

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.	FILED UNITED STATES DISTRICT COURT DENVER, COLORADO 8:05 am, May 23, 2025 JEFFREY P. COLWELL, CLERK ▲ 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 Reply Brief : 2nd injunction	

Plaintiff Plaintiff respectfully submits this Reply to Defendants' Opposition to Plaintiff's Second Emergency Motion for Preliminary Injunction. Defendants rely on *Free the Nipple–Fort Collins v. City of Fort Collins*, 916 F.3d 792 (10th Cir. 2019), to suggest a high threshold for injunctive relief, yet they fail to acknowledge that their own cited authority, when properly applied to the facts of this case, compels the opposite result.

Free the Nipple was a case about equal access to expressive rights. This case is about a state agency engaging in systemic constitutional violations and denials of procedural due process, infringement of the right to petition the government, and widespread noncompliance with Title II of the Americans with Disabilities Act that result in real and immediate harm. This case is not about symbolism or abstract rights. It is about whether indigent, disabled citizens can access the unemployment benefits they are legally entitled to, whether they can appeal wrongful denials, and whether they are afforded any meaningful opportunity to be heard before losing access to life-sustaining income, medical care, housing, and food.

Defendants invoke *Free the Nipple* to dismiss the severity of Plaintiff's circumstances, yet they fail to engage with the substance of the allegations or the unrebutted evidence already on the record. Plaintiff has demonstrated that the constitutional harms at issue are not isolated or historical but are ongoing and actively depriving him and thousands of others of protected rights. Defendants offer no valid rebuttal to the fact that no appealable determination was ever issued in connection with Plaintiff's underpayment claims or the 2023 integrity hold. They do not dispute that there was no notice, no opportunity for appeal, and no process through which Plaintiff could contest the deprivation of over \$6,000 in earned benefits. Their opposition does not cure these omissions, nor does it explain why no constitutionally compliant process was made available before depriving Plaintiff of a protected property interest.

Furthermore, Defendants continue to frame this matter as if it affects only a single individual. This is factually and legally incorrect. Plaintiff submitted this complaint through Ex Parte Young and as such clearly explained the systemic, wide spread, obvious and predictable constitutional harms, and as such has submitted credible evidence, including published complaints, public commentary, third-party investigations, and sworn declarations, demonstrating that these systemic failures affect a broad population of similarly situated claimants across the State of Colorado. The refusal to engage with these realities and to persist in characterizing this as an individualized grievance underscores the degree to which Defendants are unwilling to accept responsibility for the harms their policies and practices continue to inflict.

Defendants' invocation of *Free the Nipple* obligates the Court to apply the standard articulated therein. Plaintiff has already satisfied all four prongs: (1) a substantial likelihood of success on the merits, supported by detailed factual allegations, corroborating exhibits, and procedural admissions by Defendants; (2) irreparable harm, which includes ongoing economic instability,

risk of homelessness, loss of medical coverage, and psychological harm that flows directly from the constitutional and statutory violations; (3) a balance of equities that tips overwhelmingly in Plaintiff's favor, as the State has no cognizable interest in continuing to violate constitutional rights; and (4) the public interest in enforcing the Constitution, ensuring ADA compliance, and preventing further systemic deprivations of critical public benefits.

By failing to offer any plausible justification for these deficiencies—and by ignoring the evidentiary record submitted on March 25, 2025—Defendants have effectively waived any legitimate defense. Their reliance on procedural abstractions, their unwillingness to acknowledge the scope of the harm, and their repeated failure to engage in good faith only reinforce the need for this Court to grant immediate injunctive relief.

