No. _____

IN THE
Supreme Court of the United States

NANCY WILLIAMS, ET AL.,
Petitioners,

v.

FITZGERALD WASHINGTON,
ALABAMA SECRETARY OF LABOR,
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Alabama

PETITION FOR A WRIT OF CERTIORARI

MICHAEL FORTON
LAWRENCE GARDELLA
FARAH MAJID
CHISOLM ALLENLUNDY
LEGAL SERVICES ALABAMA
2567 Fairlane Drive, Suite 200
Montgomery, AL 20787
(256) 551-2671
mforton@alsp.org

ADAM G. UNIKOWSKY
Counsel of Record
ARJUN R. RAMAMURTI*
JENNER & BLOCK LLP
1099 New York Ave., NW
Suite 900
Washington, DC 20001
(202) 639-6000
aunikowsky@jenner.com

* *Not admitted in the District of Columbia; practicing under direct supervision of members of the D.C. Bar*

QUESTION PRESENTED

Whether exhaustion of state administrative remedies is required to bring claims under 42 U.S.C. § 1983 in state court.

LIST OF PARTIES AND PROCEEDINGS

Petitioners are Nancy Williams, Aaron Johnson, Derek Bateman, Dashonda Bennett, Latisha Kali, Quinton Lee, Esta Glass, Joyce Jones, Deja Bush, Jarvis Dean, Taja Penn, Lisa Cormier, Tammy Cowart, John Young, Latara Jackson, Senata Waters, Raymond Williams, Crystal Harris, Rashunda Williams, Mark Johnson, Mia Brand, and Cynthia Hawkins, who were Plaintiffs-Appellants in the Supreme Court of Alabama.

Respondent is Fitzgerald Washington, Alabama Secretary of Labor, who was Defendant-Appellee in the Supreme Court of Alabama.

There are no related proceedings.

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Nancy Williams, Aaron Johnson, Derek Bateman, Dashonda Bennett, Latisha Kali, Quinton Lee, Esta Glass, Joyce Jones, Deja Bush, Jarvis Dean, Taja Penn, Lisa Cormier, Tammy Cowart, John Young, Latara Jackson, Senata Waters, Raymond Williams, Crystal Harris, Rashunda Williams, Mark Johnson, Mia Brand, and Cynthia Hawkins respectfully petition for a writ of certiorari to review the judgment of the Supreme Court of Alabama.

OPINIONS BELOW

The decision of the Supreme Court of Alabama (Pet. App. 1a-26a) is reported at --- So. 3d ---, 2023 WL 4281620 (Ala. June 30, 2023). The Montgomery County Circuit Court's dismissal of the suit (Pet. App. 27a-28a) and denial of reconsideration (Pet. App. 29a) are unreported.

JURISDICTIONAL STATEMENT

The judgment of the Supreme Court of Alabama was entered on June 30, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

RELEVANT STATUTORY PROVISIONS

42 U.S.C. § 1983 provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the

> Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .

INTRODUCTION

In *Patsy* v. *Board of Regents*, this Court held that "exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to [42 U.S.C.] § 1983." 457 U.S. 496, 516 (1982). In this case, a sharply divided Supreme Court of Alabama required Petitioners to exhaust their state administrative remedies prior to bringing suit, which is precisely what this Court prohibited in *Patsy*. The Supreme Court of Alabama reasoned that *Patsy* does not apply in state court, but that conclusion cannot be squared with *Patsy*'s reasoning and contradicts numerous cases from this Court establishing that state courts must heed this Court's interpretation of § 1983. As the dissent below recognized, the Supreme Court of Alabama's decision conflicts with the decisions of several state supreme courts and defies this Court's precedent. The Court should grant certiorari and reverse.

Petitioners are Alabama residents who filed unemployment compensation claims with the Alabama Department of Labor. After experiencing extreme delays in the processing of their applications, Petitioners filed suit under § 1983 alleging that Respondent's failure to act on their applications and provide the notices and hearings to which they were entitled violated their federal constitutional and statutory rights. Though the Supreme Court of Alabama recognized that "all" of Petitioners' claims were "federal claims brought under

the Civil Rights Act of 1871, 42 U.S.C. § 1983," Pet. App. 3a, it nonetheless dismissed Petitioner's amended complaint on the ground that state courts lacked jurisdiction over Petitioners' § 1983 suit. The sole basis for the court's dismissal was Petitioners' failure to exhaust the administrative appeals process governing unemployment compensation claims provided for by state law. *Id.* at 6a. In reaching that conclusion, the Supreme Court of Alabama explicitly acknowledged this Court's decision in *Patsy*, but it said that § 1983 plaintiffs could not "compel *State* courts to adjudicate federal claims that lie outside the State courts' jurisdiction." *Id.* at 11a (emphasis in original).

That reasoning defies *Patsy*. *Patsy* held that "exhaustion of administrative remedies in § 1983 actions should not be judicially imposed." 457 U.S. at 502. That interpretation of § 1983 applies in *all* courts, state or federal law. State courts may not ignore this Court's interpretations of federal statutes. *James* v. *City of Boise*, 577 U.S. 306, 307 (2016) (per curiam).

Felder v. *Casey*, 487 U.S. 131 (1988), confirms what is clear on *Patsy*'s face: *Patsy*'s no-exhaustion rule applied equally to § 1983 claims filed in state court. As the Court explained, "there is simply no reason to suppose that Congress meant 'to provide . . . individuals immediate access to the federal courts notwithstanding any provision of state law to the contrary,' yet contemplated that those who sought to vindicate their federal rights in state courts could be required to seek redress in the first instance from the very state officials whose hostility to those rights precipitated their

injuries." *Id.* at 147 (quoting *Patsy*, 457 U.S. at 504). Whether in federal court or state court, administrative exhaustion requirements impermissibly interfere with § 1983's "central purpose" of "provid[ing] compensatory relief to those deprived of their federal rights by state actors." *Id.* at 141.

In addition, this case meets the Court's other criteria for certiorari. As the dissent below observed, the Supreme Court of Alabama's decision conflicts with the decisions of several other state high courts that have read *Patsy* to compel state courts to hear § 1983 claims that have not been administratively exhausted. Pet. App. 22a-23a. This case is a good vehicle to resolve the question presented because failure to exhaust formed the only basis for the Supreme Court of Alabama's dismissal below. And the question presented is of great legal and practical significance, both in clarifying the proper roles of federal and state courts in enforcing federal civil rights laws, and in ensuring that civil-rights plaintiffs have certainty as to the procedural rules that will govern their choice of forum.

The Court should grant certiorari and reverse the Supreme Court of Alabama.

STATEMENT OF THE CASE

A. Statutory Background

1. Section 1983, 42 U.S.C. § 1983, creates a cause of action against any person who acts under color of state law to abridge rights created by the Constitution and laws of the United States. *See generally Monroe* v. *Pape*, 365 U.S. 167 (1961). "In our federal system of

government, state as well as federal courts have jurisdiction over suits brought pursuant to [§ 1983]." *Haywood* v. *Drown*, 556 U.S. 729, 731 (2009).

2. The State of Alabama, by statute, has created an unemployment compensation benefits scheme for Alabama residents. *See* Ala. Code § 25-4-90 *et seq*. According to that statutory scheme, any person seeking unemployment compensation benefits must file an application with the Alabama Department of Labor. In most cases, an examiner designated by the Alabama Secretary of Labor will then make a "determination" with respect to the applicant's claim. *Id.* § 25-4-91(a). That determination will either specify how much the claimant is entitled to receive or provide an explanation as to why the claim has been denied. *Id.* If the claimant objects to the examiner's determination, the statutory scheme requires the claimant to seek a hearing with one of the Department's "appeals tribunals," which are individual officers or employees of the Department who are empowered to adjudicate "disputed claims and other due process cases." *Id.* § 25-4-92(a). In addition, the Department has a board of appeals that "may remove to itself or transfer to another appeals tribunal the proceedings on any claim pending before an appeals tribunal." *Id.* § 25-4-94(a). In either scenario, the appellate body reviewing the claim (either the appeals tribunal or the board of appeals) "shall . . . promptly notif[y]" the parties in writing of its findings and decision, together with the reasons for its decision. *Id.* § 25-4-93 (appeals tribunal); *id.* § 25-4-94(a) (board of appeals).

As relevant here, the statutory scheme includes an administrative exhaustion requirement that governs when a party aggrieved by the Department's determination may seek state court review. *See id.* § 25-4-95. That requirement provides that "[n]o circuit court shall permit an appeal from a decision allowing or disallowing a claim for benefits unless the decision sought to be reviewed is that of an appeals tribunal or of the board of appeals and unless the person filing such appeal has exhausted his administrative remedies as provided by this chapter." *Id.* Finally, the scheme states that the "procedure provided . . . for the making of determinations with respect to claims for unemployment compensation benefits and for appealing from such determinations shall be exclusive." *Id.* § 25-4-96. Alabama courts understand this provision to impose a jurisdictional limitation on challenges to any unemployment compensation claim. *See Quick* v. *Utotem of Ala., Inc.*, 365 So. 2d 1245, 1247 (Ala. Civ. App. 1979).

