

IN THE SUPERIOR COURT FOR THE COUNTY OF FULTON  
STATE OF GEORGIA

SULATHA BLOUNT, KRISTA EMILIEN \*  
LISA ENGLISH, DANIELLE \*  
ROBITSHEK, HARRIET ROGERS, and \*  
KRISTY TOWNLEY, \*

Petitioners. \*

v. \*

MARK BUTLER, individually, and in \*  
his official capacity as Commissioner of the \*  
Georgia Department of Labor, and the \*  
GEORGIA DEPARTMENT OF LABOR, \*

Respondents. \*

CIVIL ACTION NUMBER

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**VERIFIED PETITION FOR A WRIT OF MANDAMUS**

1. Petitioners Sulatha Blount, Krista Emilien, Lisa English, Danielle Robitshek, Harriet Rogers, and Kristy Townley bring this Verified Petition for a Writ of Mandamus, pursuant to Title 9, Chapter 6, Article 2, of the Official Code of Georgia, to compel Respondent Mark Butler, individually and in his official capacity as Commissioner of the Georgia Department of Labor, and Respondent the Georgia Department of Labor (“GDOL”) to faithfully, properly, and timely perform mandatory public duties under the Georgia Employment Security Law, O.C.G.A. § 34-8-1 *et seq.* and regulations promulgated in accordance with this law, to process their unemployment applications, make determinations of their eligibility, pay the unemployment benefits for which they have been deemed eligible, and schedule requested administrative appeal hearings.

2. Petitioners have experienced extreme delays at every step of the unemployment process, including waiting several months for a GDOL claims examiner to consider their applications for benefits and determine their eligibility, to receive benefits payments for which

they have been deemed eligible, and to have their appeals adjudicated by an administrative hearing officer. Petitioners seek mandamus relief because they have a clear legal right to prompt action by Respondents in connection with their pending eligibility determinations, owed payment, and requested appeal hearing, and Petitioners have no other adequate legal remedy.

3. On March 14, 2020, Georgia Governor Brian P. Kemp declared a public health state of emergency due to the emergence of COVID-19.<sup>1</sup> The COVID-19 global pandemic hit the State of Georgia hard, creating a constant source of economic stress, fear, and anxiety for Georgians for the last 10 months. Georgia has seen countless businesses substantially decrease their operating capacity or cease operating altogether, resulting in hundreds of employees experiencing significant cuts in their hours and wages or losing employment. As a result, unemployed Georgians are struggling to pay for housing, utilities, and medical care for themselves and their families.<sup>2</sup> These effects from the pandemic underscore the need for prompt review determinations of eligibility, payment of unemployment compensation to eligible claimants, and scheduling of appeal hearings.

4. The total number of regular initial unemployment claims filed in Georgia reached an all-time high of 4,155,205 for the period between the weeks ending March 21, 2020, and December 12, 2020, compared to a total of 194,077 claims filed for a similar period in 2019 (between weeks ending March 23, 2019, and December 14, 2019).<sup>3</sup> This is an over 2,000% increase in the number of regular initial claims filed in 2020 compared to those filed in 2019.

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<sup>1</sup> State of Ga. Exec. Order 03.14.20.01, *Declaration of Public Health State of Emergency*, available at <https://bit.ly/3hG1exH>.

<sup>2</sup> Ray Khalfani, Ga. Budget & Policy Institute, *State of Working Georgia: 2020 COVID Crisis Year-End Review* (Dec. 18, 2020), <http://bit.ly/3o18LK3>; Amanda Aguilar, *Delays in unemployment benefits still plague the jobless in Georgia*, Fox5 Atlanta, Dec. 23, 2020, <http://bit.ly/2KPkBZz>; Christopher Quinn & Matt Kempner, *Georgians ground down by waits for unemployment assistance*, Atlanta Journal Constitution, June 4, 2020, <http://bit.ly/3hQlfID>.

