CASE NO. 15-1390

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WALTER BARRY by his next friend Elaine Barry, DONITHA COPELAND, and KENNETH L. ANDERSON,
on behalf of themselves and all others similarly situated, and
WESTSIDE MOTHERS,

Plaintiffs – Appellees,

-vs-

NICK LYON, in his official capacity as Director,
Michigan Department of Human Services

Defendant – Appellant.

On appeal from the United States District Court
for the Eastern District of Michigan

APPELLEES' BRIEF

Oral Argument Requested

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affliations and Financial Interests

Sixth Circuit
Case Number: 15-1390 Case Name: *Walter Barry, et al., v. Nick Lyon*

Name of Counsel: Jacqueline Doig

Pursuant to 6th Cir. R. 26.1, Walter Barry, et al.
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

CERTIFICATE OF SERVICE

I certify that on June 9, 2015 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/Jacqueline Doig

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

This case involves state violation of important statutory and constitutional rights of thousands of low-income citizens. This Court has not previously considered enforcement of the specific statutory provisions at issue in this case.

JURISDICTIONAL STATEMENT

The district court had jurisdiction under 28 U.S.C. §§1331 and 1343 because Plaintiffs seek enforcement of federal constitutional and statutory rights.

This court has jurisdiction under 28 U.S.C. §1291.

STATEMENT OF ISSUES PRESENTED

I. Did Plaintiffs have standing because, when they filed suit, they were suffering actual or imminent procedural and economic injuries traceable to the Defendant and redressable by the Court,where Defendant denied them needs-based public assistance (a) by means of "criminal justice disqualification" notices challenged in Count I (constitutional due process) and Count II (statutory due process) and (b) based on Defendant's "fugitive felon" policy challenged in Count III (statutory right to Food Assistance when eligible under federal standards) and Count IV (preemption of additional state standards)?

II. Were Plaintiffs' claims not moot because:

A. Plaintiffs Anderson and Barry remained disqualified, or threatened with disqualification, from assistance throughout the proceedings?

B. Plaintiff Barry's and Copeland's claims were capable of repetition but evading review because their identities had been stolen and used by individuals who committed crimes?

C. Westside Mothers had a live claim based on Ms. Copeland's claim?

D. Class members were suffering ongoing procedural and economic injuries?

III. Did the district court properly exercise its discretion in certifying the class and subclass?

IV. For Counts II and III, did Plaintiffs have a private right of action where:

A. Congress created individually enforceable statutory rights (1) to due process for aggrieved households, under 7 U.S.C. §2020(e)(10) (Count II) and (2) to Food Assistance for eligible households, under 7 U.S.C. §2014(a) (Count III)?

B. Defendant failed to rebut the presumption that §1983 provides a remedy for violations of Plaintiffs' rights to due process and Food Assistance?

V. Are Defendant's "criminal justice disqualification" notices inadequate to meet the due process requirements of the Fourteenth Amendment (Count I) and the Food and Nutrition Act (FNA) (Count II) when they neither (a) detail the legal and factual bases for denying/terminating Plaintiffs' assistance, nor (b) explain how Plaintiffs can regain assistance?

VI. Did the district court properly exercise its discretion in enjoining Defendant from denying/terminating assistance without providing notices that contain specific information about the basis for Defendant's imposition of "criminal justice disqualifications" and how to regain eligibility?

VII. Is Defendant denying Food Assistance to eligible individuals in violation of 7 U.S.C. §2014(a), by disqualifying individuals who have outstanding

felony warrants without determining that they are intentionally fleeing from, and actively sought by, law enforcement, as required by 7 U.S.C. §2015(k)?

VIII. Did the district court properly exercise its discretion in striking new evidence Defendant sought to introduce post-judgment?

IX. Did the district court have equitable power to enjoin Defendant's violation of the FNA's express preemption provisions, 7 U.S.C. §§2014(b) and 2020(e)(5), and the limitations of the fleeing felon provision, 7 U.S.C. §2015(k), where (a) the standards of the FNA are clear and judicially administrable and do not involve judicial rate-setting, and (b) federal enforcement is not the sole remedy recognized by Congress for violations of the FNA, which anticipates private enforcement?

STATEMENT OF FACTS

The facts are detailed in Plaintiffs' Statement of Uncontested Facts [Facts], RE.52-9.

I. Defendant's "Fugitive Felon" Policies

(Facts, RE.52-9, ID#1761-72)

Since 1996, individuals who are "fleeing to avoid prosecution…" have been ineligible for federally-funded Food Assistance Program (FAP) benefits under federal law. 7 U.S.C. §2015(k). In 2011, Michigan adopted legislation barring public assistance (including FAP) to individuals who are "subject to arrest under an outstanding warrant arising from a felony charge." M.C.L.A. §400.10b(1). Michigan's Department of Health and Human Services (DHHS)[1] disqualifies anyone with a felony warrant regardless of whether (a) the individual is aware of the warrant or is intentionally seeking to evade law enforcement; or (b) law enforcement is actively seeking the individual. Bridges Eligibility Manual (BEM) 204, RE.49-6, ID#1477-79.

In late 2012, DHHS implemented an automated system that matches DHHS beneficiaries against Michigan State Police (MSP)'s Law Enforcement Information

[1] DHHS was previously called the Department of Human Services (DHS).

Network (LEIN) record of felony warrants.[2] When a match occurs, DHHS's system automatically denies, terminates, or reduces benefits, and generates "criminal justice disqualification" notices. *Opinion*, RE.91, ID#2637; Facts, RE.52-9, ID#1763-69.

> The notices state:
>
> REASON FOR INTENDED ACTION
> [Effective Date] – Ongoing
>
> [Name] – Not Eligible
>
> You or a member of your group is not eligible for assistance due to a criminal justice disqualification. Please contact your local law enforcement agency to resolve.
>
> Manual Item(s): BEM 203, ERM 203
>
> Internal use only code: EL1013

E.g., 12/31/12 Barry Notice, RE.50-1, ID#1553. Beginning around July 2013, parts of the notice were changed to:

> You or a member of your group is not eligible for assistance due to a criminal justice disqualification. Please have the disqualified member of your group contact a law enforcement agency—such as a police department, sheriff's department or the Michigan State Police—to resolve. The law enforcement agency will require you to provide picture identification.
>
> Manual Item(s): BEM 204, ERM 202[3]

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[2] Names and addresses of assistance recipients are sent to MSP to assist in arresting anyone who is actively sought. M.C.L.A. §400.10c(2).

[3] The challenged "fugitive felon" policy, which is based on M.C.L.A. §400.10b and .10c, was in BEM 203 on "Criminal Justice Disqualifications" until June 2013, and then moved to the new BEM 204 which addresses only "Fugitive Felons". *See*

E.g., 8/01/13 Woodward Notice, RE.50-8, ID#1585-86.

DHHS policy requires benefits to be withheld so long as the warrant exists, even if the computer match is erroneous and even if law enforcement informs DHHS that the individual will **not** be arrested. OIG Memo, RE.49-3, ID#1467. DHHS has extensive information from the computer match about the outstanding warrant (e.g. date, where issued, pick-up radius), but that information is not included on the notices. Technical Specifications, RE.49-10, ID#1509-11.

II. Defendant's Actions Against the Named Plaintiffs.

A. Walter Barry

(Facts, RE.52-9, ID#1772-83)

Walter Barry is a developmentally disabled adult. Elaine Barry Declaration, RE.50-9, ID#1590. After he received a 12/31/2012 "criminal justice disqualification" notice, his mother took him to the Detroit Police Department (DPD) and obtained a letter stating he had no criminal history with the DPD. *Id.* at 1592-93; 12/31/12 Barry Notice, RE.50-1, ID#1553; DPD Letter, RE.50-10, ID#1599. Mr. Barry's mother asked for a hearing, and the judge ordered Mr. Barry's benefits reinstated. *2/1/2013 Hearing Decision*, RE.50-12, ID#1603-07.

BEM 204 (eff. 6/1/2013, 7/1/13), RE.49-5, 49-6, ID#1475-79, *previously published in* BEM 203 (eff. 10/1/12, 5/1/13), RE.49-7, 49-8, ID#1481-89).

[4] Defendant previously conceded that Mr. Barry had standing. 11/14/14 Transcript, RE.119, ID#3318.

However, DHHS thereafter sent Mr. Barry two more criminal justice disqualification notices (5/16/13; 6/14/13) and cut off his benefits again because a warrant was still in his name. Facts, RE.52-9, ID#1775-78.

Mr. Barry did not receive Food Assistance for July 2013. Elaine Barry Declaration, RE.50-15, ID#1613-14. On 7/24/2013, Mr. Barry's mother filed this action as his next friend. On 7/25/2013, Defendant's attorneys advised Plaintiff Barry's attorneys that he would receive his July FAP. 7/26/13 Heyse Email, RE.41-5, ID#1282-83.

Both Defendant's and Mr. Barry's attorneys then unsuccessfully attempted to resolve the underlying warrants, which involved unauthorized use of Mr. Barry's identity in the1980s. Facts, RE.52-9, ID#1779-83. But Mr. Barry continued to have a warrant on LEIN. At Mr. Barry's second administrative hearing, the judge found both that DHHS had improperly denied Mr. Barry benefits, and that DHHS's subsequent rescission of that disqualification was based on an exception not contained in policy. *9/25/13 Decision*, RE.51-8, ID#1671-75.

B. Donitha Copeland

(Facts, RE.52-9, ID#1787-94)

Defendant sent Donitha Copeland a "criminal justice disqualification" notice on 12/31/2012, terminating her benefits, and another, on 2/12/2013, denying her reapplication. Ms. Copeland contacted the Oakland County Sheriff's Office, and

learned she had a warrant in Kalamazoo. She had never been to Kalamazoo and believed someone had stolen her identity. Because she had no money to travel, she asked the Kalamazoo Sheriff's Department if she could turn herself in in Detroit, but was advised against doing so. Second Amended Complaint, RE.70, ID#1964-70, 2024. With counsel's assistance, she was eventually able to turn herself in in Kalamazoo. Photographic evidence proved she was not the person sought, and the charges against her were dismissed without prejudice. Because her identity was stolen, she is concerned about future warrants issuing in her name, triggering future disqualifications. Copeland Declaration, RE.52-4, ID#1724-26.

C. Kenneth Anderson

(Facts, RE.52-9, ID#1794-98)

Kenneth Anderson, a seriously ill, wheelchair-bound man who requires continuous oxygen, received "criminal justice disqualification" notices dated 1/10/13 and 3/18/13, first terminating his Food Assistance and then denying his reapplication. Mr. Anderson did not know why he was disqualified. With counsel's assistance he eventually learned of a 2009 warrant apparently related to an incident where police found drugs belong to Mr. Anderson's nephew in Mr. Anderson's home. Mr. Anderson was never contacted by law enforcement about the warrant. Second Amended Complaint, RE.70, ID#1970-75, 2025. Mr. Anderson remained disqualified from benefits throughout this case. On 1/27/15, Defendant again

denied him benefits via a "criminal justice disqualification" notice, despite the injunction. 1/27/15 Anderson Notice, RE.104-3, ID#3002-05.

D. Heather Woodward

(Facts, RE.52-9, ID#1783-87)

When Heather Woodward, a low-income mother, was denied benefits around 5/23/2013, her DHHS caseworker told her she had a felony warrant. Ms. Woodward attempted to discover where the warrant was, but was only able to find a **misdemeanor** warrant. She reapplied for assistance, and was again denied. Woodward Declaration, RE.51-9, ID#1680-81. Only after she became a plaintiff and only because Defendant's attorneys provided information, did Ms. Woodward learn she had a felony warrant in a different jurisdiction, related to property missing from her father's barn. Facts, RE.52-9, ID#1786-87. Ms. Woodward subsequently resolved the warrant and regained Food Assistance. Her claims were dismissed as moot. *Opinion*, RE.91, ID#2651.

E. Westside Mothers

(Facts, RE.52-9, ID#1798-99)

Westside Mothers is a non-profit membership organization with 450-500 members, including Donitha Copeland, which advocates for the interests of public assistance recipients. Second Amended Complaint, RE.70, ID#1975-76, 2026.

III. Procedural History

Mr. Barry filed his complaint on 7/23/2013, and the next day filed motions for class certification and preliminary injunction. Complaint, RE.1, ID#1-56; Class Certification Motion, RE.4, ID#158-88; PI Motion, RE.5, ID#201-40. The complaint was amended on 8/14/2013 to add Plaintiff Woodward, and again on 8/27/2014 to add Plaintiffs Copeland, Anderson, and Westside Mothers. First Amended Complaint, RE.7, ID#288-354; Second Amended Complaint, RE.70, ID#1943-2157. The four counts and relief sought are:

Count	Cause of Action	Seeking Declaratory & Injunctive Relief to:
I	§1983 action to enforce right to due process under 14th Amendment	Prevent denial of cash, child care, or food assistance without adequate notice
II	§1983 action to enforce right to due process under FNA, 7 U.S.C. §2020(e)(10)	Prevent denial of Food Assistance without adequate notice
III	§1983 action to enforce right to Food Assistance under FNA, 7 U.S.C. §2014(a), when federal eligibility requirements met	Prevent denial of Food Assistance based solely on existence of outstanding felony warrant
IV	Action to enforce FNA's express preemption provisions,7 U.S.C. §§2014(b) & 2020(e)(5) and limitations on "fugitive felon" disqualifications, 7 U.S.C. §2015(k)	Prevent denial of Food Assistance based solely on existence of outstanding felony warrant

Ms. Woodward filed a Motion for a Temporary Restraining Order on 8/14/2013. RE.8, ID#469-86. That motion and the preliminary injunction motion were orally denied at a hearing. 9/18/13 Transcript, RE.38-3, ID#938-41.