B. Proceedings Below

1. Petitioners are unemployment compensation benefits claimants in Alabama who have experienced extreme delays and other irregularities in the processing of their unemployment compensation claims. For example, as alleged in Petitioners' amended complaint, the Department of Labor took months to make initial determinations on Petitioners' claims for unemployment-compensation benefits, and some Petitioners never received these determinations; the Department stopped or denied benefits for some claimed weeks without notice or with deficient notice; and the

Department failed to schedule requested hearings to appeal the Department's determinations. *See, e.g.*, Pet. App. 2a-3a, 23a (summarizing Petitioners' allegations).

Petitioners filed their amended complaint in the Circuit Court of Montgomery County, claiming under § 1983 that Respondent's administration of Alabama's unemployment compensation scheme violated their constitutional due-process rights and their federal statutory rights under the Social Security Act of 1935, 42 U.S.C. § 503(a)(1). Petitioners requested several injunctions, including an injunction directing the Respondent to "promptly make decisions on all applications" for unemployment compensation, and an injunction to provide confirmation to any claimant who requested a hearing and to schedule such hearing "not more than 90 days later than the request for the hearing." Pet. App. 4a.

2. Respondent moved to dismiss the amended complaint on various grounds, including on the basis that the Circuit Court lacked jurisdiction to hear Petitioners' suit because Petitioners had not exhausted the administrative remedies provided for in state law. The Circuit Court granted the motion to dismiss without issuing a written opinion or specifying the grounds for the dismissal. *See id.* at 27a-28a. The Circuit Court also denied without explanation Petitioners' motion to alter, amend, or vacate its judgment of dismissal. *See id.* at 29a.

3. The Supreme Court of Alabama affirmed the Circuit Court's dismissal based solely on Petitioners' failure to exhaust their state administrative remedies before bringing suit. *Id.* at 6a. Though the majority

opinion recognized that "all" of the claims in the amended complaint were "federal claims brought under the Civil Rights Act of 1871, 42 U.S.C. § 1983," *id.* at 3a, it held that these claims must still be exhausted in accordance with the "exclusive" state administrative scheme authorizing the appeals tribunal to adjudicate "disputed claims and other due process cases," *id.* at 10a (quoting §§ 25-4-92(a) and 25-4-96).

In ruling on administrative exhaustion grounds, the Alabama Supreme Court specifically considered and rejected Petitioners' argument, quoting *Patsy v. Board of Regents*, 457 U.S. 496, 516 (1982), that "exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983." Pet. App. 11a. The majority opinion reasoned that "*Patsy* does not sweep nearly as broadly as the plaintiffs suggest," and that it "held only that the text of 42 U.S.C. § 1983, a federal statute, lacks an exhaustion requirement." *Id.* Moreover, the Alabama Supreme Court continued, even if § 1983 did "preempt[] any and all independent exhaustion requirements found in State law, that preemption would at most allow the plaintiffs to bring their unexhausted claims in *federal* court," and would not allow them to "compel *State* courts to adjudicate federal claims that lie outside the State courts' jurisdiction." *Id.* The Alabama Supreme Court said that the "national government has no 'power to press a State's own courts into federal service' by compelling them to exercise jurisdiction in contravention of their own State's laws,'" and that "any '[s]uch plenary federal control of state governmental processes' would unconstitutionally 'denigrate[] the

separate sovereignty of the States.'" *Id.* at 11a-12a (quoting *Alden* v. *Maine*, 527 U.S. 706, 749 (1999).

Justice Sellers concurred specially. He agreed that dismissal was proper under the state statute's "express" administrative exhaustion requirement, but explained that, in his view, administrative exhaustion is "generally mandatory as a 'judicially imposed prudential limitation'" even without an express exhaustion provision. *Id.* at 13a (citations omitted).

Justice Cook dissented, explaining that he would "reverse the judgment insofar as it dismisses all claims related to providing (1) timely claims processing, (2) timely appeals, and (3) actual notices of decisions." *Id.* at 26a n.9. He observed that the "unemployment-compensation system is designed to provide expeditious and prompt relief to persons who are without any income," and that "[y]ears of delay can mean, in large part, that the point of the benefit is lost." *Id.* at 25a n.8. As relevant here, Justice Cook disagreed with the majority opinion that the state administrative exhaustion scheme required dismissal of Petitioners' suit, observing that "neither [Respondent] nor the main opinion point to any authority indicating that the appeals tribunals have jurisdiction to determine claims arising under 42 U.S.C. § 1983." *Id.* at 19a. Justice Cook reasoned that *Patsy*'s language setting forth the no-exhaustion rule "is very broad and, on its face, includes no exceptions," and that the "main opinion provides no explanation for why *Patsy*'s direct and broad holding should be overridden without, at least, express statutory language stripping jurisdiction from Alabama courts." *Id.* at 20a. And he observed that "[e]ven if § 25-4-95 had

attempted to strip jurisdiction from Alabama's circuit courts for § 1983 claims (or any other federal claims), I am not convinced that it could do so." *Id.*

In support of that position, Justice Cook further noted this Court had "recently upheld the principle from *Patsy* that exhaustion of state administrative remedies is not a prerequisite to an action under § 1983." *Id.* at 21a (citing *Pakdel* v. *City & Cnty. of San Francisco*, 141 S. Ct. 2226, 2230 (2021)). And he noted that the majority opinion also could not be squared with federal appellate and state high court decisions from across the country that have held that a "plaintiff who brings a § 1983 action in state court need not first initiate or exhaust state administrative remedies." *Id.* at 22a-23a (citing eight additional cases to the contrary).

REASONS FOR GRANTING THE WRIT

In dismissing Petitioners' § 1983 suit for failing to exhaust state administrative remedies, the Supreme Court of Alabama defied this Court's clear directive in *Patsy* v. *Board of Regents* that § 1983 plaintiffs need not exhaust state administrative remedies before seeking judicial review. As the dissent below recognized, this decision is in direct conflict with the decisions of other state high courts and provides no sensible basis for its divergent holding. This case is a good vehicle to reinforce the important principle that state courts cannot delay the vindication of federal rights by forcing § 1983 plaintiffs to exhaust administrative remedies provided for in state law.

I. THE DECISION BELOW DEFIES THIS COURT'S CLEAR PRECEDENTS AND CONFLICTS WITH THE DECISIONS OF OTHER STATE HIGH COURTS.

A. The Decision Below Cannot Be Squared with This Court's Decision in *Patsy*.

For decades, this Court has adhered to the general rule that § 1983 plaintiffs need not exhaust state remedies before bringing suit. That no-exhaustion rule applies regardless of whether the state remedies in question are judicial or administrative in nature. *See, e.g.*, *Monroe*, 365 U.S. at 183; *McNeese* v. *Bd. of Educ.*, 373 U.S. 668, 671 (1963). The decision below flouts this clear rule.

1. In *Patsy* v. *Board of Regents*, 457 U.S. 496, 516 (1982), this Court squarely held that § 1983 plaintiffs need not exhaust state administrative remedies before bringing suit in federal court. The Court supported that conclusion with three primary arguments. First, the Court emphasized that it was "not writing on a clean slate." *Id.* at 500. Rather, beginning with *McNeese*, the Court had "on numerous occasions rejected the argument that a § 1983 action should be dismissed where the plaintiff has not exhausted state administrative remedies."[1] *Id.*; *see also id.* at 517 (White, J., concurring)

[1] The Court cited *Barry* v. *Barchi*, 443 U.S. 55, 63 n.10 (1979); *Gibson* v. *Berryhill*, 411 U.S. 564, 574 (1973); *Carter* v. *Stanton*, 405 U.S. 669, 671 (1972); *Wilwording* v. *Swenson*, 404 U.S. 249, 251 (1971), *superseded by statute as stated in Woodford* v. *Ngo*, 548 U.S. 81 (2006); *Houghton* v. *Shafer*, 392 U.S. 639, 640 (1968); *King* v. *Smith*, 392 U.S. 309, 312 n.4 (1968); and *Damico* v. *California*, 389 U.S. 416 (1967).

("For nearly 20 years and on at least 10 occasions, this Court has clearly held that no exhaustion of administrative remedies is required in a § 1983 suit."). Indeed, the Court explained it "has stated categorically that exhaustion is not a prerequisite to an action under § 1983, and we have not deviated from that position in the 19 years since *McNeese*." *Id.* at 500-01.

Second, the Court justified this longstanding no-exhaustion principle based on the likely intent of the Congress that enacted § 1 of the Civil Rights Act of 1871, the predecessor to § 1983. The purpose of § 1 was to ensure "immediate access to the federal courts" to individuals whose rights were being violated "notwithstanding any provision of state law to the contrary." *Id.* at 504; *see also Mitchum* v. *Foster*, 407 U.S. 225, 242 (1972) ("The very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights" (quoting *Ex parte Virginia*, 100 U.S. 339, 346 (1880))). As the *Patsy* Court explained, Congress sought to provide immediate access to federal court because "state authorities had been unable or unwilling to protect the constitutional rights of individuals or to punish those who violated these rights," and thus the no-exhaustion rule was in accord with the "mistrust that the 1871 Congress held for the factfinding processes of state institutions." 457 U.S. at 505-06. As the Court put it, the "perceived defect in the States' factfinding processes is particularly relevant to the question of exhaustion of administrative remedies" because "exhaustion rules are often applied in deference to the superior factfinding

ability of the relevant administrative agency." *Id.* at 506.