<sup>3</sup> U.S. Dep't of Labor, *Unemployment Insurance Weekly Claims Data*, available at <http://bit.ly/358vAnw> (last visited Dec. 29, 2020) (select "State" and enter "2020" for "Beginning Year" and "Ending Year" and select "Georgia").

Although GDOL stated in December 2020 that there are no longer back logs in processing claims for those who are initially considered eligible, GDOL Commissioner Mark Butler admitted that the number of claims still waiting to be adjudicated is “probably anywhere between 40,000-50,000.”<sup>4</sup>

5. Respondents’ delays in making determinations, paying benefits, and setting appeal hearings cause uncertainty about the receipt of benefits for Petitioners and countless other Georgians. Petitioners Kristy Townley, Harriet Rogers, Krista Emilien, and Lisa English applied for unemployment benefits but have been waiting from four to nine months for Respondents to determine their eligibility. Petitioner Sulatha Blount was approved to receive Pandemic Unemployment Assistance (“PUA”)<sup>5</sup> in August 2020, but Respondent GDOL still has not issued her a payment. Petitioner Danielle Robitshek was denied benefits under the PUA program and appealed that decision in September 2020, yet no appeal hearing has been scheduled, despite her requests.

6. Petitioners therefore seek a Writ of Mandamus issued at the earliest time to redress such failures by Respondents, as no other adequate legal action exists to remedy these legal defects. This Court’s consideration is urgently needed to address the effects of involuntary unemployment caused by the COVID-19 pandemic and to “prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker or the worker’s family.” O.C.G.A. § 34-8-2. In support of this Petition, Petitioners show the Court the following:

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<sup>4</sup> Elizabeth Rawlins, *GDOL commissioner responds to calls for investigation into unemployment claims process*, Fox5 Atlanta, Dec. 24, 2020, <http://bit.ly/3n1TJCy>.

<sup>5</sup> PUA is a federal program for self-employed or gig workers, 1099 independent contractors, or those who are otherwise ineligible for regular state UI benefits. Ga. Dep’t of Labor, *Pandemic Unemployment Assistance (PUA)*, <http://bit.ly/3b5ZNHM> (last visited Jan. 3, 2021).

## **JURISDICTION AND VENUE**

7. This Court has jurisdiction to issue a Writ of Mandamus under O.C.G.A. § 9-6-20 *et seq.*

8. Venue is proper because Respondent Butler, in his official capacity, resides in Fulton County, Georgia, and substantial relief is sought against one party residing in Fulton County, Georgia. Ga. Const. art. VI, § II, ¶ VI.

## **PARTIES**

9. Petitioner Sulatha Blount is an individual residing in Bibb County, Georgia.

10. Petitioner Kristy Townley is an individual residing in Barrow County, Georgia.

11. Petitioners Harriet Rogers and Danielle Robitshek are individuals residing in Cobb County, Georgia.

12. Petitioner Krista Emilien is an individual residing in Dekalb County, Georgia.

13. Petitioner Lisa English is an individual residing in Rockdale County, Georgia.

14. Respondent Mark Butler is the Commissioner of the Georgia Department of Labor (“GDOL”).

15. Respondent Butler “shall have charge of the administration and enforcement of all laws, rules, and regulations which it is the duty of the department to administer and enforce . . . .”

O.C.G.A. § 34-2-3(e).

16. Thus, Respondent Butler is responsible for the enforcement of O.C.G.A. § 34-8-192(d) in his official capacity as Commissioner of the GDOL.

17. Respondent Butler is individually responsible for failures to properly administer Georgia’s unemployment compensation program during the COVID-19 pandemic.

18. Respondent GDOL is the department charged with administering Georgia's unemployment compensation program.

## **FACTUAL BACKGROUND**

### ***Unemployment Insurance Compensation at the Federal Level and in the State of Georgia***

19. Created in 1935 during the Great Depression, unemployment insurance is a joint federal-state system, overseen by the federal government and operated by the states, that provides cash benefits to qualifying individuals to limit immediate hardship experienced from the loss of employment and in turn, to stabilize the economy by shoring up workers' purchasing power during economic downturns.<sup>6</sup>

20. Unemployment insurance provides payments to states to finance the administration of their unemployment insurance compensation laws. 42 U.S.C. §§ 501-504.