Plaintiffs filed a Motion for Summary Judgment on 11/21/2013, RE.49, ID#1413-56, and an Amended Motion for Class Certification on 10/28/13, RE.39, ID#943-73. On 9/30/2014, Defendant filed a combined Motion to Dismiss and/or for Summary Judgment. RE.81, ID#2471-507.

On 1/9/2015, after considering voluminous briefing, evaluating an extensive record, and hearing four hours of oral argument (11/14/14 Transcript, RE.119, ID#3264-367), the district court issued an opinion granting summary judgment to Plaintiffs on all claims, certifying a class and sub-class, and enjoining Defendant from a) denying public assistance using notices that do not meet constitutional or statutory due process standards; and b) automatically denying Food Assistance based on an outstanding felony warrant without determining that the person is intentionally fleeing to avoid prosecution, custody, or confinement and is actively sought by law enforcement. *1/19/2015 Opinion and Order* [*Opinion*], RE.91, ID#2632-728. Defendant filed a Motion for Reconsideration, and a Motion for Stay pending the outcome of that motion. RE.93, ID#2734-57; RE.94, ID#2774-95. Plaintiffs moved to strike several exhibits attached to Defendant's reconsideration motion. RE.95, ID#2820-30.

Defendant took no steps to comply with the Court's injunction and continued to disqualify individuals (including Plaintiff Anderson) using automated "fugitive felon" matches and "criminal justice disqualification" notices until 2/26/2015, nearly seven weeks after the injunction issued. *Order Regarding Defendant's Compliance*, RE.110, ID#3122; 3/24/15 Transcript, RE.115, ID#3156-57; 4/21/15 Compliance Report, RE.120, ID#3371 (3,410 class members were denied benefits after 1/9/2015).

Following a 3/24/2015 status conference, the district court set deadlines for Defendant to comply, ordered restoration of benefits wrongfully withheld after 1/9/2015, *Order Regarding Defendant's Compliance*, RE.110, ID#3122-25, and ordered notice relief to the class and compliance reporting. *Order Regarding Amended Class Notice*, RE.114, ID#3131-42. The court also denied Defendant's Motion for Reconsideration and for a stay pending that motion, and partially granted Plaintiffs' Motion to Strike. *3/24/15 Opinion*, RE.106, ID#3066-85.

Defendant then filed a Motion for Stay Pending Appeal in district court, RE.109, ID#3095-116, and shortly thereafter an Emergency Motion for Immediate Consideration and Motion for Stay Pending Appeal with this Court, Doc#14-1, which was denied, *Order Denying Stay*, Doc#20-1. The district court then ordered supplemental briefing, RE.118, on *Armstrong v. Exceptional Child Center, Inc.*,

135 S.Ct. 1378 (2015), after which it denied the stay, *6/5/2015 Opinion*, RE.130, ID#3713-24.

On 5/18/2015, class counsel filed a Motion to Show Cause why Defendant should not be held in contempt, because he continues to disqualify individuals from benefits based on the enjoined automatic warrant matching, and using the enjoined "criminal justice disqualification" notices. RE.125, ID#3560-92. That motion is pending.

LAW AND ARGUMENT

I. Summary of Argument

Appellant's procedural challenges to the district court's decision all fail. The named Plaintiffs have standing because they suffered economic and procedural injuries as a result of Defendant's "criminal justice disqualification" notices and "fugitive felon" policy, which were redressed by the district court decision.

Plaintiffs' claims are not moot. Defendant does not aver that Plaintiff Anderson's claims are moot, and a single non-moot Plaintiff suffices for Article III jurisdiction. Moreover, Plaintiff Barry's and Copeland's claims are likely to recur and evade review. Even if the named Plaintiffs' claims had been moot prior to class certification, certification was appropriate because the claims are inherently transitory and Defendant was "picking off" named Plaintiffs. Because Defendant applied the automatic disqualifications and sent the boilerplate notices to class members throughout this litigation, the classes have live claims.

The district court properly exercised its discretion in applying the Rule 23 requirements for class certification, and certifying the class and subclass. Defendant's objections are meritless because they are based on his own re-definition of the classes, rather than on the actual classes certified by the court.

There is no dispute that Plaintiffs may enforce the Fourteenth Amendment under 42 U.S.C. §1983 (Count I). The district court correctly found that Plaintiffs have a private right of action to enforce the FNA provisions at issue in Counts II and III. In claiming the contrary, Defendant misstates the criteria set forth in *Blessing v. Freestone*, 520 U.S. 329 (1997), and *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002). The FNA provisions at issue confer an individual right to due process for applicants/recipients whose Food Assistance is denied/terminated, 7 U.S.C. §2020(e)(10) (Count II), and an individual right to receive Food Assistance for households that meet federal eligibility standards, *id.* at 2014(a) (Count III). Defendant failed to rebut the presumption that those rights are enforceable under §1983.

On the merits, the district court correctly decided that Plaintiffs prevail on all counts. First, with respect to Plaintiffs' due process claims (Counts I and II), the court correctly determined, as a matter of law, Defendant's "criminal justice disqualification" notices violate constitutional and statutory due process. The court did not abuse its discretion in enjoining Defendant from terminating/reducing/denying needs-based assistance without providing certain specified information about the "criminal justice disqualification" being imposed.

Second, on Counts III and IV, the district court correctly determined that Defendant is imposing an eligibility requirement (not having an outstanding felony

warrant) that is nonexistent in federal law, thereby denying Food Assistance to eligible households and violating Plaintiffs' rights to Food Assistance under 7 U.S.C. §2014(a) (Count III). It also violates the express preemption provisions of 7 U.S.C. §§2014(b) and 2020(e)(5), which prohibit Defendant from applying eligibility standards not found in federal law, and 7 U.S.C. §2015(k), which requires the state, before disqualifying a person from Food Assistance, to determine the person is intentionally fleeing, and actively sought by, law enforcement in connection with a felony (Count IV). Neither the statute nor the legislative history reveal any Congressional intent to temporarily suspend either the federal disqualification of fleeing felons, or the federal courts' authority to say what federal law means, while awaiting more detailed federal regulations outlining uniform procedures to ensure only persons actually fleeing and actively sought will be denied.

Furthermore, the district court properly exercised its equitable power to enjoin ongoing violations of federal law (Count IV). Count III, which is brought under §1983, and Count IV, which is based on the federal judiciary's equitable power to enjoin state violations of federal law, seek the same relief. Therefore, this Court need not reach Count IV; but if it does, it should affirm the district court's use of equitable powers to enjoin Defendant's violation of 7 U.S.C. §§2014(b), 2020(e)(5), and 2015(k). Those statutory sections are clear, judicially

administrable, and do not involve rate-making. Furthermore, federal enforcement is not the sole remedy provided by Congress for a state's noncompliance with the FNA. Accordingly, the FNA does not reflect a Congressional intent to foreclose equitable relief for Defendant's violation of 7 U.S.C. §§2014(b), 2020(e)(5), and 2015(k).

The district court properly exercised its discretion in striking new evidence Defendant introduced after judgment.

Finally, the district court did not abuse its discretion in granting injunctive relief. Its finding and conclusions regarding the relevant factors are sufficient, and if they were not, it would be harmless error.

II. Standard of Review

"'In determining whether a district court has properly granted a permanent injunction, we review factual findings for clear error, legal conclusions de novo, and the scope of injunctive relief for abuse of discretion." *Lee v. City of Columbus, Ohio*, 636 F.3d 245, 249 (6th Cir. 2011). Rulings on class certification and motions to strike are reviewed for abuse of discretion (see sections IV and IX, below).

III. Plaintiffs Have Standing and Their Claims Are Not Moot.

A. Plaintiffs Have Standing.

Standing is measured "at the commencement of the litigation." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000).

1. Plaintiffs Suffered "Injuries in Fact" that are Traceable to Defendant and Redressable by the Court.

Plaintiffs have standing because when they filed their complaint they: (1) had suffered "injuries in fact" (2) traceable to the Defendant and (3) likely to be redressed by the requested relief. *Id.* at 180-81. At the time of filing, Plaintiffs had experienced both (1) procedural injury from Defendant's inadequate notices; and (2) economic injury (loss of benefits) from Defendant's automatic "fugitive felon" disqualification policy.

Plaintiffs have standing to challenge procedural violations if the procedures affect their concrete interests, even if those interests may not be affected until a future date, and even if different procedures would not necessarily affect the substantive outcome. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 572 n.7 (1992). Because each named Plaintiff received "criminal justice disqualification" notices, they have standing, based on procedural injury, to bring their due process claims (Counts I and II).

Plaintiffs have standing to challenge their automatic disqualification from Food Assistance because financial loss qualifies as "injury in fact," *Clinton v. City of New York*, 524 U.S. 417, 432 (1998). All named Plaintiffs had been disqualified from, and were going without, assistance when they commenced litigation. Contrary to Defendant's representations, Appellant's Brf, Doc.32-1, p.47, Mr. Barry's benefits did not continue uninterrupted. When Mr. Barry filed his

Complaint, he was without assistance.[4] 9/13/13 Heyse Letter, RE.51-5, ID#1632 ("benefits were **retroactively** restored back in July 2013") (emphasis added).

Defendant does not dispute that Plaintiffs Copeland and Anderson had been terminated from benefits when they filed. Instead, he claims they lacked standing because they did not pursue state administrative hearings.[5] Appellant's Brf, Doc.32-1, p.48. Yet it is clear under *Patsy v. Bd. of Regents of State of Fla.* that plaintiffs need not exhaust state remedies before bringing suit under §1983. 457 U.S. 496, 516 (1982).

The second and third prerequisites to standing—causation and redressability—are closely related. It is undisputed that DHHS denied assistance to Plaintiffs (a) based on a policy of automatically disqualifying people who have outstanding felony warrants in their name, (b) via inadequate "criminal justice disqualification" notices produced and sent by Defendant. The relief ordered by the district court stops the conduct causing Plaintiffs' injuries, thus providing redress.

2. Organizational Plaintiff Westside Mothers Has Standing.

> [A]n association has standing…on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and

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[4] Defendant previously conceded that Mr. Barry had standing. 11/14/14 Transcript, RE.119, ID#3318.

[5] The district court did not "rul[e] either way" on standing during the preliminary relief hearing. 9/18/13 Partial Transcript, RE.58, ID#1895.

> (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 343 (1977). Injury to a single member is sufficient. *ACLU of Ohio Found., Inc., v. Ashbrook*, 375 F.3d 484, 489-90 (6th Cir. 2004).

Westside Mothers meets the requirements for associational standing because: (a) Ms. Copeland is a member, Copeland Declaration, RE.83, ID#2511, (b) the interests it seeks to protect (*i.e.*, low income individuals' interests in Food Assistance and in receiving adequate notice) are germane to its mission of advocating for public assistance recipients. Second Amended Complaint, RE.70, ID#1975; and (c) Plaintiffs assert no claim for monetary damages requiring individual participation.