Ongoing Due Process Violations Are Undisputed : Defendants' claim that Plaintiff's injury is "past harm" from 2023 benefits mischaracterizes the record. The harm is ongoing: the unlawful deprivation of \$6,000 in benefits, compounded over two years, has caused Plaintiff's current financial collapse. See Plaintiff's Second Motion, Ex. A (declaring ongoing economic hardship). Critically, Defendants admit no appealable determination was issued for the 2023 or 2025 integrity holds. See Defs.' Opp'n at 4. This violates due process under *Goldberg v. Kelly*, 397 U.S. 254, 267–68 (1970) (requiring timely notice and opportunity to be heard before terminating benefits), and *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (due process requires notice and a meaningful opportunity to appeal). Without a determination, Plaintiff was constitutionally blocked from seeking redress, rendering any statute of limitations inapplicable. See *Ex Parte Young*, 209 U.S. 123, 155–56 (1908) (ongoing constitutional violations justify injunctive relief). Defendants' failure to issue appealable notices is a systemic due process violation, not a one-time error.

Furthermore, Plaintiff has gone far beyond any reasonable threshold for exhausting remedies. He attempted to appeal, denied and blocked. He went in person, denied. He called repeatedly, faxed documents, requested supervisors...each time met with lies to clear the phone que, deflection, pacification to make him think justice would come. He filed with the Attorney General liability office who simply rubber-stamped and ignored. Every avenue was a dead end, consuming months of Plaintiff's life in worsening poverty, inflicted by the very constitutional violations now before this Court. And now, despite Plaintiff having filed within the two-year statute of limitations, Defendants claim the harm is moot because Plaintiff is receiving temporary benefits for a few more weeks. That position is not only legally indefensible—it's morally bankrupt. It reflects a disturbing willingness to ignore systemic abuse and allow preventable harm to compound, even in the face of clear evidence and pleading.

Plaintiff further incurred physical harm including contracting COVID-19 and an eye infection (conjunctivitis) as a direct result of his desperate and repeated attempts to resolve these issues in person. These efforts, made only because no functional or accessible remote systems existed, forced Plaintiff, who is disabled ,onto crowded public transportation and into unsanitary, enclosed public assistance spaces, where he was exposed to unclean, shared telephones and denied direct contact with any human representative. These efforts were not only emotionally and legally exhausting, but physically hazardous, compounding the irreparable harm already inflicted by Defendants' systemic failures.

First Amendment Right to Petition Is Denied : Defendants argue that the existence of an administrative system negates Plaintiff's First Amendment claim. This is legally baseless. The First Amendment guarantees an actual right to petition for redress, not a theoretical one. See *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 387 (2011) (right to petition requires meaningful

access to government processes). Plaintiff was forced to appeal an irrelevant “withdrawal of application” to access a judge, only to be told the underpayment issue was non-reviewable. See Plaintiff’s Second Motion, Ex. B. This is not access; it is a constitutional nullity. Defendants’ silence on this point concedes its validity. See *Phillips v. Calhoun*, 956 F.2d 949, 953–54 (10th Cir. 1992) (failure to respond constitutes concession). The existence of a phone line no one can get through, a claimant portal where documents are uploaded but never reviewed, and an appeal system that refuses to hear anything not pre-approved isn’t constitutional. It’s a broken, corrupted framework hiding behind the illusion of due process. These aren’t functional access points; they’re dead ends. Pretending these systems satisfy constitutional obligations is like slapping a Band-Aid on a bullet wound and calling it surgery. The harm is ongoing, the damage is compounding, and the structures in place don’t prevent it, they guarantee constitutional harm at scale and in mass.

ADA Violations Are Structural and Ongoing : Defendants’ claim that Plaintiff’s eventual receipt of benefits in 2025 alone moots the ADA claim is meritless. Plaintiff documented repeated, unsuccessful attempts to request accommodations via uploads, website forms, and phone calls. See Plaintiff’s Second Motion, Ex. C. Title II of the ADA requires structural accessibility, not occasional success. See *Robertson v. Las Animas Cnty. Sheriff’s Dep’t*, 500 F.3d 1185, 1196 (10th Cir. 2007) (systemic barriers to communication violate ADA, regardless of individual outcomes). Defendants’ system remains non-compliant, as evidenced by hundreds of similar complaints. See Plaintiff’s Second Motion, Ex. D (citing 1,247 Google Maps reviews and 342 Reddit posts from 2023–2025 detailing identical access issues). Defendants offer no rebuttal, conceding the violation.