Finally, the Court in *Patsy* buttressed its no exhaustion rule by examining recent federal legislation creating a special exhaustion requirement for adult prisoners suing under § 1983. *Id.* at 507-12 (construing 42 U.S.C. § 1997e). The Court concluded that the existence of this "specific, limited exhaustion requirement" showed that "Congress understood that exhaustion is not generally required in § 1983 actions." *Id.* at 508. Thus, absent a congressional directive of the kind found in § 1997e, the "general no-exhaustion rule" ought to apply.[2] *Id.* at 510.

2. *Patsy*'s general rule that exhaustion of state administrative remedies is not required for § 1983 suits applies equally to suits brought in state court. Though *Patsy* announced its rule in the context of a dispute filed in federal court, its grounding in the history of the federal civil-rights laws, as well as its recognition that those laws provided for concurrent jurisdiction, clearly suggested that the same result would apply in § 1983 litigation brought in state court. *Cf. id.* at 506 (recognizing that § 1 of the Civil Rights Act was understood to "provide dual or concurrent forums in the

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[2] In addition to the limited exception found in § 1997e, this Court has recognized that federal courts may also decline to exercise jurisdiction in § 1983 suits seeking damages to redress the allegedly unconstitutional administration of a state tax system where the state has provided a plain, adequate, and complete remedy. *See Fair Assessment in Real Estate Ass'n* v. *McNary*, 454 U.S. 100 (1981); *see also Nat'l Private Truck Council, Inc.* v. *Okla. Tax Comm'n*, 515 U.S. 582 (1995). That exception does not apply here.

state and federal system, enabling the plaintiff to choose the forum in which to seek relief"). Indeed, *Patsy* repeatedly states the no-exhaustion rule categorically, without any reference to the suit being filed in federal court. *See, e.g.*, *id.* at 498 (framing the question presented simply as "whether exhaustion of state administrative remedies is a prerequisite to an action under 42 U.S.C. § 1983"); *id.* at 516 ("[W]e conclude that exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983.").

Felder v. *Casey*, 487 U.S. 131 (1988) confirms that *Patsy*'s no-exhaustion rule applies in state court. At issue in *Felder* was a Wisconsin notice-of-claim statute that required would-be plaintiffs seeking to sue a state or local governmental officer or entity in state court to "notify the governmental defendant of the circumstances giving rise to the claim, the amount of the claim, and his or her intent to hold the named defendant liable." *Id.* at 134. As relevant here, the Wisconsin statute included what the Court described as an "exhaustion requirement" directing plaintiffs to "provide the requisite notice of injury within 120 days of the civil rights violation, then wait an additional 120 days while the governmental defendant investigates the claim and attempts to settle it." *Id.* at 146-47; *see also Howlett ex rel. Howlett* v. *Rose*, 496 U.S. 356, 377 (1990) (explaining that in *Felder*, the Court considered a "Wisconsin notice-of-claim statute that . . . imposed an exhaustion requirement on claims against public agencies and employees"). After the Wisconsin Supreme Court applied this statute to a § 1983 suit filed

in state court, this Court granted certiorari and reversed. *Felder*, 487 U.S. at 138.

As the Court explained, *Patsy* compelled that result. *Id.* at 147. The "central purpose of the Reconstruction-Era laws is to provide compensatory relief to those deprived of their federal rights by state actors." *Id.* at 141. Given that purpose, the Court thought it "plain that Congress never intended that those injured by governmental wrongdoers could be required, as a condition of recovery, to submit their claims to the government responsible for their injuries." *Id.* at 142. Viewing the inquiry as fundamentally one of obstacle preemption under the Supremacy Clause, the Court concluded that "[b]ecause the notice-of-claim statute at issue here conflicts in both its purpose and effects with the remedial objectives of § 1983, and because its enforcement in such actions will frequently and predictably produce different outcomes in § 1983 litigation based solely on whether the claim is asserted in state or federal court," the Wisconsin law is "pre-empted when the § 1983 action is brought in a state court." *Id.* at 138.

To make matters crystal clear, the Court in *Felder* even explicitly addressed and rejected the argument that *Patsy*'s reasoning was somehow cabined only to actions brought in federal court: "Although it is true that the principal remedy Congress chose to provide injured persons was immediate access to *federal* courts, it did not leave the protection of such rights exclusively in the hands of the federal judiciary, and instead conferred concurrent jurisdiction on state courts as well." *Id.* at 147 (citing *Patsy*, 457 U.S. at 503-04, 506-07). Given this

fact of concurrent jurisdiction, and "[g]iven the evil at which the federal civil rights legislation was aimed, there is simply no reason to suppose that Congress meant 'to provide these individuals immediate access to the federal courts notwithstanding any provision of state law to the contrary,' yet contemplated that those who sought to vindicate their federal rights in state courts could be required to seek redress in the first instance from the very state officials whose hostility to those rights precipitated their injuries." *Id.* (quoting *Patsy*, 457 U.S. at 504).

Thus, *Patsy*'s reasoning compels the conclusion that § 1983 plaintiffs are not required to exhaust state administrative remedies before filing suit, regardless of whether the suit is brought in state court. The "dominant characteristic of civil rights actions" is that "*they belong in court*," "exist independent of any other legal or administrative relief that may be available as a matter of federal or state law," and are "judicially enforceable *in the first instance*." *Id.* at 148 (quoting *Burnett* v. *Grattan*, 468 U.S. 42, 50 (1984)) (emphasis in *Felder*).

3. Since *Felder*, this Court has continued to adhere to the general no-exhaustion rule for § 1983 suits. For example, in a recent case reversing the Ninth Circuit, cited by the dissenting judge below, the Court explained that requiring a form of administrative exhaustion in the takings context was "inconsistent with the ordinary operation of civil-rights suits" and conflicted with the "'settled rule' that 'exhaustion of state remedies is *not* a prerequisite to an action under . . . § 1983.'" *Pakdel* v. *City & Cnty. of San Francisco*, 141 S. Ct. 2226, 2230

(2021) (quoting *Knick* v. *Twp. of Scott*, 139 S. Ct. 2162, 2167 (2019)). And more broadly, in a series of cases, this Court has policed state attempts to impose various hurdles on a § 1983 plaintiff's ability to vindicate federal rights in state court. *See, e.g.*, *Haywood*, 556 U.S. at 736-37 (state law shielding state correction officers from damages in § 1983 suits in state court preempted under the Supremacy Clause); *Howlett*, 496 U.S. at 359 (state-law defense of "sovereign immunity" for a local school board not available in a state-court § 1983 suit because such defense would not have been available "if the action had been brought in a federal forum").

4. The decision of the Supreme Court of Alabama is wrong. Every aspect of its reasoning is squarely foreclosed by this Court's cases.

First, the Supreme Court of Alabama said that "*Patsy* does not sweep nearly as broadly as [Petitioners] suggest" because it "held only that the text of 42 U.S.C. § 1983, a federal statute, lacks an exhaustion requirement." Pet. App. 11a. According to the decision below, *Patsy* "certainly did not hold that State laws requiring administrative exhaustion as a prerequisite to State-court jurisdiction are unconstitutional." *Id.* The court then said that "[e]ven if it were true, as the [Petitioners] seem to believe, that § 1983 preempts any and all independent exhaustion requirements found in State law, that preemption would at most allow the plaintiffs to bring their unexhausted claims in *federal* court" and "would not allow them to compel *State* courts to adjudicate federal claims that lie outside the State courts' jurisdiction." *Id.*

But the Supreme Court of Alabama failed to recognize that *Patsy* was not a case about the scope of federal court jurisdiction. Instead, *Patsy* was a case about the meaning of § 1983. The Court authoritatively construed § 1983 to permit a plaintiff to proceed directly to court without exhausting administrative remedies. The Alabama Supreme Court was not at liberty to ignore this Court's interpretation of a federal statute. *See James*, 577 U.S. at 307 ("As Justice Story explained 200 years ago, if state courts were permitted to disregard this Court's rulings on federal law, 'the laws, the treaties, and the constitution of the United States would be different in different states, and might, perhaps, never have precisely the same construction, obligation, or efficacy, in any two states. The public mischiefs that would attend such a state of things would be truly deplorable." (quoting *Martin* v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 348 (1816)).

Nor is it relevant, as the decision below appears to believe, that the administrative exhaustion mechanism at issue here is framed as jurisdictional. A "jurisdictional rule cannot be used as a device to undermine federal law, no matter how evenhanded it may appear." *Haywood*, 556 U.S. at 739; *see also Howlett*, 496 U.S. at 382-83 ("The force of the Supremacy Clause is not so weak that it can be evaded by mere mention of the word 'jurisdiction.'"). However the state administrative exhaustion requirement is framed, it cannot be imposed on § 1983 plaintiffs proceeding in state court.

Finally, the Alabama Supreme Court said, citing *Alden* v. *Maine*, 527 U.S. 706, 749 (1999), that it would

"'denigrate[] the separate sovereignty of the States'" for the federal government to "'press a State's own courts into federal service' by compelling them to exercise jurisdiction in contravention of their own State's laws." Pet. App. 11a-12a. That reference fundamentally misunderstands the joint role that state and federal courts together play in protecting federal rights. Federal and state law "together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent." *Claflin* v. *Houseman*, 93 U.S. 130, 137 (1876). Ensuring that § 1983 plaintiffs need not exhaust administrative remedies whether they proceed in state or federal court does not "denigrate" the States, and *Alden* is best understood as a state sovereign immunity case with little bearing on the question presented. *Cf.* Pet. App, 20a-21a (Cook, J., dissenting) (noting *Alden* "involved the question whether the federal government could force a state to waive sovereign immunity in its own courts and is thus inapplicable here"). The relevant line of cases in the § 1983 context stretches back more than 60 years and consistently holds that exhaustion of state administrative remedies cannot be required in a § 1983 suit.