B. Plaintiffs' Claims Are Not Moot.

1. Named Plaintiffs' Claims are Not Moot.

Article III jurisdiction exists if at least one Plaintiff has a "personal stake in the outcome" throughout the case. *Horne v. Flores*, 557 U.S. 433, 445 (2009). The named Plaintiffs not only had standing when they filed, but their interest in the litigation has continued. *Friends of the Earth*, 528 U.S. at 189.

a. Kenneth Anderson

"Defendant does not challenge Anderson's claims as moot, and with good reason, as Anderson still has an outstanding felony warrant in his name and is not

receiving Food Assistance benefits." *Opinion,* RE.91, ID#2654; *see also* Shaw Aff., RE.74-2, ID#2207. But for the district court's injunction, Mr. Anderson will be denied benefits if he applies, and will be informed through a "criminal justice disqualification" notice.[6] **Because only one non-moot plaintiff is needed and it is undisputed that Mr. Anderson has live claims, mootness is a non-issue.**

b. Walter Barry

Mr. Barry suffered actual or threatened termination of benefits on at least four occasions, as well as the burden of two hearings and three visits to the DPD. He received three separate "criminal justice disqualification" notices (12/31/2012; 5/16/13; 6/14/13), two of which post-dated his first administrative hearing. Barry Notices, RE.50-1, 50-2, 50-3, ID#1551-68. Over a year after litigation began, he was orally threatened with termination by Defendant's agent because there was still a warrant. Third Elaine Barry Declaration, RE.80-3, ID#2432-33. He made three trips to, and obtained multiple clearance letters from the DPD, but was unable

[6] Indeed, Defendant disobeyed the injunction by sending Mr. Anderson a third "criminal justice disqualification" notice denying him Food Assistance over two weeks after the injunction issued. 1/27/15 Anderson Notice, RE.104-3, ID#3002-05; *Order Regarding Compliance*, RE.110, ID#3122.

to resolve the warrants, or even determine which warrant(s) were disqualifying.[7] *Id.*

Defendant repeatedly attempted to override the "fugitive felon" policy in order to pick off Mr. Barry as a class representative.[8] However, Defendant's policies and computer systems remained unchanged, resulting in Mr. Barry's

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[7] Although Defendant asserts that Mr. Barry no longer has a felony warrant, there is no record evidence. *Opinion Granting Motion to Strike*, RE.106, ID#3070-77. Defendant's counsel stated at the 11/14/2015 hearing "we have been advised as of a week or so ago that all warrants have been released or taken care of with respect to Mr. Barry," but did not introduce any evidence. The district court expressed skepticism that the problem was solved and Mr. Barry would not be disqualified yet again. 11/14/14 Hearing Transcript, RE.119, ID#3313-14. Even if counsel's representation were sufficient to show that certain warrants have been "taken care of", there is a reasonable expectation that Mr. Barry will again face termination of benefits because DHHS repeatedly made similar, unfulfilled promises in the past, and because Mr. Barry's identity was stolen and repeatedly associated with criminal acts. Plaintiff Barry's case perfectly illustrates how a claim can be capable of repetition yet evading review. At every junction DHHS sought to "pick off" Mr. Barry as a class representative by arguing that he was then receiving benefits, only to turn around and threaten him with disqualification again. *Turner v. Rogers*, 131 S. Ct. 2507, 2515 (2011).

[8] Defendant sought to moot Mr. Barry by: (1) reinstating his benefits one day after this case was filed (7/26/13 Heyse Email, RE.41-5, ID#1282); (2) seeking transfer of his warrant in LEIN, which DHHS notably failed to do after the first administrative hearing (8/5/13 Heyse Emails, RE.51, 51-1, ID#1620-24); (3) requesting that MSP review his record because the DHHS/MSP match "has led to litigation" (OIG 8/2/13 Letter, RE.51-4, ID#1630); (4) rescinding the disqualification on the eve of his second administrative hearing, in contravention of policy (9/13/13 Heyse Letter, RE.51-5, ID#1632); 9/16/13 Hearing Transcript, RE.51-7, ID#1652-56, 1666-68; and (5) contacting law enforcement on the eve of the summary judgment hearing in an effort to resolve the warrants, 11/14/14 Hearing Transcript, RE.119, ID#3313-14.

repeated disqualification. 5/22/13 Hearing Summary, RE.50-13, ID#1609; Elaine Barry Declaration, RE.50-9, ID#1594-95. Indeed, the judge at Mr. Barry's second administrative hearing found:

> DHS relies on automated systems and…there is a reasonable probability that Claimant will suffer future benefit terminations….[A] previous administrative hearing addressed a FAP termination notice stemming from the same arrest warrant….Claimant had good reason to worry about future benefit terminations….The failure to address the legitimacy of the criminal justice disqualification against Claimant is regrettable…the evidence suggested that the issue will arise again.

9/25/13 Decision, RE.51-8; ID#1674. These factual findings are binding on this Court. *Univ. of Tenn. v. Elliott*, 478 U.S. 788, 799 (1986).

c. Donitha Copeland/Westside Mothers

The district court correctly determined that Ms. Copeland's injury (and hence Westside Mothers') was reasonably likely to recur because another person committed crimes using her identity and might do so again, and because the dismissed felony charges might be reinstated. *Opinion*, RE.91, ID#2652-53; Second Amended Complaint, RE.70, ID#1964-70, 2024. Further, although Defendant argues that Ms. Copeland relocated to Alaska, he ignores Ms. Copeland's intent to return to Michigan, where she will again likely need assistance. Second Copeland Declaration, RE.83, ID#2511-12.

2. The Classes' Claims are Not Moot.

Defendant does not and cannot argue that the classes' claims are moot. Absent the district court's injunction, Defendant would continue denying benefits to thousands of low-income Michigan residents, based solely on an automated computer match, using boilerplate notices.

In cases where '[i]t is by no means certain that any given individual, named as plaintiff, would be [subject to violation of federal rights] long enough for a district judge to certify the class [and]…the constant existence of a class of persons suffering the deprivation is certain" a case may proceed as a class action even if named Plaintiffs' claims become moot. *Gerstein v. Pugh,* 420 U.S. 103, 111 (1975). Thus, in the present case, where a disqualification may end because the disqualified person turns herself in, or her record is corrected, before class certification is decided, "termination of a class representative's claim does not moot the claims of the unnamed members of the class." *Id.* at 110 n.11; *See also Newberg on Class Actions* §2.13 (5th ed. 2013). Cases are not moot if either the named plaintiffs themselves "suffer repeated deprivations," or "it is certain that other persons similarly situated" would be subject to the same challenged procedures. *Gerstein*, 420 U.S. at 110 n.11. Here, not only do the named Plaintiffs face the possibility of repeated deprivations, but it is certain that the classes are subject to the challenged laws and policies. *See also County of Riverside v.*

McLaughlin, 500 U.S. 44, 51-52 (1991); *Ball v. Wagers*, 795 F.2d 579, 581 (6th Cir. 1986); *Olson v. Brown*, 594 F.3d 577 (7th Cir. 2010).

Invocation of the "inherently transitory" exception is particularly appropriate here because Defendant sought to "pick off" class representatives. The law does not permit defendants to "frustrate the objectives of class actions" and "waste judicial resources" by intentionally mooting the named Plaintiffs' claims. *Deposit Guar. Nat. Bank v. Roper*, 445 U.S. 326, 339 (1980); *see also Carroll v. United Compucred Collections*, 399 F.3d 620, 625 (6th Cir. 2005).

IV. The District Court Did Not Abuse Its Discretion in Certifying the Class and Subclass.

Class certification decisions are reviewed for abuse of discretion. *Am. Copper & Brass, Inc. v. Lake City Indus. Prods. Inc.*, 757 F.3d 540, 543 (6th Cir. 2014). Such decisions are subject to "very limited review and will be reversed only if a strong showing is made that the district court clearly abused its discretion." *Id.*

The district court certified two classes: the Due Process Class and Automatic FAP Disqualification Subclass. The court thoroughly analyzed each Rule 23 factor, rejected one of Plaintiffs' proposed class definitions, and defined each class by reference to a specific harm and membership in a specific group. *Opinion*, RE.91, ID#2655-71, 2722-24.

Defendant does not argue that the classes defined by the court fail to meet Rule 23. Rather, Defendant mischaracterizes the class descriptions as revolving

around the inaccuracy of LEIN information, which is not part of either class definition. Appellant's Brf, Doc.32-1, p.69. The harms at issue are inadequate notice and automatic disqualification based on a warrant match. Defendant cannot defeat certification by challenging classes that were not certified, nor by redefining Plaintiffs' claims. As the district court explained, "[W]hat defendant terms the 'real' harm—erroneous LEIN records—caused no harm to plaintiffs until defendant used the LEIN records to disqualify plaintiffs from food assistance benefits. In other words, the question of whether the disqualification is lawful is different from the question of whether the LEIN records are accurate." *Opinion*, RE.91, ID#2661-62. Even when LEIN records are accurate, the person may not be fleeing or actively sought.

Defendant claims the Due Process Class is overbroad because the notices cause no harm distinct from that caused by an inaccurate criminal record. Appellant's Brf, Doc.32-1, p.70-71. That is simply not true. Because of the inadequate information provided, Plaintiffs struggled to figure out why they had been disqualified and how to regain benefits. Moreover, "the right to procedural due process is 'absolute' in the sense that it does not depend on the merits of a claimant's substantive assertion"; class members, regardless of whether they ultimately qualify for benefits, have a right to adequate notice. *Carey v. Piphus*, 435 U.S. 247, 266-67 (1978). Because constitutionally inadequate notice is harm

per se, all class members suffer the same injury and the same legal question: do DHHS's boilerplate notices meet constitutional procedural due process requirements?

Defendant also argues that the subclass should not include "*bona fide* fugitive felons." Appellant's Brf, Doc.32-1, p.73. But that argument begs the question shared by members of the Automatic FAP Disqualification Class: who is a "*bona fide* fugitive felon" ineligible for Food Assistance under federal law? Is it, as Defendant contends, anyone "subject to arrest under an outstanding warrant arising from a felony charge against that individual in this or any other jurisdiction," M.C.L.A. §400.10b(1)? Or is it a person "fleeing to avoid prosecution, or custody or confinement" and "whom law enforcement authorities are actively seeking for the purpose of holding criminal proceedings," 7 U.S.C. §2015(k)?[9]

[9] Because class membership does not depend on LEIN accuracy, Defendant's argument that certification requires an individualized LEIN accuracy determination also fails. *Appellant's Brf*, Doc.32-1, p.73.

V. Plaintiffs Have A Private Right of Action Under §1983 to Enforce the FNA Provisions at Issue in Counts II and III.[10]

A. The Framework for Determining a Private Right of Action in §1983 Cases.

There is a two-step framework for finding a private right of action under §1983. Courts "must first determine whether Congress intended to create a federal right." *Gonzaga*, 536 U.S. at 283. Then, once the court finds that the statute confers individual rights, those rights are *presumptively* enforceable through §1983 and the burden shifts to the defendant to rebut this presumption. *Id.* at 284.

In the first step, to assess whether a statute confers individual rights, *Gonzaga* reaffirmed the three-prong test in *Blessing*. 536 U.S. at 273; 520 U.S. at 340-41. Under *Blessing*, a federal statutory right is enforceable via §1983 when plaintiffs show that the statute is: (1) "intended to benefit" plaintiffs seeking to enforce it; (2) a binding obligation on the governmental unit "couched in mandatory rather than precatory terms"; and (3) not so "vague and amorphous" as to be beyond the judiciary's competence to enforce. *Gonzaga*, 536 U.S. at 282. *Gonzaga* clarified that under the first prong, §1983 only provides a private right of

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[10] The private right of action analysis applies only to Counts II and III (enforcement of FNA under §1983). Defendant does not contest the well-established enforceability, under §1983, of Plaintiffs' Fourteenth Amendment right to due process (Count I). *See Howard v. Bayes*, 457 F.3d 568, 572 (6th Cir. 2006). Count IV is a preemption claim.

action to enforce statutes that have "unambiguously conferred a mandatory [benefit] focusing on the individual." *Id.* at 280.

In the second step, to rebut the presumption of enforceability under §1983**, "The State's burden** is to demonstrate that **Congress shut the door to private enforcement** either expressly, through 'specific evidence from the statute itself,' …or impliedly, by creating a **comprehensive enforcement scheme** that is **incompatible with individual enforcement** under §1983." *Id*. at 285 (emphasis added).

Instead of analyzing the relevant statutory provisions under the *Gonzaga*/*Blessing* two-step framework, Defendant misrepresents what the framework is. Defendant erroneously argues that plaintiffs must show that "Congress did not delegate enforcement powers to federal agencies." Appellant's Brf, Doc.32-1, p.28. However, this is not part of the three-prong test for determining whether a statute confers individual rights.

Second, Defendant mistakenly suggests that Plaintiffs rely on an implied right of action. Appellant's Brf, Doc.32-1 p.30. The distinction between private rights of action for §1983 claims and implied rights of action for non-§1983 claims is important. Although both §1983 claims and implied-right-of-action claims require a showing of congressionally-conferred individual rights, plaintiffs in §1983 cases enjoy the **presumption** that their rights are enforceable under §1983,

Gonzaga, 536 U.S. at 284. Plaintiffs in an implied right of action case, however, bear the additional burden of establishing Congressional intent to provide a judicial remedy.

Here, Plaintiffs' claims are brought under §1983; thus, they need only prove the existence of statutorily-conferred individual rights. Defendant then bears the burden of rebutting the presumed §1983 right of action. Because Defendant ignores the significance of the remedy provided by §1983, he fails to distinguish between Plaintiffs' step-one burden to establish individual rights and Defendant's step-two burden to establish that "Congress shut the door to private enforcement." *Id.*

B. §2020(e)(10) and §2014(a) Speak in Unambiguous, Mandatory Terms, and Have an Individual Focus, Thus Creating Individual Rights.