Plaintiff has only now learned, through Defendants' own sworn declarations, how or where accommodations were allegedly required to be requested. This revelation itself demonstrates systemic noncompliance. If a disabled, self-represented litigant with over a decade of legal and administrative experience could not identify the proper channel, then the average claimant, particularly one with cognitive, emotional, or physical limitations, has no meaningful ability to do so. The lack of clear, accessible, and standardized procedures is not a minor oversight; it is a structural deficiency that violates federal law. Moreover, the system appears deliberately opaque, designed to suppress and obscure demand. By making accommodations functionally unreachable, Defendants create the illusion of compliance and use artificially low request data to claim success, while the vast majority of disabled claimants remain excluded, unheard, and unassisted. This practice is not lawful administration, it is institutionalized denial masked as administrative efficiency.

Systemic Harm Is Uncontested : Defendants' attempt to frame this as a "single plaintiff" case ignores Plaintiff's evidence of widespread harm. Plaintiff's filings document hundreds and thousands of complaints across social media and news reports, corroborated by Defendants' own staff admissions of systemic delays. See Plaintiff's Second Motion, Ex. E (news article quoting Division employee). Defendants' failure to address this evidence concedes its truth. See *Sawyers v. Norton*, 962 F.3d 1270, 1286 (10th Cir. 2020). This systemic failure supports injunctive relief under *Ex Parte Young*, as it demonstrates ongoing violations affecting a broad class.

While Plaintiff is fully prepared to present additional individuals who have experienced identical constitutional violations and would willingly submit affidavits or join as co-plaintiffs. However, as a pro se litigant who is not a licensed attorney, Plaintiff is legally prohibited from representing others. Moreover, the scale of systemic harm alleged here would likely warrant class certification

,a burden the Court may deem inappropriate for a self-represented, disabled litigant to manage. Defendants exploit this procedural imbalance while simultaneously refusing to acknowledge the broader public harm. To dismiss this action or deny the requested injunction on those grounds would be to invite a class action or mass litigation effort that could stretch across both state and federal jurisdictions or further lengthy appeals meanwhile, individuals actively continue to face the irreparable harms of eviction, untreated illness, and procedural deprivation of constitutional rights without access to appeal or accommodation. Defendants' refusal to engage these broader issues despite overwhelming evidence reflects not only bad faith but a legal strategy rooted in evasion and diversion like their client they represent is not a defense.

Irreparable Harm The ongoing deprivation of \$6,000 in wrongfully withheld unemployment benefits from 2023 has caused Plaintiff not merely financial inconvenience, but total economic destabilization resulting in housing insecurity, inability to obtain medical care for him or his service dog, deteriorated credit, and significant mental and physical health strain. This is not a past harm; it is a present and worsening condition that continues to threaten Plaintiff's survival.

The harm here is both personal and representative of a systemic collapse. Thousands of similarly situated Coloradans are experiencing the same constitutional deprivations, as documented by major news outlets, ongoing public commentary, and widespread testimony across social platforms including Reddit, Facebook, Google Maps reviews, and direct community reports. These voices, many from disabled, elderly, or indigent claimants reveal an enduring state of desperation: claimants wait not weeks, but months or years, without any decision, notification, or access to appeal. For many, this has resulted in homelessness, untreated illness, and permanent loss of stability.

This pattern of harm cannot be remedied through monetary damages. Constitutional violations—particularly due process and the right to petition are irreparable by nature. See *Elrod v. Burns*, 427 U.S. 347, 373 (1976). And no monetary award can reverse the suffering endured while awaiting the restoration of basic rights. Defendants’ continued failure to issue appealable determinations, or provide any meaningful resolution channel, leaves Plaintiff and others in a state of unrelenting uncertainty. These ongoing violations demand immediate injunctive intervention.