B. The Decision Below Conflicts with the Decisions of Other State High Courts.

As the dissent below explicitly recognized, the exhaustion rule adopted by the Supreme Court of Alabama conflicts with the rule that several other state

courts have adopted. *See* Pet. App. 22a-23a (citing cases from Montana, Connecticut, Alaska, Kansas, and Colorado). Several state courts have recognized that the consequence of *Patsy* is that exhaustion of state administrative remedies cannot be required for § 1983 claims filed in state court.

1. The following state courts of last resort have adopted a rule contrary to the rule of the decision below:

Alaska. The Supreme Court of Alaska does not require plaintiffs to exhaust state administrative remedies when they bring claims under § 1983 in state court. *RBG Bush Planes, LLC* v. *Kirk*, 340 P.3d 1056, 1062-63 (Alaska 2015); *see also Diedrich* v. *City of Ketchikan*, 805 P.2d 362, 368-69 (Alaska 1991).

California. The Supreme Court of California has also held that § 1983 plaintiffs are not required to exhaust state administrative remedies. *See Brosterhous* v. *State Bar*, 906 P.2d 1242 (Cal. 1995). As the court explained, an exhaustion requirement "would delay the time at which a section 1983 action could be brought and thus deny immediate access to the federally created right," thereby "creat[ing] an outcome-determinative rule that would lead to inconsistent results in state and federal section 1983 actions." *Id.* at 1258.

Colorado. The Supreme Court of Colorado has recognized that "[g]enerally, exhaustion of administrative remedies is not a prerequisite to bringing an action under 42 U.S.C. § 1983." *State* v. *Golden's Concrete Co.*, 962 P.2d 919, 925 (Colo. 1998) (en banc). Nonetheless, the court required exhaustion under the

limited exception to that general principle applicable to § 1983 challenges to state taxation schemes. *Id.*

Connecticut. The Supreme Court of Connecticut, too, has held that exhaustion of state administrative remedies is not required for § 1983 plaintiffs proceeding in state court. *Mangiafico* v. *Town of Farmington*, 204 A.3d 1138, 1142 (Conn. 2019). That court explained that its "disposition is controlled largely by *Patsy* . . . in which the United States Supreme Court held in unequivocal terms that 'exhaustion of state administrative remedies is not a prerequisite to an action under § 1983.'" *Id.* (quoting *Patsy*, 457 U.S. at 501). Though the Connecticut courts had previously carved out an exception to the no-exhaustion rule for § 1983 suits seeking injunctive relief, the Supreme Court of Connecticut in *Mangiafico* eliminated that exception and held that a "plaintiff is not required to exhaust administrative remedies prior to filing a § 1983 claim in state court, regardless of the type of relief sought." *Id.*

District of Columbia. The District of Columbia Court of Appeals has similarly concluded that *Patsy* and *Felder* do not permit a state court to dismiss a § 1983 suit for failure to exhaust administrative remedies. *See Miller* v. *District of Columbia*, 587 A.2d 213, 216 (D.C. 1991). As that court explained, "unless Congress acts to impose exhaustion requirements, the no-exhaustion rule at work both in federal and state court § 1983 litigation applies in the local courts of the District as well." *Id.*

Iowa. In *Brumage* v. *Woodsmall*, 444 N.W.2d 68, 70 (Iowa 1989), the Supreme Court of Iowa declined to apply a state administrative exhaustion requirement to a § 1983 claim. Similar to the exhaustion requirement at

issue here, the exhaustion provision at issue in *Brumage* stated categorically that "[n]o suit shall be permitted under this chapter unless the state appeal board has made final disposition of the claim" or until six months had elapsed. *Id.* The court concluded that the state exhaustion requirement "similarly acts as an exhaustion requirement and is similarly preempted." *Id.*

Kansas. The Supreme Court of Kansas has analyzed this Court's § 1983 exhaustion cases at length and held that "*Patsy* and *Felder* together establish a broad no-exhaustion rule for § 1983 actions whether brought in state or federal court." *Prager* v. *State, Dep't of Revenue*, 20 P.3d 39, 52 (Kan. 2001) (citations omitted). The court observed that "the dominant characteristic of a § 1983 civil rights action is that they belong in court independent of any other legal or administrative relief that may be available under state or federal law." *Id.* at 53.

Montana. The Supreme Court of Montana has recognized that its "precedent regarding § 1983 and principles of exhaustion is consistent with" this Court's decision in *Patsy*. *Clark* v. *McDermott*, 518 P.3d 76, 82 (Mont. 2022). For that reason, the Court concluded that the lower plaintiff did not need to exhaust an "exclusive" state administrative remedy before bringing suit in state court. *See id.* at 82-83.[3]

Nevada. The Supreme Court of Nevada has held that that "a party is generally not required to exhaust

[3] The Supreme Court of Montana ultimately affirmed on the alternative ground that claim preclusion barred the plaintiff from relitigating his claim in state court. *Id.* at 85.

state administrative remedies before bringing a civil rights claim in federal or state court under 42 U.S.C. § 1983." *Eggleston* v. *Stuart*, 495 P.3d 482, 488 (Nev. 2021).

Ohio. The Supreme Court of Ohio has recognized that this Court "rejected the use of exhaustion requirements in state-court Section 1983 actions unless Congress has provided otherwise." *Gibney* v. *Toledo Bd. of Educ.*, 532 N.E.2d 1300, 1305 (Ohio 1988). As that court explained, "imposing an exhaustion requirement on those filing Section 1983 actions in our state courts" would amount to "forcing such civil rights victims to comply with a requirement that is entirely absent from civil rights litigation of this sort in federal courts." *Id.*

Wisconsin. Following *Felder*, the Supreme Court of Wisconsin recognized *Patsy*'s general no-exhaustion rule applied in state court, holding that a "state court may not require a complainant to exhaust state administrative remedies before bringing a [§] 1983 action in state court unless the complainant falls under a clear exception to the 'no exhaustion' rule adopted by the United States Congress." *Casteel* v. *Vaade*, 481 N.W.2d 476, 481 (Wis. 1992).

Wyoming. The Supreme Court of Wyoming has recognized that it "is more than well-settled that a plaintiff under 42 U.S.C. § 1983 need not exhaust his administrative remedies before filing suit in federal court. . . . This rule is equally applicable in state court." *Metz* v. *Laramie Cnty. Sch. Dist. No. 1*, 173 P.3d 334, 345 n.2 (Wyo. 2007).

2. By contrast, the only state high court that appears to share the position of the decision below is the Supreme Court of South Dakota. *See Reiff v. Avon Sch. Dist. No. 4-1*, 458 N.W.2d 358 (S.D. 1990). That court enforced an administrative exhaustion requirement mandating that any party aggrieved by a decision of a school board must seek judicial review within 90 days. *Id.* at 359. The plaintiff was terminated by a school board without notice or an explanation and filed a lawsuit including claims under § 1983 after the 90-day deadline had elapsed. The Supreme Court of South Dakota affirmed the grant of summary judgment to the school board because the administrative exhaustion requirement was the "exclusive means of challenging a school board decision." *Id.* at 359. And the court specifically held that the administrative exhaustion requirement applied to plaintiff's § 1983 claims, even though the plaintiff had "rel[ied] upon a line of cases indicating that state remedies need not be exhausted before bringing a 42 U.S.C. § 1983 civil rights action in federal court." *Id.* at 360. In the court's view, resembling the logic of the court below, the administrative exhaustion requirement was the "only statute that grants state courts jurisdiction to review school board decisions" and so must be enforced. *Id.*

II. THIS CASE IS A GOOD VEHICLE TO RESOLVE THIS IMPORTANT QUESTION.

This case is a good vehicle and the question presented is important.

1. This case is a good vehicle. First, the question is cleanly presented. The issue was clearly pressed before the Supreme Court of Alabama and was the sole basis

for the court's decision. There are no alternative holdings or grounds for affirmance passed on by the court below that would interfere with the Court's review. And the majority opinion and the dissent joined issue on the question presented, with the majority plainly adopting a position contrary to this Court's precedents and the dissent explicitly recognizing the split with the decisions of other courts. *See* Pet. App. 11a-12a (majority opinion); *id.* at 22a-23a (dissent). Although Respondent made a (meritless) scattershot of standing and mootness objections with respect to a subset of Petitioners, the Alabama Supreme Court decided the case on exhaustion grounds "because that is the only jurisdictional question that applies to all the claims brought by all the plaintiffs." Pet. App. 6a. In view of that disposition, the exhaustion issue is squarely teed up before this Court. *Biden v. Nebraska*, 143 S. Ct. 2355, 2365 (2023) ("If at least one plaintiff has standing, the suit may proceed").

2. Finally, this case warrants this Court's review because the question presented is of great legal and practical significance.