Although Defendant seeks to obfuscate the issues by citing several FNA provisions[11], Plaintiffs seek to enforce two specific sections of the FNA: §2020(e)(10) (right to fair hearing) and §2014(a) (right to assistance). Second Amended Complaint, RE.70, ID#2013, 2015. Courts must look at "individual

[11] Defendant points to §§2020(d) and (e)(5), 2014(b), and 2015, Appellant's Brf, Doc.32-1, p.34-35, which are not relevant to the individual focus of §§2020(e)(10) and 2014(a) - the specific statutory rights being enforced in Counts II and III. Second Amended Complaint, RE 70, ID#2013, 2015.

provisions of the statute to determine whether a private right of action exists under each portion."[12] *John B. v. Goetz*, 626 F.3d 356, 362 (6th Cir. 2010).

1. **§2020(e)(10) Creates a Privately-Enforceable Right to Due Process (Count II).**

The due process provision enforced in Count II is squarely focused on the needs of particular persons:

> The State plan…**shall provide**...
>
> (10) for the granting of a fair hearing and a prompt determination thereafter **to any household aggrieved** by the action of the State agency under any provision of its plan of operation as it affects the participation of **such household** in the supplemental nutrition assistance program.

7 U.S.C. §2020(e)(10) (emphasis added).[13] The statute unambiguously confers on each aggrieved household the right to a meaningful opportunity to be heard. It is conferred in mandatory ("shall"), not precatory, terms.

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[12] *Almendares v. Palmer*, No. 3:00CV7524, 2002 U.S. Dist. LEXIS 23258 (N.D. Ohio Dec. 3, 2002), RE.36-5, is irrelevant. *Almendares* focused on an entirely different FNA provision making benefits (bilingual personnel/writings) available **in a geographic** area (as compared to making them available **to particular households**). The district court correctly concluded that *Almendares* is inapplicable because "in contrast to the provisions at issue here," the provision there was "expressly aggregate." *Opinion*, RE.91, ID#2682.

[13] The implementing regulations also focus on individual households. *See* 7 C.F.R. §273.10(g)(ii) ("[T]he State agency shall provide **the household** with written notice explaining the basis for the denial, **the household's right** to request a fair hearing, [etc.]."); 7 C.F.R. §273.13(a) ("Prior to any action to reduce or terminate **a household's benefits** within the certification period, the State agency shall...**provide the household** timely and adequate advance notice....").

In *Gean v. Hattaway*, this Court held a virtually identical provision of the Medicaid Act is privately enforceable, concluding that 42 U.S.C. §1396a(a)(3)—which states, "A State plan for medical assistance must…provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness"—has an individual focus and "is tied to a specific denial of benefits and not amorphous and normative concepts." 330 F.3d 758, 772-73 (6th Cir. 2003). The exact same thing is true of §2020(e)(10) here.

2. §2014(a) Creates a Privately-Enforceable Right to Food Assistance (Count III).

In Count III, Plaintiffs seek to enforce 7 U.S.C. §2014(a), which gives them the right to receive Food Assistance when they meet the federally-established eligibility criteria. §2014(a) focuses on the needs of households who meet federal Food Assistance criteria: "Assistance under this program shall be furnished to **all eligible households** who make application for such participation." Once again, nearly identical provisions in the Medicaid Act, 42 U.S.C. §1396a(a)(8) and (10), were held enforceable in *Westside Mothers v. Olszewski* [*Westside Mothers II*]. 368 F. Supp. 2d 740, 761-62 (E.D. Mich. 2005), *not questioned on appeal*, 454 F.3d 532 (6th Cir. 2006). *See Side by Side Comparison of Statutory Provisions*, RE.80-11, ID#2467.

In *Westside Mothers II*, the district court held that these Medicaid Act provisions were enforceable because they required the State to provide an objective benefit ("medical assistance") to individuals who applied and were "eligible." *Id.* Thus, the provisions were analogous to the provision enforced in *Wilder v. Va. Hosp. Ass'n*, 496 U.S. 498 (1990), which "required States to pay an 'objective' monetary entitlement to individual health care providers."[14] Here, Plaintiffs have an equally enforceable right to Food Assistance[15] under §2014(a).

3. Statutory References to the State Plan Do Not Transform Individual Rights into Aggregate Norms.

In arguing that "the State plan…shall" language of §2020(e)(10) makes Plaintiffs' statutory due process rights (Count II) unenforceable,[16] Appellant's Brf, Doc.32-1, p.34-35, Defendant ignores this Court's consistent enforcement of mandatory state plan requirements. *Gean*, 330 F.3d at 772-73; *Harris v. Olszewski*, 442 F.3d 456, 461 (6th Cir. 2006); and *Westside Mothers II*, 454 F.3d at 543-44.[17]

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[14] *Gonzaga* specifically approved the holding that enforceable individual rights were created by the statute construed in *Wilder*. 536 U.S. at 289.

[15] Food Assistance benefits "are a matter of statutory entitlement" for needy households. *Atkins v. Parker*, 472 U.S. 115, 128 (1985).

[16] Count III seeks enforcement of 7 U.S.C. §2014(a), which is not couched in terms of State Plan requirements.

[17] The fact that this Court has consistently found "State plan must" language to create enforceable rights defeats Defendant's argument that only the language used in Title VI and IX ("No person…shall…be subject to discrimination") is rights-creating. *See also Sabree v. Richman*, 367 F.3d 180, 190 (3d Cir. 2004) ("[W]e find

That §2020(e)(10)'s due process right is labeled a "[r]equisite[] of state plan of operation," and is preceded by the phrase, "[t]he State Plan of operation shall provide…" merely reinforces that it is "couched in mandatory rather than precatory terms," thus satisfying the second prong in *Blessing,* 520 U.S. at 340-41. *See Harris*, 442 F.3d at 461 ("[a] State plan…must…provide" is "the same kind of 'rights-creating'…'mandatory language'… that the Supreme Court and our court have held establishes a private right of action.")

Furthermore, the "state plan…shall" language does not transform the individually focused mandate into an aggregate requirement or an institutional yardstick. The statute remains focused on the "household aggrieved", not on the program in general. Therefore, Defendant's argument that §2020(e)(10) has an institutional focus and uses aggregate language is wrong.

C. Defendant Has Not Met His Burden of Demonstrating That Congress Intended to Foreclose §1983 Enforcement.

Defendant has neither proven that the FNA creates a comprehensive enforcement scheme, nor that federal enforcement is inconsistent with private enforcement under §1983. Accordingly, Defendant has failed to rebut the

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it difficult, if not impossible… to distinguish the import of the language-'A State plan must provide'-from the 'No person shall' language …. Just as in Titles VI and IX, the relevant terms used [here] are mandatory rather than precatory.").

presumption that Plaintiffs' rights to due process (Count II) and to Food Assistance (Count III) are privately enforceable under §1983.[18]

1. Agency Enforcement Power Does Not Preclude a Private Right of Action.

Congress's delegation of certain enforcement powers to the United States Departrment of Agriculture [USDA], including the powers to cut off funds and to ask the Attorney General to sue for injunctive relief, 7 U.S.C. §2020(g), do not preclude private enforcement. Neither USDA's power to cut off funds nor the Attorney General's authority to sue are sufficient to show Congressional intent to foreclose private enforcement under §1983. The Supreme Court, in *Wilder* and *Wright v. City of Roanoke*, as well as this Court, in *Harris* and *Sandusky County Democratic Party v. Blackwell*, have rejected arguments similar to Defendant's in this case. 496 U.S. at 521-22; 479 U.S. 418, 424 (1987); 442 F.3d at 463; 387 F.3d 565, 573 (6th Cir. 2004).

The district court, consistent with other courts, correctly concluded that USDA's enforcement power under §2020(g) does not preclude private enforcement of FNA provisions under §1983. *See Gonzalez v. Pingree*, 821 F.2d

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[18] Defendant's reliance on *Armstrong v. Exceptional Child Ctr., Inc., Traverse Bay Intermediate Sch. Dist. v. Mich. Dep't of Educ*., and *Ass'n of Cmty. Orgs. for Reform Now v. New York City Dep't of Educ.* is misplaced, because none of them involved an action brought under §1983. 135 S.Ct. 1378 (2015); 615 F.3d 622 (6th Cir. 2010); 289 F. Supp. 2d 338 (S.D.N.Y. 2003).

1526, 1529 (11th Cir. 1987); *Victorian v. Miller*, 813 F.2d 718, 721-24 (5th Cir. 1987); *M.K.B. v. Eggleston*, 445 F. Supp. 2d 400, 429 (S.D.N.Y. 2006); *Williston v. Eggleston*, 379 F. Supp. 2d 561, 576-78 (S.D.N.Y. 2005).[19]

2. 7 U.S.C. §2014(k)(2) Goes to the Merits, Not to Whether Plaintiffs Have a Private Right of Action.

Defendant puts the cart before the horse when he suggests that the Court should consider 7 U.S.C. §2015(k)(2), which directs the Secretary to promulgate rules regarding the "fleeing felon" disqualification, in deciding whether Plaintiffs have a private right of action to enforce their §2014(a) right to Food Assistance. Appellant's Brf, Doc.32-1, p.39.

The analysis required here is similar to the analysis in *Westside Mothers II*, where the court first decided that 42 U.S.C. §1396a(a)(8) and (10) gave eligible individuals rights to "medical assistance" enforceable under §1983, and then turned to the question of the scope of "medical assistance" to decide the merits of whether plaintiffs' rights had been violated. 368 F. Supp. 2d at 746-69. Here, the Court must **first** determine whether eligible households **have a right** to Food

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[19] The plain language of the FNA makes clear that Congress intended some provisions to be privately enforced. *Victorian,* 813 F.3d at 723-24, citing 7 U.S.C. §2023(b). In addition, 7 U.S.C. §2020(a)(3)(B)(ii) provides that state records shall "be available for review **in any action filed by a household to enforce any provision of this Act (including regulations issued under this Act)**." (Emphasis added.) This provision would be meaningless if Congress did not intend private enforcement.

Assistance under §2014(a), and **then** separately consider the **scope of that right**, i.e. the merits question of whether individuals with outstanding warrants are still "eligible" if they are not fleeing and actively being sought.[20]

VI. Defendant's Notices Violate Plaintiffs' Rights to Due Process Under the Fourteenth Amendment and Federal Law.

A. Defendant's Notices Violate Constitutional Due Process Requirements.

Plaintiffs have the right to timely, adequate notice and a meaningful opportunity to be heard before needs-based benefits are reduced or terminated, and when applications for aid are denied. U.S. Const. amend. XIV, §1; *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Hamby v. Neel*, 368 F.3d 549, 561 (6th Cir. 2004). Adequate notice is an essential element of the right to be heard because one cannot know whether to request a hearing, and cannot prepare to present evidence and rebut charges, without knowing the specific facts alleged and the laws or policies applied. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Morgan v. United States*, 304 U.S. 1, 18 (1938).

Because "one of the purposes of notice is to clarify the issues to be considered" at a hearing, notices must set forth the factual basis for government action "with particularity" and identify "the specific issues" to be considered. *In re*

[20] The scope and meaning of §2015(k) (the "fleeing felon" disqualification) is relevant to the **merits** of Plaintiffs' Count III claim, but does affect the **enforceability** of §2014(a). §2015(k) is entirely irrelevant to Plaintiffs' due process claims (Counts I and II).

Gault, 387 U.S. 1, 33-34 n.54 (1967);[21] *see also, Goldberg*, 397 U.S. at 267-68 (notices must disclose "the precise questions raised about… continued eligibility," "detail[] the reasons," and tell "the legal and factual bases" for proposed action).

Due process also requires that individuals be "adequately informed as to how to fully receive the benefits to which they were entitled, at the time they were entitled to them." *Hamby*, 368 F.3d at 561.

Consistent with this well-settled caselaw, the district court held that due process requires Defendant to:

1. Provide specific, individualized reasons for the agency action in enough detail to allow for a meaningful hearing, and
2. Inform notice recipients "how to fully receive the benefits to which they were entitled"—i.e, "what they must do to lift the disqualification," and "whether a hearing request is necessary to resolve the disqualification, even if the issue is resolved with law enforcement."

Opinion, RE.91, ID#2693-95, 2702-03. Moreover, telling Plaintiffs to call a contact person at DHHS could not compensate for deficiencies in the written notice. *Id.* at ID#2699.

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[21] Defendant misreads *Rosen v. Goetz*, *Appellant's Brf*, Doc.32-1, p.65, wherein the Court found individualized notices were not required by the Medicaid regulation at issue there, and went on to find that the higher standard imposed by Fourteenth Amendment due process cases was met by the combined content of two notices sent to recipients in that case, stating, "the very facts that the plaintiffs claim are missing are supplied…through a second letter." 410 F.3d 919, 931 (6th Cir. 2005). No supplemental notices were sent here.

The district court found, as a factual matter, the challenged notices do not state:

- Whose conduct is at issue,
- What type of criminal justice disqualification is at issue,
- Anything about the outstanding warrant, including the underlying charge and the law enforcement agency that issued the warrant,
- …[What] they must…[do] to keep or regain benefits.

Opinion, RE.91, ID#2698-99, 2703-04.