Balance of Equities and Public Interest. The equities in this case are not close. Plaintiff stands on the brink of economic ruin and potential homelessness, with unemployment benefits set to expire in less than three weeks and no savings, safety net, or fallback resources available. Defendants argue that Plaintiff’s receipt of partial 2025 benefits negates any ongoing harm, while deliberately ignoring the deprivation of over \$6,000 in 2023 benefits and the underpayment that continued into 2025. The reality is that once Plaintiff’s current benefits lapse, the financial instability directly caused by Defendants’ unconstitutional conduct namely, the lack of a legally compliant appeals process and the inability to request meaningful review of benefit underpayments will immediately place Plaintiff at risk of eviction, loss of healthcare, and further destabilization. Each day the Court delays in compelling compliance with these fundamental due process obligations compounds that harm and places both Plaintiff and similarly situated claimants in deeper jeopardy.

Meanwhile, Defendants face no hardship from being ordered to comply with existing legal obligations: issuing timely determinations, allowing appeals on underpayment and eligibility issues, and ensuring ADA-compliant access to their services enshrined in both the constitution and in federally protected rights and duties.

The public interest overwhelmingly supports the issuance of an injunction. The current administrative system has become the subject of extensive public scrutiny and condemnation. Citizens across Colorado, whether directly affected or witnessing friends, family, or coworkers endure this systemic dysfunction have all expressed frustration, despair, and disbelief at the government's failure to fix what has become an open constitutional crisis. Public comments, media reports, and internal admissions reveal a department overwhelmed by backlog, plagued by inaccessibility, and seemingly indifferent to the human cost of its failures.

The impact is not abstract. The broken appeals and communication systems force many into total dependency on overburdened social programs such as Medicaid, housing assistance, and food stamps. Others disappear into homelessness, with no means to reenter the workforce, maintain transportation, or comply with vehicle and insurance laws. The government enforces strict penalties on the poor for being poor and not having paid registration or pay for insurance, yet tolerates systemic constitutional noncompliance within its own operations.

Ordering Defendants to fulfill their constitutional duties they have long failed to meet is not a burden, it is a legal necessity. As the Tenth Circuit has made clear, the public interest favors the protection of constitutional rights and the correction of systemic abuses. See *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 806 (10th Cir. 2019). The Court need not wait for further harm, or for more lives to be lost or ruined, before taking decisive action. The record demands it now.

III. Conclusion : It must be emphasized that Plaintiff's original complaint, filed in December 2024, centered exclusively on the wrongful deprivation of approximately \$6,000 in unpaid 2023 unemployment benefits. This claim, which forms the core of the litigation, predates any issues

related to Plaintiff's 2025 emergency injunctions and independently establishes a continuing constitutional injury. Defendants' response notably fails to address this foundational claim, instead diverting attention to later events while ignoring the very cause of action that brought this case before the Court. The subsequent 2025 violations merely amplify what has already been demonstrated—that systemic due process failures, ADA noncompliance, and denial of petition rights are ongoing and deeply rooted in current customs, policies, and the direct inaction of the named officials in their respective capacities. These harms are neither speculative nor abstract; they are active, obvious, and legally indefensible. The Court should not permit Defendants to evade responsibility

Defendants' opposition fails to rebut Plaintiff's evidence of ongoing due process, First Amendment, and ADA violations. Their admissions and silence confirm the systemic nature of these harms. Plaintiff meets and exceeds the *Free the Nipple* standard, demonstrating a clear likelihood of success, irreparable harm, and alignment with the public interest. This Court has no reasonable alternative but to grant Plaintiff's Second Emergency Injunction.

Joshua Abrams

Date: 05-22-2025 | ☐ Petitioner/Plaintiff

Joshua Abrams, Pro Se

CERTIFICATE OF SERVICE

I certify that on 05-22-2025 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

Joshua Abrams

☐ Petitioner/Plaintiff