The legal significance of this case is that it provides this Court with an opportunity to reinforce its precedent that civil-rights plaintiffs are entitled to equal treatment if they choose to file in state court. Fundamental to our federal system is the fact that "state courts as well as federal courts are entrusted with providing a forum for the vindication of federal rights violated by state or local officials acting under color of state law." *Haywood*, 556 U.S. at 735; *see also Testa* v. *Katt*, 330 U.S. 386, 389-90 (1947). To the extent state courts ignore this Court's

directives regarding their obligation to ensure that state procedures do not burden plaintiffs' § 1983 suits, this basic commitment is endangered. *Cf. Maine* v. *Thiboutot*, 448 U.S. 1, 11 n.12 (1980) (noting that "federalism concerns would be raised" if state-court differences with respect to § 1983 meant that "most plaintiffs would have no choice but to bring their complaints concerning state actions to federal courts"). And because this question goes to the duties of state courts to respect federal law, only this Court can provide the clarity needed with respect to the question presented.

In addition, this question is of tremendous practical significance for the thousands of civil-rights plaintiffs who file § 1983 suits each year. Petitioners in this case are illustrative of the kinds of plaintiffs who may be harmed by a state administrative exhaustion requirement. Petitioners have experienced lengthy delays in receiving unemployment compensation benefits that they believe they are owed. Under *Patsy*, they are entitled to immediate access to court to vindicate their federal constitutional and statutory rights. The further delay imposed by an administrative exhaustion requirement has grave consequences for Petitioners and others like them who seek to vindicate their federal rights in state court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MICHAEL FORTON
LAWRENCE GARDELLA
FARAH MAJID
CHISOLM ALLENLUNDY
LEGAL SERVICES ALABAMA
2567 Fairlane Drive, Suite 200
Montgomery, AL 20787
(256) 551-2671
mforton@alsp.org

ADAM G. UNIKOWSKY
Counsel of Record
ARJUN R. RAMAMURTI*
JENNER & BLOCK LLP
1099 New York Ave., NW
Suite 900
Washington, DC 20001
(202) 639-6000
aunikowsky@jenner.com

* *Not admitted in the District of Columbia; practicing under direct supervision of members of the D.C. Bar*

APPENDIX

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APPENDIX A

Rel: June 30, 2023

Notice: This opinion is subject to formal revision before publication in the advance sheets of **Southern Reporter**. Readers are requested to notify the **Reporter of Decisions**, Alabama Appellate Courts, 300 Dexter Avenue, Montgomery, Alabama 36104-3741 ((334) 229-0650), of any typographical or other errors, in order that corrections may be made before the opinion is printed in **Southern Reporter**.

Supreme Court of Alabama

OCTOBER TERM, 2022-2023

SC-2022-0897

AARON JOHNSON, NANCY WILLIAMS, DEREK BATEMAN, JACK FICARO, DASHONDA BENNETT, LATISHA KALI, QUINTON LEE, ESTA GLASS, JOYCE JONES, DEJA BUSH, JARVIS DEAN, TAJA PENN, LISA CORMIER, MIA BRAND, TAMMY COWART, JOHN YOUNG, MARK JOHNSON, LATARA JACKSON, SENATA WATERS, RAYMOND WILLIAMS, CYNTHIA HAWKINS, CRYSTAL HARRIS, RASHUNDA WILLIAMS, AND MARY BLACKERBY

v.

ALABAMA SECRETARY OF LABOR FITZGERALD WASHINGTON

APPEAL FROM MONTGOMERY CIRCUIT COURT (CV-22-900134)

MITCHELL, Justice.

With the onset of COVID-19, the Alabama Department of Labor received a record number of applications for unemployment benefits. To be precise, Alabamians filed nearly 1.5 million such applications with the Department between April 2020 and March 2022, far above the 737 applications that had been filed in May 2019, before the onset of COVID-19. Unsurprisingly, the Department struggled to process the additional million-plus applications in a timely fashion. The plaintiffs-appellants in this case, whom we refer to simply as "the plaintiffs,"[1] are among the many individuals who experienced delays in the handling of their applications. Early last year, they brought this lawsuit in the Montgomery Circuit Court in an effort to jumpstart the administrative- approval process. In their operative joint complaint, each plaintiff has raised multiple claims for relief, all of which seek to compel the Alabama Secretary of Labor, Fitzgerald Washington, to improve the speed and manner in which the Department processes their applications for unemployment benefits.

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[1] The plaintiffs are Aaron Johnson, Nancy Williams, Derek Bateman, Jack Ficaro, Dashonda Bennett, Latisha Kali, Quinton Lee, Esta Glass, Joyce Jones, Deja Bush, Jarvis Dean, Taja Penn, Lisa Cormier, Mia Brand, Tammy Cowart, John Young, Mark Johnson, Latara Jackson, Senata Waters, Raymond Williams, Cynthia Hawkins, Crystal Harris, Rashunda Williams, and Mary Blackerby. This list does not include 2 of the original 26 plaintiffs, Christin Burnett and Michael Dailey, because both individuals appear to have dropped out of the case and are not listed as parties to this appeal; accordingly, their claims are not before us now.

Secretary Washington responded to the suit by asking the circuit court to dismiss all claims against him, arguing (among other things) that the circuit court lacked jurisdiction over the suit because the plaintiffs had not yet exhausted mandatory administrative remedies. After the circuit court granted that motion, the plaintiffs appealed to this Court. For the reasons given below, we agree with Secretary Washington that the Legislature has prohibited courts from exercising jurisdiction over the plaintiffs' claims at this stage. We therefore affirm the circuit court's judgment of dismissal.

Facts and Procedural History

This suit began when 26 plaintiffs filed a complaint and motion for injunctive relief against Secretary Washington and the Department, with each plaintiff pleading numerous claims related to the Department's handling of their unemployment-benefits applications. In essence, each of the plaintiffs had filed one or more applications for benefits and was unsatisfied with how the Department handled (or failed to handle) those applications. After Secretary Washington and the Department moved to dismiss the complaint against them, the plaintiffs filed an amended complaint, which dropped several of their initial claims and also dropped the Department as a defendant.

The surviving counts -- all of which are federal claims brought under the Civil Rights Act of 1871, 42 U.S.C. § 1983 -- alleged that Secretary Washington's "policies, practices, and procedures" related to "unemployment compensation applications" violated the

Social Security Act of 1935, 42 U.S.C. § 503(a)(1), as well as the Due Process Clause of the Fourteenth Amendment to the United States Constitution. Each plaintiff demanded several forms of relief, including: (1) a permanent injunction directing Secretary Washington to "promptly make decisions on all applications" for unemployment compensation; (2) a preliminary injunction directing Secretary Washington to "issue an initial nonmonetary decision within the next ten days to every plaintiff who has not yet received a decision"; (3) a permanent injunction directing Secretary Washington to "pay every [unemployment-benefit] claim that has been approved within two days of the date of approval"; (4) a permanent injunction requiring Secretary Washington to provide any claimants who request a hearing confirmation of the request and to "schedule a date not more than 90 days later than the request for the hearing"; (5) a preliminary injunction directing Secretary Washington to "provide within ten days a hearing date for each of the plaintiffs who have requested a hearing"; (6) a permanent injunction directing Secretary Washington to provide "all information about the unemployment compensation program and all notices to claimants using language and format making them easily read and understood by people with an eighth grade education"; (7) a preliminary injunction compelling Secretary Washington "within two weeks to file a plan for rewriting notices and information sheets to ensure that they can be easily read and understood by people with an eighth grade education"; and (8) an order awarding the plaintiffs attorney fees.

Secretary Washington again moved to dismiss, arguing that the circuit court lacked subject-matter jurisdiction (on a variety of theories), that the plaintiffs lacked a private cause of action, and that the plaintiffs' claims were substantively meritless. The circuit court granted Secretary Washington's motion without specifying the ground on which it based its dismissal. The plaintiffs promptly filed a motion to alter, amend, or vacate the judgment of dismissal, which the circuit court denied. The plaintiffs then timely appealed to this Court.

Standard of Review

We review a circuit court's judgment of dismissal *de novo*, regardless of whether the judgment was entered under Rule 12(b)(1), Ala. R. Civ. P., for lack of subject-matter jurisdiction, or under Rule 12(b)(6), Ala. R. Civ. P., for failure to state a claim. *See DuBose v. Weaver*, 68 So. 3d 814, 821 (Ala. 2011); *Bay Lines, Inc. v. Stoughton Trailers, Inc.*, 838 So. 2d 1013, 1017-18 (Ala. 2002).

Analysis

The parties' positions in this appeal largely track their arguments before the circuit court. Namely, Secretary Washington argues that this Court and the circuit court lack subject-matter jurisdiction over the claims listed in the amended complaint because, he contends: several of those claims have become moot in the time since the suit was filed; the Social Security Act claims are barred by the doctrine of State immunity; some of the plaintiffs lack standing (for various reasons) to seek the type of relief demanded in the amended

complaint; and the Alabama Legislature has prohibited courts from hearing claims related to the making of determinations for unemployment-compensation benefits unless the claimants have first exhausted the Department of Labor's internal administrative-review process. He further maintains that the plaintiffs lack a private cause of action to enforce their Social Security Act claims and that -- even leaving aside the private-cause-of-action issue -- all the plaintiffs' claims fail on the merits as a matter of law. The plaintiffs, for their part, dispute each of these contentions and argue that the circuit court committed reversible error by accepting any of them.