Defendant only disagrees with the Court's finding that the notice does not identify whose "criminal justice disqualification" is at issue, asserting that the person's is "specifically identified in the notice." Appellant's Brf, Doc.32-1, p.66. But the notice says "you or a person in your group is not eligible for assistance due to a criminal disqualification." *E.g.*, 12/31/12 Barry Notice, RE.50-1, ID#1553. Thus, the court's finding is not clearly erroneous.

Defendant also argues the notices "allow for a meaningful hearing" because they cite BEM 204. Appellant's Brf, Doc 32-1, ID#66. But, as the district court noted, "a notice recipient must still be able to (1) determine that 'BEM 204" refers to the Bridges Eligibility Manual, section 204, (2) determine that [an explanation of] the relevant type of criminal justice disqualification can be found there, and (3) get access to the BEM." *Opinion*, RE.91, ID#2699.

When the state must provide information in a written notice, it cannot meet its burden by requiring the notice recipient to make further inquiries to acquire the mandated information. *Boatman v. Hammons*, 164 F.3d 286, 290 (6th Cir. 1998). Defendant cannot meet his notice obligation here by obliquely directing notice recipients to research the legal/policy basis for Defendant's action via the notation, "Manual Item(s): BEM 204, ERM 202". "[A] scheme which relies on beneficiaries to seek out basic information on why the agency took the action it did will result in 'only the aggressive receiv[ing] their due process right to be advised of the reasons for the proposed action.'…'The meek and submissive,' …will 'remain in the dark....'" *Kapps v. Wing*, 404 F.3d 105, 125-26 (2d Cir. 2005) (citation omitted). "[T]he burden of providing adequate notice rests with the state, and it cannot shift that burden to the individual by providing inadequate notice and inviting the claimant to call to receive complete notice." *Ortiz v. Eichler*, 616 F. Supp. 1046, 1062 (D. Del. 1985), *aff'd* 794 F.2d 889 (3d Cir. 1986).

Defendant's only other argument is that "it seems axiomatic that one would know if there is or is not the possibility of a felony warrant issued in their (or a household member's) name." Appellant's Brf, Doc.32-1, p.66. However, the notice does not even say the disqualification is based on a felony warrant, but only that it

is due to a "criminal justice disqualification," of which there are five types.[22] Facts, RE.52-9, ID#1770-72 (describing five types of criminal justice disqualifications). Moreover, the fallacy of Defendant's assumption is illustrated by the named Plaintiffs' experiences. None of the Plaintiffs had any inkling that there was a felony warrant in their name when they received the "criminal justice disqualification" notice. *See Opinion*, RE.91, ID#2700; Facts, RE.52-9, ID#1787-98.

Neither the unfounded assumption that certain information on which Defendant's action is based is already known to notice recipients, nor the cryptic citation to "Manual Items" in the challenged notice, is a substitute for a detailed disclosure of the underlying factual and legal bases for the action.

Defendant does not dispute the district court's finding that the notices do not tell recipients what they must do, in addition to "resolving" the criminal justice disqualification with law enforcement, in order to keep or regain benefits.[23] *Opinion*, RE.91, ID#2703. Nor does he dispute that due process requires that adequate information about "how to fully receive the benefits to which they were

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[22] The "criminal justice disqualification" notice replaced a previous version that used the words "fugitive felon." *DHS Fugitive Felon Interface Meeting Minutes*, RE.49-9, ID#1494.

[23] With limited exceptions, a disqualified individual who "resolves" the issue with law enforcement will remain disqualified unless she or he reapplies. *See* BAM 811, RE.49-16, ID#1538-39.

entitled." *Hamby*, 368 F.3d at 561. Thus, again, the district court correctly concluded that Defendant violated Plaintiffs' due process rights.

B. Defendant's Notices Violate Plaintiffs' Right to Due Process Under the FNA.

The district court correctly determined that Defendant's notices also violate Plaintiffs' right to due process under the FNA.[24] USDA regulations (7 C.F.R. §§273.10(g), 273.13(a)) issued to implement the statutory fair hearing requirement of 7 U.S.C. §2020(e)(10), require, Defendant to "provide the household with written notice **explaining** the basis for the denial….and, if possible, the name of the person to contact for additional information" when Food Assistanceis denied. 7 C.F.R. §273.10(g)(ii) (emphasis added). And when FAP benefits are reduced or terminated, Defendant must "provide the household timely and adequate advance notice before the adverse action is taken", which must "**explain[ ] in easily understandable language**:…the reason for the proposed action;…and, if possible, the name of the person to contact for additional information…." 7 C.F.R. 273.13(a)(2) (emphasis added).

Plaintiffs are entitled to summary judgment on Count II because Defendant's boilerplate notices utterly fail to explain the factual basis for DHHS's decision to

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[24] If this Court affirms the district court decision on Count I, it need not reach Count II. However, it is necessary to decide Count I, as the right to adequate notice for cash or child care applicants/recipients cannot be based on the FNA.

impose a "criminal justice disqualification". Neither the citation to BEM 203/204, nor the unfounded assumption that notice recipients are aware of the existence and basis of outstanding warrants in their or other household members' names, constitute "notice" or an "explanation in plain language" of the reasons for Defendant's action.

C. The Notice Requirements in the District Court's Injunction Are Not an Abuse of Discretion.

While the district court's legal conclusions regarding the constitutional and statutory deficiencies of Defendant's notices are reviewed *de novo*, the scope of its injunction is reviewed for an abuse of discretion. *Lee*, 636 F.3d at 249. Defendant has offered no explanation, authority, or evidence to demonstrate that the district court abused its discretion when it enjoined Defendant from denying/reducing/terminating assistance without first providing notice of specific information that recipients need to understand and address their disqualifications. *Opinion*, RE.91, ID#2726-27.

Defendant suggests the required notice elements are "burdensome." Appellant's Brf, Doc.32-1, p.4,5,18. But Defendant did not raise this argument in

the district court until after judgment, and introduced no admissible evidence of the alleged "burden."[25]

Furthermore, the named Plaintiffs' experiences underscore how critical the court-ordered information is for determining whether a person is the subject of the warrant, whether s/he should contest the disqualification, what evidence s/he needs to refute her/his disqualification, and how s/he can get back on assistance. The particular information ordered by the court will improve class members' abilities to guard against erroneous deprivations of assistance. Without a clear explanation of the factual and legal bases for the "criminal justice disqualification," notice recipients may conclude that they are ineligible for assistance, even when they actually are eligible. By using vague boilerplate language, instead of stating, and outlining the reasons why, the person is considered an ineligible "fugitive felon," Defendant substantially increases the risk that eligible individuals will be erroneously denied. For example, the notice did not inform Plaintiff Copeland how she could prove her eligibility for Food Assistance, and thus she did not pursue a hearing even though the warrant in her name was not her warrant. Facts, RE.52-9, ID#1787-94. The requirement that Defendant provide warrant-specific

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[25] Furthermore, the district court found Defendant already has most of the information and merely needs to use procedures he already uses both for public assistance hearings and in juvenile justice and child protection cases. *Opinion*, RE.91, ID#2708-09; *3/24/2015 Opinion*, RE.106, ID#3081-84.

information and specify that he has determined the individual is both intentionally fleeing and actively sought, has become all the more important in preventing erroneous deprivations given Defendant's post-judgment non-compliance.

VII. Defendant Is Denying Food Assistance To Individuals Who Are Eligible For Assistance, In Violation of 7 U.S.C. §2014(a).

A. Food Assistance Eligibility Is Determined by Federal Law and the Defendant May Not Impose Additional Criteria.

The individual right of eligible households to receive Food Assistance is established by 7 U.S.C. §2014(a), and eligibility is defined by, *inter alia*, 7 U.S.C. §§2014(b) and 2015(e)(5) (requiring the use of federal—and prohibiting additional, state-imposed—eligibility requirements).[26] The district court correctly rejected Defendant's argument that Michigan's "fugitive felon" law and Defendant's implementing policies are a permissible interpretation of §2015(k) (the "fleeing felon" provision), and that Plaintiffs thus are not "eligible households" to whom he must provide Food Assistance under §2014(a). The court correctly decided that because Michigan's "fugitive felon" law and policy violates Plaintiffs' rights under §2014(a) because it imposes the additional requirement of

[26] States must use standards that "meet those established by [USDA]," and "shall [not] impose any other standards of eligibility as a condition for participating in the program." 7 U.S.C. §2014(b). Defendant must determine eligibility according to "specific standards…which shall be in accordance with [7 U.S.C. §§2014 and 2015] and shall include no additional requirements imposed by the State…." 7 U.S.C. §2020(e)(5).

not having an outstanding felony warrant in one's name, and disqualifies individuals with warrants **regardless of whether they are intentionally fleeing or actively sought**. *Opinion*, R.91, ID#2719-20.

B. Michigan Disqualifies Individuals Based Solely On the Existence of an Outstanding Warrant Even Though a Warrant Alone Does Not Suffice Under Federal Law.

1. Michigan Eligibility Criteria for Food Assistance.

Under Michigan law and Defendant's policies, a person is automatically disqualified from receiving Food Assistance merely because LEIN shows the existence of an outstanding felony warrant. *See* M.C.L.A. §400.10b(1); BEM 203, 204.[27] Defendant makes no effort to determine whether (a) the person knows about the warrant; (b) the person is intentionally fleeing to evade prosecution, arrest or confinement; and (c) law enforcement is actively seeking the individual for prosecution or incarceration. Thus, Defendant denies Food Assistance to people who may not even know they have a warrant, let alone be fleeing to evade prosecution, arrest or confinement.

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[27] M.C.L.A. §400.10b(1) provides "the department shall not grant public assistance under this act to an individual if the department receives information…that the individual is subject to arrest under an outstanding warrant arising from a felony charge against that individual in this or any other jurisdiction." Under BEM 204, any individual who is "subject to arrest under an outstanding warrant arising from a felony charge against that person" is barred from benefits. RE.49-6, ID#1478.

Contrary to Defendant's assertions, the existence of a warrant does not mean a person is fleeing. Michigan law does not require a person be notified when a warrant is issued, and notice is rarely given (hence none of the Plaintiffs knew they had a warrant when they got their "disqualification" notice). Shea Decl., RE.32-3, ID#746. Nor is there an easy way for individuals to determine if they have a warrant; many people remain unaware of warrants that were issued against them months, years, or even decades ago. *Id.* at ID#747.

DHHS uses the automated match to disqualify individuals, even when law enforcement has made it clear that they do not intend to act on the warrant after being alerted to the person's whereabouts. OIG Memo, RE.49-3, ID#1467 (disqualification continues even if law enforcement declines to arrest after being notified individual is at DHHS office). Indeed, as Mr. Barry's case shows, DHHS has denied Food Assistance using the automated match even in cases where law enforcement officials have determined the disqualified individual is not the person sought through the warrant. Elaine Barry Decl, RE.50-9, ID#1590-97.

2. Federal Eligibility Criteria for Food Assistance.

The FNA addresses outstanding warrants and sets eligibility criteria distinct from those in M.C.L.A. §400.10b and BEM 203, 204. 7 U.S.C. §2015(k)(1)(A) disqualifies individuals

> fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which the individual is

> fleeing, for a crime, or attempt to commit a crime, that is a felony under the law of the place from which the individual is fleeing…[.]

7 U.S.C. §2015(k)(2) directs the Secretary of Agriculture to:

> (A) define the terms "fleeing" and "actively seeking" for purposes of this subsection; and
> (B) ensure that State agencies use consistent procedures established by the Secretary that disqualify individuals whom law enforcement authorities are actively seeking for the purpose of holding criminal proceedings against the individual.

Because "the language of the statute is the starting point for interpretation, and it should also be the ending point if the plain meaning of the language is clear," *United States v. Douglas*, 634 F.3d 852, 858 (6th Cir. 2011), the district court relied on the dictionary definition of "fleeing" and the statute's requirement that "the relevant crime must be a felony 'under the law of the place from which the individual is fleeing' (emphasis added), and correctly held, "A person cannot be fleeing from a place (such as the state of Michigan) if he or she remains in that place. Furthermore, by specifying that the person must be fleeing to avoid prosecution, the [FNA] incorporates an element of intent." *Opinion*, RE.91, ID#2715-16. The court further concluded "The [FNA] clearly requires law enforcement to be "actively seeking" a person for the person to be disqualified from receiving Food Assistance benefits, 7 U.S.C. §2015(k)(2), "and that Defendant's reading of the statute would write the word 'actively' out of the FNA;

if issuing a warrant equates to 'actively seeking' then 'actively seeking' would be no different from plain 'seeking.' *Id.*, ID#2717 (citations omitted).

Defendant complains the district court: 1) should not have interpreted the statute because the USDA has not updated the existing regulations; and 2) should not have looked to an almost identical provision governing disqualification from Supplemental Security Income. Neither complaint has merit.

C. The Current and Proposed Regulations Interpreting §2015(k) Make Clear that the Mere Existence of a Felony Warrant is Not Enough.

