. They are ongoing, predictable, and, in some cases, fatal. The death certificate may not list "denied unemployment" as the cause, but make no mistake this system's failures are killing people.

Plaintiff meets each prong required for preliminary injunctive relief. The violations alleged are substantial, ongoing, and clearly established in law. The irreparable harm Plaintiff faces outweighs any minor administrative inconvenience to Defendants, and public interest undeniably favors immediate judicial action. Accordingly, the Court should grant Plaintiff's request for emergency injunctive relief.

Relief Requested

Order Immediate Backpay: Issue an injunction compelling Defendants to pay Plaintiff the \$6,000 in wrongfully withheld 2023 unemployment compensation, which remains critical to preventing imminent homelessness and medical destabilization. While this relief would satisfy Plaintiff's immediate needs to prevent irreparable harm, this alone doesn't stop the irreparable harm affecting the thousands of other Colorado citizens currently suffering.

Issue Declaratory Relief: Declare that Defendants' current systems and practices violate the First and Fourteenth Amendments and Title II of the Americans with Disabilities Act (ADA). Specifically, the Court should recognize that:

- Claimants have been deprived of procedural due process where no disqualifying determinations or appealable decisions were issued.
- The lack of accessible and functional channels to petition for redress violates First Amendment protections.

- Defendants' failure to maintain an accessible, transparent, and inclusive system for requesting disability accommodations constitutes an ongoing violation of the ADA.
- Formally recognize the existence of a constitutional emergency affecting thousands of claimants across Colorado, as demonstrated through sworn testimony, public data, oversight reports, and the evidentiary record.

Allow or Invite Summary Judgment: Grant leave or invite Plaintiff to file a Motion for Summary Judgment. Alternatively, the Court should specify what genuine issues of material fact, if any, preclude such judgment at this stage, given that Defendants have failed to rebut Plaintiff's evidence or identify plausible legal defenses.

Mandate Structural Reform and Compliance:

- Require Defendants to immediately develop and implement accessible ADA accommodation processes, including online and non-phone-based requests.
- Direct Defendants to expand their appeals framework to allow for appeals on all matters impacting benefit eligibility or amounts, not just limited to pre-defined determinations.
- Order the creation of an emergency or expedited appeals track for claimants whose claims have remained unresolved for more than 60 days and issue notices to all former and active claimants to make them aware of these changes and their rights since simply enacting the changes won't stop the harm of the victims and claimants don't know such a pathway newly exists.
- Require the allocation or hiring of sufficient personnel (estimated at 60 additional staff) to allow for meaningful phone access and call-back functions.

Establish Dedicated Integrity Resolution Channel: Order the creation of a separate and constitutionally compliant integrity hold resolution process that is not dependent on access to the claimant portal or main overburdened phone lines. This process must:

- Allow claimants to prove identity and eligibility without requiring insecure or burdensome digital uploads of sensitive personal documents.
- Compliance with the Privacy Act of 1974, the Colorado Consumer Data Privacy Act, and HIPAA.
- Provide transparency and opt-out mechanisms regarding data sharing with third-party vendors such as ID.me and Google Services.

Appoint Special Master or other necessary relief : Appoint a Special Master under Fed. R.

Civ. P. 53 to oversee compliance, monitor systemic improvements, and ensure prompt implementation of judicial orders considering the Defendant and their councils track record of being non compliant spanning 2 decades of their control and positions.

Date:

05-11-2025 | ☐ Petitioner/Plaintiff

Joshua Abrams, Pro Se

CERTIFICATE OF SERVICE

I certify that on 05-11-2025 a true and accurate copy of the Defendant was served on the other party by:

X_E-filed, lauren.davison@coag.gov & Stephen.woolsey@coag.gov

☐ Petitioner/Plaintiff

Exhibit A Showing my original request as stated in the appeal which forced appeal through ‘withdrawing application’ and Plaintiff’s direct clarity about the specific underpayment issues and lack of constitutional pathways.

Please review your contact information below. If you need to update your information, select **Modify**.

Address Line 1: 1182 Akron St
Address Line 2:
City: Aurora
State: Colorado
ZIP/Postal Code: 80010.3051
Home Number: 6099689360
Cell Number: 6099689360
Other Number:
International Number:

Modify

Reason for Appeal

Please describe the reason for this appeal:

The only reason i applied to withdraw was to apply in a new base year, which i shouldn't need to do since i was approved for the alternative base period. My out of state wages are not being applied, the other state benefits have been exhausted and i am unable to apply again in the former state, i need those wages applied to this alt base period. Unable to appeal that decision, so i'm using this to start the process.

Modify

Hearing Details

Are you represented by an attorney or other representative in this appeal? Unknown at this time
Will you need an interpreter? No
If an interpreter is needed by any party, select the language needed: Select an option
Please enter your contact number: 609.968.9360

Modify

Additional Representation

Exhibit B shows the immediate denial of this appeal which limited the decision completely to ‘withdrawing application’ and denied that specific issue based on technical timeline deadlines that had nothing to do with or had authority or jurisdiction on handling the issue relating my underpayment of benefits

Division of Unemployment Insurance
P.O. Box 8988
Denver, CO 80201-8988



COLORADO
Department of
Labor and Employment

Go online: coloradoui.gov
Call: 1-800-388-5515
Fax: 303-318-9248

Forwarding Service Requested

Joshua M. Abrams
c/o JOSHUA ABRAMS
1182 Akron St
Aurora, CO 80010-3051

April 5, 2023

Issue Identification Number: 0022 3807 86-01
Correspondence ID: 73119708
Appeal Due Date: 4/25/2023

Appeal Rights:

Any party to this decision may disagree with (appeal) it. To appeal, please fill out the request for hearing at the end of the document. This decision is final unless we receive a written appeal no later than 20 calendar days from the mail date.

Notice of Determination

Reasoning and Findings

Your request to cancel your valid initial claim is denied. You failed to make this request within twelve calendar days of the date on which your claim was filed.

Applicable Section of Law

Colorado Employment Security Act: 8-74-101 (1) and Regulation 2.1.11.1

Effect of this Determination

Your claim for Unemployment Insurance Benefits will not be withdrawn.

You have 2 other outstanding issue(s) that may affect your eligibility for benefits.

Issue ID:0022 2938 32-01, Temporary Agency - Temporary Agency
Issue ID:0022 2938 05-01, Temporary Agency - Temporary Agency

Login to your account at www.coloradoui.gov to check the status of the other issue(s).
If you have any questions, please contact the Customer Service Center at 1-800-388-5515, Monday through Friday from 8:00 a.m. to 4:00 p.m. You can also access claims information online by logging in to your Unemployment Insurance Claims System account at www.coloradoui.gov, Sunday through Saturday from 2:00 a.m. to 11:59 p.m. Please have your issue or Claimant identification number available when you call.