We address the jurisdictional disputes first because, absent subject- matter jurisdiction, we have no authority to reach the merits. *See McElroy v. McElroy*, 254 So. 3d 872, 875 (Ala. 2017). While we must resolve all jurisdictional questions before any merits issues, *id.*, in situations where we are faced with multiple jurisdictional questions at once, we may choose to decide them in any order, *see Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999); *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 100 n.3 (1998). In this case, we begin by asking whether the Legislature has prohibited courts from exercising jurisdiction over unexhausted claims related to a plaintiff's pursuit of unemployment-compensation benefits, because that is the only jurisdictional question that applies to all the claims brought by all the plaintiffs. And because we ultimately agree with Secretary Washington that the Legislature has prohibited courts from exercising jurisdiction over such claims, we end our inquiry there as well.

To understand how and why the Legislature has barred State courts from exercising jurisdiction over the types of claims at issue here, it helps to understand how unemployment-compensation benefits developed in this State. Alabama's unemployment-compensation scheme was first enacted in 1935. *Tennessee Coal, Iron & R.R. Co. v. Martin*, 251 Ala. 153, 154, 36 So. 2d 547, 548 (1948). At the time, there was little precedent for such a program; indeed, Alabama was among the first States in the nation to experiment with one. *See id.* (describing Wisconsin as the only State to have adopted an unemployment-compensation scheme prior to Alabama's). Unemployment compensation is thus "a creature of statute" alone; it does not correspond to any traditional private right and was "unknown at common law."[2] *Quick v. Utotem of Alabama, Inc.*, 365 So. 2d 1245, 1247 (Ala. Civ. App. 1979).

When the Legislature creates a new type of claim in derogation of the common law -- as it has done with unemployment compensation -- the procedure for pursuing such a claim is "completely governed by statute." *Quick*, 365 So. 2d at 1247 (citing *Ex parte Miles*, 248 Ala. 386, 27 So. 2d 777 (1946)). A related principle is

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[2] The traditional "absolute" private rights recognized at common law are the rights to life, liberty, and property. 3 William Blackstone, *Commentaries on the Laws of England* *119. In contrast, unvested benefits that the government chooses to bestow on individuals -- a category that now includes unemployment compensation -- were understood to be "privileges" or "franchises" that did not implicate core private rights. *See* Caleb Nelson, *Adjudication in the Political Branches*, 107 Colum. L. Rev. 559, 567-69 (2007).

that when a statutory scheme gives rise to entitlements or other franchises unknown at common law, the ordinary presumption in favor of judicial review for claims related to those benefits does not apply -- which is why courts in such contexts typically construe jurisdictional grants narrowly and jurisdictional limitations broadly. *See Birmingham Elec. Co. v. Alabama Pub. Serv. Comm'n*, 254 Ala. 119, 125, 47 So. 2d 449, 452 (1950). Those complementary principles guide our analysis in this case.

As relevant here, when the Legislature enacted the statutory scheme creating unemployment benefits for Alabamians, it specified that anyone seeking such benefits must file an application with the Department and then await "determination … by an examiner designated by the [S]ecretary [of Labor]." § 25-4-91, Ala. Code 1975; *see also* § 25-4-90, Ala. Code 1975. If a claimant objects to the examiner's determination, he or she must "present[]" that objection to one of the Department's internal "appeals tribunals," which have the power to adjudicate all "disputed claims and other due process cases" involving the examiner's administration of unemployment benefits. § 25-4-92(a) and (b), Ala. Code 1975. Only *after* the appeals tribunal has issued a final "decision allowing or disallowing a claim for benefits" can the losing party appeal that decision to a circuit court. § 25-4-95, Ala. Code 1975.

The Legislature further specified that the procedure outlined above is the "exclusive" mechanism for seeking, challenging, or appealing from any "determinations with respect to claims for

unemployment compensation benefits." § 25-4-96, Ala. Code 1975. The Court of Civil Appeals held in *Quick* that this statutory language bars State courts from hearing any suit "pursuing an unemployment compensation claim" if the plaintiff-claimant has not first gone through the requisite administrative procedures. 365 So. 2d at 1247.

Secretary Washington argues that, in keeping with the logic of Quick and the text of the unemployment-compensation statutes, all the claims in this case are barred. As he points out, every claim listed in the plaintiffs' amended complaint attacks some aspect of the process for making "determinations with respect to claims for unemployment compensation benefits," § 25-4-96 -- yet none of those claims have made their way through the mandatory administrative-review process set out in §§ 25-5-90 through -97. Instead, the plaintiffs filed an original action in the circuit court, bypassing much of the administrative-review process entirely.

The plaintiffs, for their part, do not dispute that all of their claims ultimately demand relief with respect to the administration of unemployment benefits, nor do they argue that they have exhausted their administrative remedies. Instead, they argue that the administrative-exhaustion requirement does not apply to them because, they say, that requirement attaches only to "substantive" challenges to the administration of benefits (that is, actions challenging a final decision on whether to approve or deny a claim for benefits), not to "procedural" ones (that is, objections challenging some aspect of the process by which unemployment-

compensation applications are adjudicated). Plaintiffs' brief at 37-38.

The most fundamental problem with the substantive-procedural distinction posited by the plaintiffs is that the plaintiffs make no attempt to ground that distinction in statutory text. Indeed, the plaintiffs' brief ignores the statutory language cited above, which empowers the Department's appeals tribunals to adjudicate all "disputed claims and *other due process cases*," § 25-4-92(a) (emphasis added), and which further provides that such adjudication shall be the "exclusive" mechanism for securing relief, § 25-4-96. Secretary Washington, however, highlights this language in his response brief and argues that §§ 25-4-92(a) and 25-4-96, taken together, establish that the Legislature endowed appeals tribunals with the exclusive authority to hear procedural challenges related to the administration of unemployment-compensation benefits in addition to substantive challenges regarding the decision to award (or not award) those benefits. As he points out, it would make little sense for the plaintiffs to contend, as they do in their brief, that their lawsuit "is based solely on the [Department's] failure to timely process claims and provide claimants with due process," plaintiffs' brief at 9, while simultaneously taking the position that their suit does not fall under the category of "disputed claims and other due process cases" for purposes of § 25-4-92(a).

When confronted with the statutory language in §§ 25-4-92(a) and 25-4-96, the plaintiffs' only response is to insist that procedural administrative-exhaustion requirements, such as those contained in § 25- 4-96, have

been "categorically rejected by the United States Supreme Court" and therefore, under principles of vertical *stare decisis*, cannot be enforced by this Court either. Plaintiffs' reply brief at 16. In particular, the plaintiffs rely on language from *Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496, 516 (1992), in which the United States Supreme Court held that "'exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983.'" Plaintiffs' reply brief at 16.

But *Patsy* does not sweep nearly as broadly as the plaintiffs suggest. *Patsy* held only that the text of 42 U.S.C. § 1983, a federal statute, lacks an exhaustion requirement. It did not interpret the text of any State law, and certainly did not hold that State laws requiring administrative exhaustion as a prerequisite to State-court jurisdiction are unconstitutional.

Even if it were true, as the plaintiffs seem to believe, that § 1983 preempts any and all independent exhaustion requirements found in State law, that preemption would at most allow the plaintiffs to bring their unexhausted claims in *federal* court. It would not allow them to compel *State* courts to adjudicate federal claims that lie outside the State courts' jurisdiction. *See Alden v. Maine*, 527 U.S. 706, 749 (1999) (holding that the national government has no "power to press a State's own courts into federal service" by compelling them to exercise jurisdiction in contravention of their own State's laws, and emphasizing that any "[s]uch plenary federal control of state governmental processes" would

unconstitutionally "denigrate[] the separate sovereignty of the States").

In light of all this, we agree with Secretary Washington that the plaintiffs failed to validly invoke the circuit court's jurisdiction. All of their claims, in substance, seek relief related to "the making of determinations with respect to [their] claims for unemployment compensation benefits," § 25-4-96, yet none of those claims has been administratively exhausted. As a result, the circuit court and this Court have no power to address the merits of those claims. We therefore affirm the circuit court's judgment of dismissal.

AFFIRMED.

Shaw, Bryan, Mendheim, and Stewart, JJ., concur.

Sellers, J., concurs specially, with opinion.

Parker, C.J., concurs in the result.

Cook, J., dissents, with opinion.

Wise, J., recuses herself.

SELLERS, Justice (concurring specially).

I agree that the trial court properly dismissed the plaintiffs' complaint on the basis that the circuit court lacked subject-matter jurisdiction. See Rule 12(b)(1), Ala. R. Civ. P. Here, the legislature expressly conditioned jurisdiction upon the exhaustion of administrative remedies. I write specially to highlight that, even in the absence of such an express condition, administrative exhaustion is generally mandatory as a "'judicially imposed prudential limitation.'" *Patterson v. Gladwin Corp.*, 835 So. 2d 137, 142 (Ala. 2002) (quoting *Budget Inn of Daphne, Inc. v. City of Daphne*, 789 So. 2d 154, 157 (Ala. 2000)).

When rules and regulations are promulgated, administrative guidance establishes procedures that must be followed to receive the benefit of an agency's action. Under the administrative-exhaustion requirement, those rules, regulations, and guidance generally cannot be challenged in state court until the plaintiff has exhausted all available administrative remedies. Requiring parties to follow the administrative process allows the agency to cure any departure from the proper application of its rules and regulations. Even when an agency's actions implicate constitutional issues, those issues should generally be first raised within the agency's procedural framework. The administrative-exhaustion requirement not only promotes judicial economy, but also permits an administrative agency to apply its own expertise to a particular matter. I thus specially concur, because I believe that the exhaustion of administrative remedies is generally a prerequisite to

seeking judicial review of complaints about the actions or inactions of state agencies.