The basic statutory disqualification of fleeing felons, §2015k(1), was inserted into the FNA in 1996, almost two decades ago, as part of the Personal Responsibility and Work Opportunity Reconciliation Act [PRWORA], Pub. L. No. 104-193 §821, 110 Stat. 2105, 2321, RE. 80-8, ID#2455. The legislative history contains no indication that Congress intended either to impose disqualifications based on the existence of a warrant alone, or to disqualify individuals who are not fleeing. H.R. Rep. No. 104-651; H.R. Conf. Rep. No. 104-725 at 462, RE.80-9, ID#2457-60.

Like the statute, the implementing regulations adopted in 2001 only disqualify persons "fleeing to avoid prosecution or custody for a crime, or an attempt to commit a crime, that would be classified as a felony." 7 C.F.R. §273.11(n). 7 C.F.R. §273.1(b)(7)(ix) also identifies "[i]ndividuals who are fleeing to avoid prosecution" as ineligible household members. In addition, 7 C.F.R.

§272.1(c)(1)(vii), authorizes state agencies to release certain information to law enforcement agencies requesting information about "fleeing felons", but states:

> A request for information **absent documentation** [that a household member is fleeing to avoid prosecution or custody] **would not be sufficient** to terminate the member's participation.

Thus, DHHS may not disqualify a person from assistance without first documenting that the person is, in fact, "fleeing to avoid prosecution or custody."

1. The Legislative and Regulatory History In No Way Suggests That 2015(k) is Without Effect Until the USDA Updates Its Regulations.

The provision Defendant emphasizes, requiring USDA to define the terms "fleeing" and "actively seeking," was added 12 years later when Congress enacted §2015k(2)(A) as a "[t]echnical clarification regarding eligibility," with an effective date of 10/1/2008. Pub. L. No. 110-246 §§4112, 4407, 122 Stat. 1651, H. Conf. Rep. No. 110-627 at 772, RE.80-10, ID#2462-2464. The 2008 amendment also required USDA to ensure states use "consistent procedures" that "disqualify individuals whom law enforcement authorities are actively seeking." 7 U.S.C. §2015(k)(2)(B).

In the 2008 "technical clarification," there is no evidence of Congressional intent to suspend the operation of §2015(k)(1)[28] or to exempt states from conforming their disqualification practices to the federal law enacted in 1996. Nor is there any indication that Congress, in expressly limiting disqualification to those whom law enforcement is "actively seeking", intended to delay enforcement of that provision until USDA defined the term.

The "technical clarification" reflected congressional concern about "innocent people who had their identities stolen, or who have outstanding warrants for minor infractions that are many years old and where the police have no interest in apprehending and prosecuting the case" being erroneously disqualified because states misinterpreted the statute. 76 Fed. Reg. 51908 (summarizing legislative history). The 2008 amendment was intended to "correct this by making the Department clarify the terms used and make sure that States are not incorrectly disqualifying needy people not being actively pursued by law enforcement authorities." *Id.*

Defendant argues that because updated implementing regulations were not finalized, the district court could not interpret and apply §2015(k). In essence,

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[28] Indeed, if it did, there would be no basis for denying Food Assistance to Plaintiffs, because no "fleeing felon" disqualifications could occur until rulemaking is complete.

Defendant argues that because Congress in 2008 added §2015(k)(2), the courts can no longer interpret §2015(k)(1) (enacted in 1996) and the existing 7 C.F.R. §273.11(n), leaving the states free to do as they wish. But that would undermine the purpose of the amendment, which was to ensure states apply that law as Congress intended.[29] Moreover, by Defendant's logic, whenever Congress amends a statute and delegates some task to the administering agency, federal courts lose their power to enforce that statute until the the laborious rulemaking process is done (which, as here, can take years).

There is an entire line of cases addressing situations where a court's interpretation of a statutory term prior to rulemaking conflicts with the agency's subsequent interpretation. That line of cases would not exist if courts had no power to enforce statutes prior to rulemaking. In *National Cable & Telecommunications*

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[29] Under rules of statutory interpretation, and given the FNA's focus on uniform national standards, Congress did not intend the federal "fleeing felon" disqualification to be triggered by state definitions of "fleeing." *Opinion*, RE.91, ID#2713; *6/55/2015 Opinion*, RE.130, ID#3722. Moreover, state agency interpretations of federal law are not entitled to deference from federal courts. *Michigan Bell Tel. Co. v. Strand*, 305 F. 3d 580, 586 (6th Cir. 2002); *Bldg. Trades Employers' Educational Assn. v. McGowan*, 311 F.3d 501, 507 (2d Cir. 2002); *MCI Telecommunication Corp. v. Bell Atl. Pennsylvania*, 271 F.3d 491, 515 (3d Cir. 2001); *GTE South, Inc. v. Morrison*, 199 F.3d 733, 745 (4th Cir. 1999); *United States v. Alexander*, 938 F.2d 942, 946 n.6 (9th Cir. 1991); *see also Smith v. Babcock*, 19 F.3d 257, 266 (6th Cir. 1994) (Kennedy, J. dissenting) ("I do not believe the principle of deference to an agency has any application where 50 different state agencies would have to be deferred to.").

Association v. Brand X Internet Services, the Supreme Court considered whether a lower court should have followed a prior judicial interpretation of the statutory term "telecommunications service", or instead should have deferred under *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.* to a subsequent, conflicting agency definition. 545 U.S. 967 (2005); 467 U.S. 837 (1984). In concluding that *Chevron* deference "does not depend on the order in which the judicial and administrative constructions occur," the court explicitly recognized that courts sometimes interpret statutes before agency rulemaking is complete.[30] *Brand X*, 545 U.S. at 982-83; *see also Neal v. United States*, 516 U.S. 284 (1996) (declining to defer to Commission's construction of term conflicting with court's prior interpretation).

This Court, in *Lynch v. Lyng* specifically rejected arguments that FNA amendments become effective only once USDA promulgates implementing regulations, rather than when the statutory change itself goes into effect. 872 F.2d 718 (6th Cir. 1989). There the statute directed: "the Secretary shall issue rules to carry out the amendments made by this title." *Id.* at 720. While the statutory amendment went into effect on 12/3/1985, the Secretary argued that the increased

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[30] The Defendant conflates the question of how much deference is due to a federal agency's interpretation of a statute with the question of whether a federal court must abdicate its responsibility to interpret the statute while the agency engages in rulemaking. Only the second question is before the court.

benefits due as a result need only begin by 8/1/1986, after the regulations were implemented. *Id.* at 719. This Court disagreed, holding that "legal effectiveness is not made subject to the Secretary's power every time a provision is not self-executing," but requires implementing regulations. *Id.* at 721. Likewise, here, the fact that USDA has yet to finalize revisions to 7 C.F.R. §273.11(n) does not mean §2015(k)(2) has not been in effect for the last seven years, much less that §2015(k)(1) suddenly ceased being in effect when the 2008 "technical clarification" was added. *See also Walton v Hammons*, 192 F.3d 590, 601 n.11 (6th Cir. 1999) (enforcing PRWORA before USDA issued implementing regulations).

2. The Proposed Regulations Seek to Ensure that Only Individuals Who Are Actually Fleeing and Actively Sought by Law Enforcement Are Disqualified.

USDA published proposed regulations in August 2011 that would update the existing 7 C.F.R. §273.11(n), by specifying criteria for imposing a "fleeing" felon disqualification.[31] 76 Fed. Reg. 51907. Defendant mistakenly argues that USDA's

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[31] The district court did not usurp USDA's rulemaking authority. The court's *Opinion* leaves plenty of room for prescribing the details. Indeed, the holding does not conflict with the proposed regulations, which specify two situations in which disqualifications may be imposed: (1) where law enforcement present a felony warrant for flight or escape to the state agency for purposes of locating the person, or (2) the state agency documents that: (i) the individual has an outstanding felony warrant; (ii) the individual is aware of, or should reasonably have expected a warrant has or would have been issued; (iii) the individual has taken some action to avoid being arrested or jailed; and (iv) law enforcement is actively seeking the

description of the current inconsistency in states' interpretations of the statutory fleeing felon disqualification provision, means that USDA **approved** the inconsistent policies. Exactly the opposite is true. USDA was identifying the problem Congress meant to correct: "inadequate guidance to the States has resulted in…denying Food Assistance to individuals whose offense[s] were so minor or so long ago that law enforcement has no interest in pursuing them." 76 Fed. Reg. 51908.

USDA expressed particular concern about data match systems like Defendant's, because of the systems' problems, which are illustrated by the named Plaintiffs' experiences. 76 Fed. Reg. at 51907, 51909-10 ("the outstanding or active warrant may not belong to the SNAP recipient, …households often find it difficult or impossible to resolve these warrants… State agencies have denied or terminated individuals [] where there is no reasonable way for the individual to resolve the warrant and law enforcement agency has not taken any action to execute the warrant…the applicable law enforcement agency may not be interested in pursuing the warrant.")

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person. 76 Fed. Reg. 51913 (proposed 7 C.F.R. §273.11(n)). In the second situation, "all four items have to be present and verified." 76 Fed. Reg. 51909. The law enforcement agency must verify it is "actively seeking" the person by a statement that the agency intends to enforce an outstanding felony warrant within specified timeframes. 76 Fed. Reg. at 51913 (proposed 7 C.F.R. §273.11(n)(3)).

USDA's commentary explicitly disapproved disqualifications based on a warrant alone because it "does not provide sufficient information to determine that the individual is actually a fleeing felon who is being actively sought by a law enforcement agency." 76 Fed. Reg. at 51910.

D. The District Court Correctly Looked to Caselaw Construing Almost Identical Provisions in the Social Security Act.

The language of the Supplemental Security Income (SSI) "fleeing felon" disqualification, 42 U.S.C. §1382(e)(4), and the Food Assistance "fleeing felon" disqualification are "nearly identical."[32] *Opinion*, RE.91, ID#2718; *see also* Side by Side Comparison of Statutory Provisions, RE.80-11, ID#2469. Both provisions were enacted in 1996 as part of PRWORA, Pub. L. No. 104-193 §202, 110 Stat. at 2185-86 , RE.80-8, ID#2454, and "[t]here is accordingly a strong presumption that Congress meant the same thing by 'flee' in both provisions." *Opinion*, R.91, ID#2718.

Courts have consistently held that individuals cannot be disqualified from SSI under §1382(e)(4) unless the agency has proof the individual knows her apprehension is sought and is intentionally fleeing from justice. In *Oteze Fowlkes*

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[32] Under 42 U.S.C. §1382(e)(4)(A)(i), a person who is "fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees," is ineligible for SSI.

v. Adamec, the plaintiff, who was denied SSI based solely on an outstanding warrant, argued he had been unaware of the warrant and was not intentionally "fleeing." 432 F.3d 90, 96 (2d Cir. 2005). The Second Circuit, interpreting language virtually identical to that at issue here, held:

> **The statute does not permit the Commissioner to conclude simply from the fact that there is an outstanding warrant for a person's arrest that he is "fleeing to avoid prosecution,"** 42 U.S.C. §1382(e)(4)(A)… there must be some evidence that the person knows his apprehension is sought. The statute's use of the words "to avoid prosecution" confirms that for "flight" to result in a suspension of benefits, it must be undertaken with a specific intent, i.e., to avoid prosecution.

Id. at 96-97 (emphasis added). In light of *Fowlkes* and a series of similar cases[33], the Social Security Administration settled a nationwide class action in 2009, agreeing that only outstanding warrants for flight or escape would be disqualifying, and the mere existence of other felony warrants was not disqualifying. *Martinez v.*

[33] Cases holding a warrant alone is insufficient to show that person is "fleeing" for the purposes of disqualification from federal benefits include *Blakely v. Com'r of Soc.Sec.*, 330 F. Supp. 2d 910 (W.D. Mich. 2004); *Hull v. Barnhart*, 336 F. Supp. 2d 1113 (D. Or. 2004); *Garnes v. Barnhart*, 352 F. Supp. 2d 1059 (N.D. Cal. 2004); *Cambero v. Commissioner*, No. 1:06-cv-00551 (W.D. Mich. Sep. 10, 2007), RE.41-15.

Astrue, No. 08-CV-4735 CW (N.D. Cal. 2008), Settlement, Aug. 11, 2009, RE. 5-4, ID#262-63.[34]

Defendant objects that the Social Security Act has no provision similar to §2015(k)(2), requiring definitions and procedures to ensure that only individuals who are actually fleeing and actively sought are disqualified. However, the fact that §2015(k)(2) was added in 2008, after the *Fowlkes* decision, suggests Congress was trying to ensure that the principles of that decision were being followed in the Food Assistance context. Moreover, the "fleeing to avoid prosecution" language of §1382(e)(4), which is the basis of *Fowlkes* and other decisions about SSI, is contained in the portion of 7 U.S.C. §2015(k) that has not changed since 1996.