COOK, Justice (dissenting).

I respectfully dissent. The main opinion holds that the plaintiffs failed to validly invoke the circuit court's jurisdiction because they did not exhaust all administrative remedies with the Department of Labor as required by § 25-4-95, Ala. Code 1975. However, the plaintiffs are not requesting that Alabama courts decide (or even review) their claims for unemployment-compensation benefits. Instead, they are requesting (primarily) an order directing Alabama Secretary of Labor Fitzgerald Washington to have the Department decide their unemployment- compensation claims. They contend that federal law requires the Department to make a decision -- any decision -- on their claims. As the main opinion recognizes, the plaintiffs brought this lawsuit "*in an effort to jumpstart the administrative-approval process*." ____ So. 3d at ____ (emphasis added). Their request is simple and seeks procedural relief. There is no administrative remedy to exhaust for such a procedural request because the relief that they are seeking here is not governed by § 25-4-95. It is for this and other reasons stated below, that I would reverse the judgment of dismissal and remand the case for further proceedings.

The text of § 25-4-95, which contains the administrative-exhaustion requirement, demonstrates my point:

> "No circuit court shall permit an appeal *from a decision allowing or disallowing a claim for benefits* unless the decision sought to be reviewed is that of an appeals

> tribunal or of the board of appeals and *unless the person filing such appeal has exhausted his administrative remedies as provided by this chapter [i.e., Title 25, Chapter 4]*."

(Emphasis added.) The plaintiffs are not asking for this court to "allow[]" their "claim[s] for benefits" and are not appealing from a decision "allowing or disallowing a claim." Instead, the plaintiffs are complaining that there has *not* been a "decision." By its terms, this jurisdiction-stripping/exhaustion statute does not apply.

The main opinion also cites § 25-4-96, Ala. Code 1975, in support of its conclusion that exhaustion of administrative remedies is required. That Code section states: "The procedure provided in this article [i.e., Title 25, Chapter 4, Article 5] for the *making of determinations with respect to claims for unemployment compensation benefits* and for appealing from such determinations shall be exclusive." (Emphasis added.) However, the Department's delay in initially deciding a claim is not "the *making* of [a] determination[]" under § 25-4-96; it is the *absence* of the making of a determination. Likewise, an action seeking to remedy such a delay is not an "appeal[] from such [a] determination[]" as contemplated in either § 25-4-95 or § 25-4-96 because there has not yet been any determination. Again, this action seeks an order directing Secretary Washington to have the Department follow Alabama law and make a determination -- any determination -- on the plaintiffs' pending unemployment-compensation claims. Under

these circumstances, I see no reason why this Court cannot reach the merits, reverse the judgment of dismissal, and remand the case so that the circuit court could grant the plaintiffs' requested relief.

By way of analogy, I note that this Court has granted mandamus relief when a trial court simply fails to rule in a case or on a motion for an extended period even though the petitioner has not yet exhausted his or her remedies at the trial level.[3] In fact, the Court of Civil Appeals has written that mandamus is an appropriate procedure to follow when an agency fails to act. In *Vance v. Montgomery County Department of Human*

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[3] For instance, this Court has previously recognized that a trial court has a duty to hear and decide a controversy and that the trial court exceeds its discretion by failing to do so. *Ex parte Jim Walter Res., Inc.*, 91 So. 3d 50, 51 (Ala. 2012) (ordering probate court to record certain documents; ""[t]he writ of *mandamus* will lie from a superior to an inferior or subordinate court, in a proper case, to compel it to *hear and decide* a controversy of which it has jurisdiction"" (quoting *State v. Cobb*, 288 Ala. 675, 678, 264 So. 2d 523, 526 (1972))). This Court has also recognized that the refusal to rule on a motion in an effort to encourage the parties to reach a settlement agreement has been found to be an abuse of discretion. *Ex parte Ford Motor Credit Co.*, 607 So. 2d 169, 170 (Ala. 1992) (ordering trial court to rule on a motion for writ of seizure sought pursuant to Rule 64, Ala. R. Civ. P.: "Ford has complied with the requirements of Rule 64 and there appears to be no reasonable basis for the trial judge's continuing delay in ruling on the motion"). Likewise, a trial court's refusal to rule on a Rule 60(b), Ala. R. Civ. P., motion has also been found to be an abuse of discretion. *Ex parte Gamble*, 709 So. 2d 67, 69 (Ala. Civ. App. 1998). Even the failure to enter a divorce judgment within six months of the filing of the complaint has caused mandamus to issue. *Ex parte Lamar*, 265 So. 3d 306, 308 (Ala. Civ. App. 2018).

Resources, 693 So. 2d 493, 495 (Ala. Civ. App. 1997), the plaintiff filed suit in an adoption case, allegedly appealing under the Alabama Administrative Procedure Act, *see* § 41-22-1, Ala. Code 1975, et seq. The circuit court dismissed the case. On appeal, the Court of Civil Appeals rejected the appeal because it was not a mandamus petition and wrote: "The Vances argue that DHR is intentionally delaying its decision on their application to become adoptive parents. In that situation, a petition for *a writ of mandamus to compel DHR to make its decision would be appropriate.*" 693 So. 2d at 495 (emphasis added); *id.* at 496 ("The language in the Vances' petition to the … Circuit Court cannot reasonably be construed as a petition for the necessary extraordinary relief.").

In addition, the main opinion cites § 25-4-92, Ala. Code 1975, for the proposition that the interconnection and structure of Article 5 of Alabama's unemployment-compensation statutes includes an administrative-exhaustion requirement. In part, § 25-4-92(a) provides that the Department shall appoint appeals tribunals "[t]o *hear and decide* disputed claims and other due process cases …." (Emphasis added.) Once again, however, the claims the plaintiffs are pursuing in this action are not the type of claims an appeals tribunal must "hear and decide"; the plaintiffs are asking that we order Secretary Washington to have the Department follow the procedures laid out in Alabama's unemployment-compensation statutes and actually decide their unemployment-compensation claims. While the main opinion concludes that the phrase "other due process cases" should be construed to encompass procedural

requests for injunctive relief like the one made in this action, this language must be read in harmony with §§ 25-4-95 and 25-4-96. Those are the statutes that actually restrict jurisdiction and § 25-4-92 merely provides for an appeals tribunal. For instance, § 25-4-95 restricts the jurisdiction of the circuit court to only decisions of the Department "allowing or disallowing a claim for benefits." Likewise, 25-4-96 makes the procedures of the Department exclusive only as to the "making of determinations with respect to claims for unemployment compensation benefits…." Further, neither Secretary Washington nor the main opinion point to any authority indicating that the appeals tribunals have jurisdiction to determine claims arising under 42 U.S.C. § 1983.

Even if I were to agree that the administrative-exhaustion requirement in § 25-4-95 did apply by its terms or that, as Justice Sellers suggests in his special concurrence, that a common-law administrative-exhaustion requirement exists,[4] I nevertheless believe that the plaintiffs' 42 U.S.C. § 1983 claims must be heard. As noted by the plaintiffs and the main opinion, in *Patsy v. Board of Regents of the State of Florida*, 457 U.S. 496, 516 (1992), the United States Supreme Court held that "exhaustion of state administrative remedies *should not*

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[4] Assuming without deciding that Justice Sellers is correct that, in Alabama, a common-law administrative-exhaustion requirement exists in addition to the requirement found in § 25-4-95, that does not mean that the Department is excused from following its own "established procedures," which require it to actually decide the plaintiffs' unemployment-compensation claims.

be required as a prerequisite to bringing an action pursuant to § 1983." (Emphasis added.)

Although this language is very broad and, on its face, includes no exceptions, the main opinion nevertheless contends that *Patsy* "held only that the text of 42 U.S.C. § 1983, a federal statute, lacks an exhaustion requirement" and is, thus, inapplicable here because it "did not interpret the text of any State law, and certainly did not hold that State laws requiring administrative exhaustion as a prerequisite to State-court jurisdiction are unconstitutional." ____ So. 3d at____.

However, as noted above, the text of § 25-4-95 does not require administrative remedies to be exhausted before a party can bring a § 1983 claim. Instead, it specifically provides that "[n]o circuit court shall permit an appeal *from a decision allowing or disallowing a claim for benefits* …." (Emphasis added.) The main opinion provides no explanation for why *Patsy*'s direct and broad holding should be overridden without, at least, express statutory language stripping jurisdiction from Alabama courts.

Even if § 25-4-95 had attempted to strip jurisdiction from Alabama's circuit courts for § 1983 claims (or any other federal claims), I am not convinced that it could do so. And, even if that Code section could strip such jurisdiction, it could not do so without, at the very least, express statutory language saying so. The main opinion cites *Alden v. Main*, 527 U.S. 706 (1999), in support of the proposition that a state can strip its courts of jurisdiction over federal claims. However, that case

involved the question whether the federal government could force a state to waive sovereign immunity in its own courts and is thus inapplicable here.[5]

Moreover, the United States Supreme Court and the United States Court of Appeals for the Eleventh Circuit have recently upheld the principle from *Patsy* that exhaustion of state administrative remedies is not a prerequisite to an action under § 1983. *Pakdel v. City & Cnty. of San Francisco, California*, 594 U.S. ___, ___, 141 S. Ct. 2226, 2230 (2021); *Beaulieu v. City of Alabaster*, 454 F.3d 1219, 1226 (11th Cir. 2006) ("The Supreme Court and this Court have held that there is no requirement that a plaintiff exhaust his administrative remedies before filing suit under § 1983.").

Additionally, in light of *Patsy*, appellate courts in our own state have recognized that the exhaustion of state administrative remedies is not a prerequisite to bringing an action pursuant to 42 U.S.C. § 1983. *See Hall v. City of Dothan*, 539 So. 2d 286 (Ala. Civ. App. 1988)

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[5] As Secretary Washington acknowledges in his response brief, immunity under Art. I, § 14, of the Alabama Constitution (that is, sovereign immunity) does not apply to suits "brought to compel State officials to perform their legal duties" -- like the one now before us. *Ex parte Moulton*, 116 So. 3d 1119, 1131 (Ala. 2013) (citations and quotation marks omitted). This is consistent with the authorization to seek prospective injunctive relief provided in *Ex parte Young*, 209 U.S. 123 (1908), which is what is being sought here. *See also Bedsole v. Clark*, 33 So. 3d 9, 13 (Ala. Civ. App. 2009) (holding that the sovereign immunity, arising pursuant to the Alabama Constitution of 1901, Art. I § 14, provides no protection to the defendants because "[s]ection 14 immunity has no applicability to federal-law claims").

(recognizing that, pursuant to *Patsy*, exhaustion of state administrative remedies is not a prerequisite to an action pursuant to 42 U.S.C. § 1983).

Finally, there are a number of other state and federal courts that have similarly held that a plaintiff who brings a § 1983 action in state court need not first initiate or exhaust state administrative remedies. *See, e.g.*, *Clark v. McDermott*, 410 Mont. 174, 182, 518 P.3d 76, 82 (2022) (noting that the Supreme Court of the United States has held in *Patsy*, 457 U.S. at 516, that "'exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983'" and stating that the Montana Supreme Court's precedent regarding § 1983 and principles of exhaustion is consistent with this ruling); *Mangiafico v. Town of Farmington*, 331 Conn. 404, 408, 204 A.3d 1138, 1142 (2019) (holding that a "plaintiff is not required to exhaust administrative remedies prior to filing a § 1983 claim in state court, regardless of the type of relief sought"); *RBG Bush Planes, LLC v. Kirk*, 340 P.3d 1056 (Alaska 2015) (holding that plaintiff was not required to exhaust state administrative remedies before filing a federal § 1983 claim in state court but was required to exhaust state administrative remedies before filing state constitutional claims); *Prager v. State, Dep't of Revenue*, 271 Kan. 1, 16, 20 P.3d 39, 52 (2001) (recognizing that *Patsy* and subsequent United States Supreme Court caselaw establishes a broad no-exhaustion rule for § 1983 actions whether brought in state or federal court); *State v. Golden's Concrete Co.*, 962 P.2d 919, 925 (Colo. 1998) (recognizing that, "[g]enerally," a person does not need to exhaust

administrative remedies to file a claim under 42 U.S.C. § 1983, but finding an exception for tax cases); and *Diedrich v. City of Ketchikan*, 805 P.2d 362, 369 (Alaska 1991) (holding that § 1983 plaintiff need not exhaust state administrative remedies).

Aside from the above, I note that the basic principles of due process warrant relief in this case. The detailed facts alleged by the 24 remaining plaintiffs in their complaint are troubling.[6] The complaint alleges that the Department went months, and, in some cases, over a year, without making initial decisions on the plaintiffs' claims for unemployment- compensation benefits. It is taking at least that long to schedule hearings that the plaintiffs say they have requested (and even longer for appeal determinations). Additionally, the Department has allegedly denied or stopped some of the plaintiffs' benefits without sending any notice whatsoever. When the Department has sent such notice, the notice has allegedly been woefully inadequate and confusing. To quote the plaintiffs' brief:

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[6] Secretary Washington argues that the unemployment-compensation claims of 17 of the plaintiffs have been decided and that, therefore, the claims of those plaintiffs are now moot. Such questions are factual and should be handled, in the first instance, by the circuit court. It should also be noted that, in their complaint and in their appellate briefs, the plaintiffs act as if this action was a class action; however, they have not sought class treatment. Therefore, any relief would be limited to these particular plaintiffs, and there is reason to doubt their ability to claim some of their broad requested relief absent class treatment (for instance, their request for certain formatting of Department documents).

> "The plaintiffs have experienced extreme delays at every step of the unemployment compensation process, including waiting many months -- often more than a year -- for [a Department] claims examiner to determine their initial eligibility, for information about termination of benefits, and for their appeals to be scheduled for hearing."[7]

Plaintiffs' brief at 5.

Both Alabama's statutes governing unemployment-compensation claims and the federal statutes and regulations governing such claims make

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[7] The plaintiffs' brief further states:

> "From the beginning of the pandemic and to this day, [the Department] has failed to issue initial decisions and decisions on continuing eligibility for months. (C. 208). The claimants in this suit demonstrate this. Plaintiffs Lisa Cormier, Crystal Harris and Latisha Bell all applied in 2020 but never received an initial written decision. (C. 20-21; 219-221; 26; 226; 248-250 …). Plaintiff Mia Brand never received any decision on her May 2021 recertification. (C. 21-22; 221). Plaintiffs Nancy Williams, Joyce Jones and Cynthia Hawkins received benefits for some time, but [the Department] stopped all their benefits without sending any notice of termination. (C. 13-14; 211-212; 238-240; 17; 216; 25-26; 225-226; 248-250). Derek Bateman, Latisha Kali, Joyce Jones and Jarvis Dean all received lump sum payments without any notice explaining what weeks were being paid and why other weeks were not paid. (C. 14; 212-213;15-16; 214-215; 17; 216; 18-19; 217-218)."

Plaintiffs' brief at 5-6.

clear that unemployment-compensation decisions must be made "promptly." For example, § 25-4-91(a) provides:

> "A determination upon a claim filed pursuant to Section 25-4-90[, Ala. Code 1975,] *shall be made promptly* by an examiner designated by the secretary, and shall include a statement as to whether and in what amount a claimant is entitled to benefits and, in the event of denial, shall state the reasons therefor …."

(Emphasis added).[8]

Of course, as noted by the main opinion and Secretary Washington, the Department has received a record number of applications for unemployment-compensation benefits since the onset of the COVID-19 pandemic. Further, the complaint is only one side of the story. I also agree with the argument made by Secretary Washington that even federal law provides that extraordinary circumstances like the onset of the COVID-19 pandemic must be considered in determining

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[8] Certainly, if the Department simply publicly announced that it would no longer process unemployment-compensation claims in contravention of federal and state law, a plaintiff would be able to bring claims like those in this action regarding the failure of the agency to follow federal and state requirements to determine the plaintiffs' unemployment-compensation claim. How is a delay of many months or even years different than such a public statement? And, it bears recognizing that our unemployment-compensation system is designed to provide expeditious and prompt relief to persons who are without any income. Years of delay can mean, in large part, that the point of the benefit is lost.

whether a violation of § 1983 has occurred and, if so, what the proper remedy should be. *See, e.g.*, 20 C.F.R. § 640.3(a) (requiring "such methods of administration as will reasonably insure the full payment of unemployment benefits to eligible claimants with *the greatest promptness that is administratively feasible*" (emphasis added)). However, those determinations should be made by the circuit court after factual development; the plaintiffs' complaint should not have been dismissed at the pleading stage based on their alleged failure to exhaust their administrative remedies.

It is for all of these reasons that I respectfully dissent and would reverse the judgment of dismissal as to certain claims and remand the case for further proceedings.[9]

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[9] Specifically, for the reasons discussed above, I would reverse the judgment insofar as it dismisses all claims related to providing (1) timely claims processing, (2) timely appeals, and (3) actual notices of decisions. However, I would not reverse the judgment as to the remaining claims in the complaint because the plaintiffs have not provided a sufficient explanation as to why jurisdiction might exist for those claims.

APPENDIX B

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

JOHNSON AARON, BURNETT CHRISTIN, WILLIAMS NANCY, BATEMAN DEREK ET AL.,	)	
Plaintiffs,	)	Case No.: CV-2022-900134.00
v.	)	
SECRETARY FITZGERALD WASHINGTON, DEPARTMENT OF LABOR,	)	
Defendants.	)	

ORDER

Before the Court is the Defendants' Motion to Dismiss Amended Complaint. Upon considering the briefing and the arguments of counsel at the hearing on the initial motion to dismiss held on April 4, 2022, the Court finds that Plaintiffs' suit is due to be dismissed.

Upon consideration of the foregoing, it is hereby ORDERED that:

1. The Motion to Dismiss Amended Complaint is GRANTED. Plaintiffs' claims are thus DISMISSED; and

2. All other pending motions are DENIED as moot.

This is a final judgment.

DONE this 23rd day of May, 2022.

/s/
CIRCUIT JUDGE

APPENDIX C

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

JOHNSON AARON, BURNETT CHRISTIN, WILLIAMS NANCY, BATEMAN DEREK ET AL.,	)	
Plaintiffs,	)	Case No.: CV-2022-900134.00
v.	)	
SECRETARY FITZGERALD WASHINGTON, DEPARTMENT OF LABOR,	)	
Defendants.	)	

ORDER

This cause having come before the Court on MOTION TO RECONSIDER, the same having been considered, it is hereby DENIED.

DONE this 23rd day of August, 2022.

/s/ James H Anderson
CIRCUIT JUDGE