VIII. This Court Has Equitable Power to Enjoin the State Law and Policies that are Preempted by the FNA.

A. This Court Need Not Reach Count IV.

Plaintiffs have an individual right to Food Assistance under 7 U.S.C. §2014(a), enforceable via §1983 (Count III). Therefore, this Court need not rely on its general equity powers to enjoin Michigan's fugitive felon statute, M.C.L.A. §400.10b, and policy, BEM 204, in order to stop Defendant's ongoing violations of

[34] *See also* National Senior Citizens Law Center, *Advocates' Guide: Understanding the* Martinez *Settlement* (Sept. 2010), http://justiceinaging.org/wp-content/uploads/2015/03/Martinez-Advocate-Guide-LT.pdf.

7 U.S.C. §§2014(b), 2020(e)(5), and 2015(k) (Count IV). The relief Plaintiffs seek is the same under both counts III and IV.

However, if this Court reaches Count IV, Plaintiffs can enforce the FNA because federal courts acting in equity have a "long history of judicial review" of illegal state action and have authority to enforce federal law through their equitable powers. *Armstrong v. Exceptional Child Center, Inc.*, 135 S.Ct. 1378, 1385 (2015).

B. *Armstrong* Does Not Prevent the Courts from Using Their Equitable Powers to Enforce the FNA's Express Preemption Provisions and the Limits of §2015(k).

"Sections 2014(b) and 2020(e)(5) of the [FNA] expressly preempt eligibility requirements that exceed the federal eligibility requirements….Mich. Comp. Laws 400.10b and DHS's fugitive felon policy are therefore expressly preempted." *Opinion*, RE.91, ID#2721. Nevertheless, Defendant argues, based on a broad reading of *Armstrong*, that this Court cannot grant Plaintiffs relief even though federal law expressly preempts M.C.L.A. §400.10b.

However, *Armstrong* does not affect the outcome of this case because the Medicaid Act section at issue in *Armstrong* (§30A) was nothing like the FNA provisions at issue here. The district court correctly determined "the two aspects of §30A...that precluded equitable relief in *Armstrong* are not present" in this case. First, the FNA, unlike the Medicaid Act, "expressly contemplates private action to enforce its provisions." *Opinion and Order Denying Stay Pending Appeal* [*Opinion*

Denying Stay] , RE.130, ID#3721, Thus, here, unlike in *Armstrong*, the withholding of funds by the federal agency was not "the **sole** remedy Congress provided for a State's failure to comply 135 S.Ct. at 1385." *Id.* (emphasis added).

Second, the limitations imposed by §2015(k) are not "judicially unadministrable" like the "judgment-laden" factors, such as "efficiency", "economy", and "quality", that had to be interpreted and balanced to enforce §30A. *Opinion Denying Stay*, RE.130, ID#3723; *Armstrong*, 135 S.Ct. at 1385. Further, the FNA provisions at issue here do not "concern…rate-setting, a complex task that requires administrative expertise." *Armstrong*, 135 S.Ct. at 1385; *Opinion Denying Stay*, RE.130, ID#3723.

IX. The District Court Did Not Abuse Its Discretion By Striking Evidence Defendant Proffered After Judgement.

The district court's decision to strike new evidence Defendant submitted post-judgment is reviewed for abuse of discretion. *Int'l Union, United Auto., Aerospace, & Agr. Implement Workers of Am. v. Aguirre*, 410 F.3d 297, 304 (6th Cir. 2005). "[D]ecisions that are reasonable, that is, not arbitrary, will not be overturned." *Id.*

Defendant argues that because the court struck his untimely evidence, it decided his Motion for Reconsideration without "full and accurate facts." Appellant Brf, Doc.32-1, p.78. But "Counsel's job is, in part, to ensure the Court has complete and accurate facts before [not after] making a decision." *3/24/2015*

Opinion, RE.106, ID#3075. Whether under Fed.R.Civ.P 59(e) or E.D. Mich. Local Rule 7.1(h), a party may not introduce evidence for the first time in a motion for reconsideration where that evidence could have been presented earlier. *Sommer v. Davis*, 317 F.3d 686, 691 (6th Cir. 2003), *cert. den.* 540 U.S. 825 (2003). Moreover, "[e]ven if the Court were to consider defendant's new evidence, the outcome of this case would be no different." *3/24/2015 Opinion*, RE.106, ID#3075.

X. Strict Compliance With Fed. R. Civ. P. 52(a) May Be Waived.

The purpose of requiring district courts to state findings of fact and conclusions of law regarding the factors for injunctive relief "is to provide an appellate court with a clear understanding of the district court's decision." *Six Clinics Holding Corp. II v. CAFCOMP Sys, Inc.*, 119 F.3d 393, 400-01 (6th Cir. 1997). In cases, like this one, that "do…not present any genuine issue as to any material fact," strict compliance with Fed. R. Civ. P. 52(a) may be waived "on the ground that the error is not substantial in the particular case." *Urbain v. Knapp Bros. Mfg. Co.*, 217 F.2d 810, 816-17 (6th Cir. 1954).[35] To remand cases in which

[35] In the cases cited by the Defendant, *Mayo v. Lakeland Highlands Canning Co.*, 309 U.S. 310, 315-16 (1940); *First-Citizens Bank & Trust Co. v. Camp*, 432 F.2d 481, 483-84 (4th Cir. 1970), the record lacked any findings supporting an injunction, and there were disputed material facts or a party has not had an

the record is clear and facts are not disputed "would be both a waste of time and a needless expense." *Id.* at 817.

Here, the record adequately reflects the district court's findings as to the four factors for injunctive relief. First, as to irreparable harm for which there is no adequate remedy at law, thr court found that where plaintiffs are "challenging the legality of government action" and are "the object of the action, then there is ordinarily little question that the action…has caused injury." *Opinion*, RE.91, ID#2641. Recognizing the seriousness of this injury in light of Congress' purpose to "safeguard the health and well-being" and improve "levels of nutrition", *id* at ID#2634, the court stated that access to Food Assistance is the difference "between having enough food to avoid malnutrition and the attendant issues that happen when a child or adult is malnourished or undernourished." 11/14/14 Transcript, RE.119, ID#3363. Additionally, the court thoroughly discussed the procedural injury and length of time Plaintiffs suffered without assistance. *Opinion,* RE.91, ID#2641-55. The court's findings that Plaintiffs had been illegally deprived of Food Assistance,which is intended to prevent inadequate nutrition and injury to health, together with the absence of contested facts and extensive caselaw recognizing loss of a needs-based assistance as irreparable harm, satisfies the

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opportunity to present rebutting evidence or defenses. By contrast, here there are no genuine issue of material fact.

irreparable harm factor. *See, e.g., Haskins v. Stanton*, 794 F.2d 1273, 1276-77 (7th Cir. 1986); *Reynolds v. Giuliani*, 35 F.Supp. 2d 331, 339 (S.D.N.Y. 1999), *rev'd on other grounds* 506 F.3d 183 (2nd Cir. 2007); *see also Goldberg*, 397 U.S. at 260-65 (every day that indigent people go without subsistence-level benefits is a day of "brutal need," causing physical and emotional effects that cannot be compensated with later payments).

The district court addressed the lack of adequate legal remedies in the section titled, "Inadequacy of State Remedies." *Opinion*, RE.91, ID# 2691-92. This Court has recognized, "one who has been denied basic subsistence for one year is not really made whole by being given one year's worth of food in a lump sum at the end of the year." *Lynch*, 872 F.2d at 723. Moreover, as Defendant notes, the Eleventh Amendment bars the court from retroactively awarding money. Sur-Reply Opposing Summary Judgment, RE.87, ID#2580-82.

The first two factors are enough to support an injunction against Defendant's unconstitutional notices. *Warren v. City of Athens, Ohio*, 411 F.3d 697, 711 (6th Cir. 2005).

As to the last two factors, Defendant argued his policy was in the public interest, but never entered any evidence of hardship to balance against Plaintiffs' irreparable harm. *See* Response Opposing PI, RE.30, ID#616-18; Response Opposing Summ J, RE.75, ID#2277-80. Defendant asserted a public interest in

enforcing M.C.L.A. §400.10(b), *id*, and in not assisting ineligible individuals, *Response Opposing PI*, RE.30, ID#616. But the court correctly determined that §400.10(b) violates both federal law and Plaintiffs' federal rights, and should be enjoined under *Ex Parte Young*, 209 U.S. 123 (1908). Accordingly, the court implicitly and correctly rejected Defendant's claim that enjoining wrongful denials of needs-based assistance is not in the public interest.

For the foregoing reasons, the judgment of the district court should be affirmed.

/s/Jacqueline Doig
Center for Civil Justice

/s/Miriam J. Aukerman
American Civil Liberties Union Fund of Michigan

CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because the word counting feature of counsel's word processing programs shows that this brief contains 13,952 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. B. 32(A)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font.

/s/Jacqueline Doig
Jacqueline Doig (P37105)

CERTIFICATE OF SERVICE

I certify that on June 9, 2015 I filed the foregoing paper with the Clerk of Court using the Court's electronic filing system which will send notice of such filing to all counsel of record.

/s/Jacqueline Doig
Jacqueline Doig (P37105)

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Note Regarding Citations to District Court Record

Many of the documents in this case were filed as Exhibits in support of multiple pleadings and motions. Most of the documents were compiled and filed as Exhibits to Plaintiffs' Motion for Summary Judgment (RE.49-2 through 49-17, 50 through 50-16, 51 through 51-16, and 52 through 52-9 Pg ID#1460-1799).

In this brief, in lieu of providing parallel citations, Plaintiffs have cited to the Exhibit to Plaintiffs' Motion for Summary Judgment or, if the document was not an exhibit to that motion, to the most recent filing of the document cited.

Per the Federal Rules of Appellate Procedure for the Sixth Circuit, Plaintiffs-Appellees designate the following portions of the record on appeal:

Description of the Document	**Date**	**District Court Record Entry Number**	**Page ID Number**
Complaint	7/24/2013	RE 1	1–56
Motion for Class Certification	7/25/2013	RE 4	158–188
Motion for a Preliminary Injunction	7/25/2013	RE 5	201–240
Exhibit C – *Martinez v. Astrue*, No. 08-CV-4735 CW (N.D. Cal. 2008), Settlement, Aug. 11, 2009	7/25/2013	RE 5-4	256–286
First Amended Complaint	8/13/2013	RE 7	288–354

Ex Parte Motion for Temporary Restraining Order	8/14/2013	RE 8	469–486
Defendant's Response to Plaintiffs' Motion for Preliminary Injunction and Temporary Restraining Order	9/11/2013	RE 30	588–620
Defendant's Response to Motion for Class Certification	9/11/2013	RE 31	674–701
Plaintiffs' Reply to Response to Motion for Class Certification	9/16/2013	RE 32	726–736
Plaintiffs' Reply to Responses to Motion for Preliminary Injunction and Motion for Temporary Restraining Order	9/16/2013	RE 33	777–789
Order Denying Motion for Preliminary Injunction and Motion for Temporary Restraining Order	9/25/2013	RE 35	818
Defendant's Motion to Dismiss and/or for Summary Judgment	10/11/2013	RE 36	819–854
Exhibit 12 – *Almendares v. Palmer*, No. 3:00CV7524, 2002 U.S. Dist. LEXIS 23258 (N.D. Ohio Dec. 3, 2002)	10/11/13	RE 36-5	866–879
Plaintiffs' Motion for Leave to File Amended Class Certification Motion and Second Amended Complaint	10/28/2013	RE 38	891–911
Plaintiffs' Amended Motion to Certify Class	10/28/2013	RE 39	943–973
Exhibit A – MSP Press Release	10/28/2013	RE 39-2	975
Exhibit B – Doig Resume	10/28/2013	RE 39-3	976–978
Exhibit D – Aukerman Resume	10/28/2013	RE 39-5	983–984
Exhibit E – DHS Trend Report	10/28/2013	RE 39-6	985
Plaintiffs' Response to Defendant's Motion to Dismiss and/or Summary Judgment	11/01/2013	RE 41	1202–1233

Exhibit D – 7/26/13 K. Heyse Email and 7/26/13 Benefit Notice	11/01/2013	RE 41-5	1282–1287
Exhibit N – *Cambero v. Commissioner*, 1:06-cv-00551 (W.D. Mich. Sep. 10, 2007)	11/01/2013	RE 41-15	1343–1354
Defendant's Reply to Response to Motion to Dismiss and/or Summary Judgment	11/18/2013	RE 47	1389–1408
Plaintiffs' Cross Motion for Summary Judgment	11/21/2013	RE 49	1413–1456
Index of Exhibits	11/21/2013	RE 49-1	1457–1459
Exhibit A – FOA Memo 12/21/12	11/21/2013	RE 49-2	1460–1465
Exhibit B – DHS OIG Memo 12/20/12	11/21/2013	RE 49-3	1466–1468
Exhibit C – BPB 2013-003	11/21/2013	RE 49-4	1469–1473
Exhibit D – BEM 204 eff. 6/1/13	11/21/2013	RE 49-5	1474–1476
Exhibit E – BEM 204 eff. 7/1/13	11/21/2013	RE 49-6	1477–1479
Exhibit F – BEM 203 eff. 10/1/12	11/21/2013	RE 49-7	1480–1484
Exhibit G – BEM 203 eff. 5/1/13	11/21/2013	RE 49-8	1485–1489
Exhibit H – Meeting Minutes 7/6/11	11/21/2013	RE 49-9	1490–1496
Exhibit I – Fugitive Felon Interface Specifications 7/26/11	11/21/2013	RE 49-10	1497–1513
Exhibit J – BAM 800 eff. 2/1/2013	11/21/2013	RE 49-11	1514–1519
Exhibit K – BAM 800 eff. 6/1/13	11/21/2013	RE 49-12	1520–1523
Exhibit L – BAK 800 eff. 7/1/13	11/21/2013	RE 49-13	1524–1530
Exhibit M – BAM 811 eff. 2/1/13	11/21/2013	RE 49-14	1531–1533

Exhibit N – BAM 811 eff. 5/1/13	11/21/2013	RE 49-15	1534–1536
Exhibit O – BAM 811 eff. 7/1/13	11/21/2013	RE 49-16	1537–1539
Exhibit P – Training Materials 3/20/13	11/21/2013	RE 49-17	1540–1543
Exhibit Q – R. Thomas emails 2/28/13	11/21/2013	RE 50	1544–1550
Exhibit R – 12/31/12 Notice to W. Barry	11/21/2013	RE 50-1	1551–1555
Exhibit S – 5/16/13 Notice to W. Barry	11/21/2013	RE 50-2	1556–1562
Exhibit T – 6/14/13 Notice to W. Barry	11/21/2013	RE 50-3	1563–1568
Exhibit U – 12/31/12 Notice to D. Copeland	11/21/2013	RE 50-4	1569–1571
Exhibit V – 2/12/13 Notice to D. Copeland 2/12/13	11/21/2013	RE 50-5	1572–1574
Exhibit W – 1/10/13 Notice to K. Anderson	11/21/2013	RE 50-6	1575–1578
Exhibit X – 3/18/13 Notice to K. Anderson	11/21/2013	RE 50-7	1579–1582
Exhibit Y – 8/1/13 Notice to H. Woodward	11/21/2013	RE 50-8	1583–1588
Exhibit Z – 7/23/13 Declaration of E. Barry	11/21/2013	RE 50-9	1589–1597
Exhibit AA – 1/8/13 Detroit PD Statement	11/21/2013	RE 50-10	1598–1599
Exhibit BB – 1/15/13 Medical Needs Form	11/21/2013	RE 50-11	1600–1601
Exhibit CC – 2/1/13 Hearing Decision	11/21/2013	RE 50-12	1602–1607
Exhibit DD – 5/22/13 Hearing Summary	11/21/2013	RE 50-13	1608–1609
Exhibit EE – 5/16/13 R. Thomas Statement	11/21/2013	RE 50-14	1610–1611

Exhibit FF – 8/13/13 Second Declaration of E. Barry	11/21/2013	RE 50-15	1612–1616
Exhibit GG – 7/26/13 Notice to W. Barry	11/21/2013	RE 50-16	1617–1618
Exhibit HH –8/5/13 11:04AM K. Heyse Email	11/21/2013	RE 51	1619–1622
Exhibit II – 8/5/13 1:03PM K. Heyse Email	11/21/2013	RE 51-1	1623–1624
Exhibit JJ – 8/7/13 Detroit PD Statement	11/21/2013	RE 51-2	1625–1626
Exhibit KK – 8/8/13 Detroit PD Statement	11/21/2013	RE 51-3	1627–1628
Exhibit LL – 8/2/13 OIG letter to MSP	11/21/2013	RE 51-4	1629–1630
Exhibit MM – 9/13/13 K. Heyse Email to ALJ	11/21/2013	RE 51-5	1631–1632
Exhibit NN – 9/13/13 Doig Letter to ALJ	11/21/2013	RE 51-6	1633–1635
Exhibit OO – Transcript of 9/16/13 Hearing	11/21/2013	RE 51-7	1636–1669
Exhibit PP – 9/25/13 Hearing Decision	11/21/2013	RE 51-8	1670–1675
Exhibit QQ – 8/13/13 Declaration of H. Woodward	11/21/2013	RE 51-9	1676–1682
Exhibit RR – June 2011 Misdemeanor Citation	11/21/2013	RE 51-10	1683–1684
Exhibit SS – Register of Actions 23rd DCt Case 11-1717-OM	11/21/2013	RE 51-11	1685–1688
Exhibit TT – ICHAT on H. Woodward 8/6/13	11/21/2013	RE 51-12	1689–1692
Exhibit UU – 1/13/13 Complaint	11/21/2013	RE 51-13	1693–1694
Exhibit VV – Judicial Warehouse Report printed 8/14/13	11/21/2013	RE 51-14	1695–1697
Exhibit WW – Register of Actions printed 9/4/13	11/21/2013	RE 51-15	1698–1699

Exhibit XX – Incident Report 12/7/12	11/21/2013	RE 51-16	1700–1705
Exhibit YY – Declaration of Warren Calkins	11/21/2013	RE 52	1706–1710
Exhibit ZZ – 9/13/13 Second Declaration of H. Woodward	11/21/2013	RE 52-1	1711–1716
Exhibit AAA – 11/13/12 Detroit PD Crime Report	11/21/2013	RE 52-2	1717–1720
Exhibit BBB – 11/14/12 Detroit PD Crime Report	11/21/2013	RE 52-3	1721–1722
Exhibit CCC – 11/19/13 Declaration of D. Copeland	11/21/2013	RE 52-4	1723–1727
Exhibit DDD – Sample SSA Fleeing Felon Notice	11/21/2013	RE 52-5	1728–1734
Exhibit EEE – Children Protective Services Manual (PSM) 713-2	11/21/2013	RE 52-6	1735–1741
Exhibit FFF – Children's Foster Care Manual (FOM) 722-6A	11/21/2013	RE 52-7	1742–1749
Exhibit GGG – Juvenile Justice Manual (JJ2) 280	11/21/2013	RE 52-8	1750–1758
Exhibit HHH – Statement of Uncontested Facts	11/21/2013	RE 52-9	1759–1799
Exhibit A to Plaintiffs' Response to Defendant's Motion to Strike Plaintiffs' Cross Motion for Summary Judgment – Partial Transcript of Hearing 9/18/2013	11/27/2013	RE 58	1872–1897
Order Granting Plaintiffs' Motion for Leave to File Amended Motion for Class Certification and Second Amended Complaint	8/14/2014	RE 69	1937–1942
Second Amended Complaint	8/27/2014	RE 70	1943–2026
Exhibit S – 11/14/12 Police Report naming Ronesha Williams	8/27/2014	RE 70-20	2076
Exhibit BB – BEM 203 eff. 6/1/13	8/27/2014	RE 70-29	2117–2119

Exhibit II – Bridges Individual Demographic Screen "Conviction Information"	8/27/2014	RE 70-36	2140–2141
Defendant's Objection to Amended Motion to Certify Class	9/15/2014	RE 74	2170–2203
Exhibit 1 – 9/11/14 D. Shaw Affidavit	9/15/2014	RE 74-2	2206–2227
Defendant's Response to Plaintiffs' Cross Motion for Summary Judgment and Supporting Brief	9/15/2014	RE 75	2236–2281
Plaintiffs' Sur-Reply to Defendant's Motion to Dismiss and/or for Summary Judgment and Supporting Brief	9/26/2013	RE 76	2313–2281
Plaintiffs' Reply to Response to Amended Motion to Certify Class	9/29/2014	RE 79	2327–2342
Exhibit C – Declaration of John Shea	9/29/2014	RE 79-4	2374–2379
Exhibit D – BAM 406 eff. 7/1/2013	9/29/2014	RE 79-5	2380–2385
Exhibit E – 9/26/14 Declaration of Kenneth Anderson	9/29/2014	RE 79-6	2386–2388
Exhibit F – 2/27/13 MSP Division I Email	9/29/2014	RE 79-7	2389–2391
Exhibit H – Orders of Dismissal – Donitha Copeland	9/29/2014	RE 79-9	2399–2401
Exhibit J – 8/12/14 Doig Emails	9/29/2014	RE 79-11	2405–2408
Plaintiffs' Reply to Response to Cross Motion for Summary Judgment	9/29/2014	RE 80	2409–2425
Exhibit B – Third Declaration of E. Barry 9/29/14	9/29/2014	RE 80-3	2430–2436
Exhibit G – Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193 §§ 202 and 821; 110 Stat. 2105, 2321, & 2185–86	9/29/2014	RE 80-8	2453–2455
Exhibit H – H. Rep. No. 104-651 and	9/29/2014	RE 80-9	2456–2460

H. Conf. Report 104-725 at 462			
Exhibit J – Side by Side Comparison of SNAP Act, Medicaid, and SSI provisions	9/29/2014	RE 80-11	2465–2470
Defendant's Second Motion to Dismiss and/or for Summary Judgment	9/30/2014	RE 81	2471–2508
Exhibit E to Plaintiffs' Reply to Response to Cross Motion for Summary Judgment – Second Declaration of Donitha Copeland	10/6/2014	RE 83	2510–2513
Plaintiffs' Response to Defendant's Second Motion to Dismiss and/or for Summary Judgment	10/24/2014	RE 85	2520–2558
Defendant's Sur-Reply to Amended Motion to Certify Class	10/31/2014	RE 86	2559–2571
Defendant's Sur-Reply to Cross Motion for Summary Judgment	10/31/2014	RE 87	2572–2584
Defendant's Reply to Response to Motion to Dismiss and/or for Summary Judgment	11/3/2014	RE 88	2585–2597
Plaintiffs' Supplemental Brief re Amended Motion to Certify Class	11/7/2014	RE 89	2598–2600
Opinion and Order Denying in Part and Granting in Part Defendant's Motion to Dismiss and/or for Summary Judgment, Granting Plaintiffs' Amended Motion to Certify Class, and Granting Plaintiffs' Motion for Summary Judgment	1/9/2015	RE 91	2632–2728
Defendant's Motion for Reconsideration or to Alter Judgment	1/23/2015	RE 93	2734–2757
Defendant's Motion to Stay Judgment Pending Outcome of Motion for Reconsideration or to Alter Judgment	1/23/2015	RE 94	2774–2795
Plaintiffs' Motion to Strike Exhibits to Defendant's Motion for Reconsideration or to Alter Judgment	1/28/2015	RE 95	2820–2830

Plaintiffs' Response to Defendant's Motion to Stay Judgment Pending Outcome of Motion for Reconsideration or to Alter Judgment	2/5/2015	RE 97	2832–2850
Defendant's Response to Plaintiffs' Motion to Strike Exhibits to Defendant's Motion for Reconsideration or to Alter Judgment	2/17/2015	RE 99	2903–2923
Defendant's Reply to Motion to Stay Judgment Pending Outcome of Motion for Reconsideration	2/17/2015	RE 100	2924–2934
Plaintiffs' Reply to Response to Motion to Strike Exhibits to Defendant's Motion for Reconsideration or to Alter Judgment	2/27/2015	RE 103	2958–2968
Plaintiffs' Reply to Defendant's Objection Regarding Notice to Class	3/6/15	RE 104	2669–2993
Exhibit A-1 – 1/27/15 Anderson Notice	3/6/2015	RE 104-3	3001–3005
Exhibit A-2 – 2/9/15 A.P. Notice	3/6/2015	RE 104-4	3006–3009
Exhibit A-6 – BAM 811 Fugitive Felon Match eff. 7/1/14	3/6/2015	RE 104-8	3023–3025
Exhibit B – BEM 554	3/6/2015	RE 104-9	3026–3028
Opinion and Order Partially Granting and Partially Denying Plaintiffs' Motion to Strike Exhibits to Defendant's Motion for Reconsideration or to Alter Judgment, Denying Defendant's Motion for Reconsideration or to Alter Judgment, and Denying Defendant's Motion to Stay	3/24/2015	RE 106	3066–3085
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Defendant's Motion to Stay Pending Appeal	3/27/2015	RE 109	3095–3116
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Defendant's Notice of Appeal	3/31/2015	RE 112	3127–3129
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and Implementation of the Court's January 9, 2015 Order			
Transcript of Status Conference held on 3/24/2015	4/7/2015	RE 115	3143–3238
Plaintiffs' Response to Motion to Stay Pending Appeal	4/10/2105	RE 116	3239–3240
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Transcript of Motion for Class Certification/Motion to Dismiss/Motions for Summary Judgment held on 11/14/14	4/21/2015	RE 119	3264–3367
Defendant's 4/21/15 Compliance Report	4/21/2015	RE 120	3368–3375
Defendant's Supplemental Brief re Motion for Stay Pending Appeal	4/22/2015	RE 121	3507–3517
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Plaintiffs' Motion for Show Cause Order	5/18/2015	RE 125	3560–3593
Opinion and Order Denying Defendant's Motion for Stay of Judgment Pending Appeal	6/5/2015	RE 130	3713–3724