21. Georgia is eligible to receive unemployment insurance payments from the federal government if it meets certain federal requirements, including that its law has a provision for "such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation *when due*." 42 U.S.C. § 503(a)(1) (emphasis added).

22. This section of the Social Security Act is known as the "when due" provision. The federal regulation interpreting the "when due" provision requires that Georgia unemployment compensation laws provide for "such methods of administration as will reasonably ensure the full payment of unemployment benefits to eligible claimants with the greatest promptness that is administratively feasible." 20 C.F.R. § 640.3(a).

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<sup>6</sup> Chad Stone & William Chen, Ctr. on Budget & Policy Priorities, *Introduction to Unemployment Insurance* (2020), <http://bit.ly/38MFU5Q>.

23. In accordance with these federal requirements, Georgia passed the Employment Security Law, O.C.G.A. § 34-8-1 *et seq.* This law creates the Georgia Department of Labor and gives the Commissioner power to operate a program of unemployment compensation. The statute specifies the Respondents' duties in operating the program.

24. The Georgia statute recognizes that:

economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the General Assembly to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker or the worker's family.

O.C.G.A. § 34-8-2.

25. "Unemployment benefits provide cash to a newly unemployed worker 'at a time when otherwise [they] would have nothing to spend,' serving to maintain the recipient at subsistence levels without the necessity of [their] turning to welfare or private charity." *Ca. Dep't of Human Res. v. Java*, 402 U.S. 121, 131-32 (1971).

26. The courts must "liberally construe and apply [employment security laws] in the light of the public policy of this State," and "shall be guided by the fact that the unemployment compensation law is intended to provide some income for persons who are, without fault of their own, temporarily out of employment." *Dalton Brick & Tile Co. v. Huiet*, 102 Ga. App. 221, 223 (1960) (quoting *Young v. Bureau of Unemployment Comp.*, 63 Ga. App. 130, 135 (1940)).

***State Law's Requirement for the "Prompt" Administration of Georgia's  
Unemployment Insurance Benefits System***

27. Georgia law requires that the administration of the unemployment benefit process be taken promptly. *See, e.g.*, O.C.G.A. § 34-8-192(a) (requiring prompt determination of benefits); *id.* § 34-8-192(d) (requiring prompt payment of benefits).

28. Prompt determinations and payments are necessary to ensure that unemployment benefits serve their statutory purpose of replacing lost income to avoid economic hardship. *See* § 34-8-192(a), (d).

29. Upon a claimant's filing for unemployment in Georgia, "GDOL reviews and processes [the] application" to determine whether the person has sufficient insured wages to establish a claim for unemployment benefits.<sup>7</sup>

30. Eligible Georgia claimants may receive up to \$365.00 per week in benefits for up to 26 weeks in Georgia. O.C.G.A. § 34-8-193(c)(4); Ga. Comp. R. & Regs. 300-2-4-0.11-.13.

31. If the claimant has sufficient insured wages, GDOL informs the claimant that they can claim weekly benefits online, and the claimant can then begin to do so.<sup>8</sup>

32. GDOL then reviews the claim to determine whether the claimant is eligible based on the reason for separation from the most recent employer and the claimant's availability for work.<sup>9</sup>

33. An initial determination of a claim "shall be made promptly." *See* O.C.G.A. § 34-8-192(a).

34. Claimants must call GDOL customer service immediately if they have not received an eligibility determination from the claims examiner within 19 days of claiming a week of benefits.<sup>10</sup>

35. If a claimant is approved for unemployment benefits by a claims examiner, GDOL shall pay the claimant "promptly." O.C.G.A. § 34-8-192(d).

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<sup>7</sup> *See* Ga. Dep't of Labor, *Unemployment Insurance Claimant Handbook* (hereinafter "Handbook") at 1, available at <https://bit.ly/2JuPgdJ> (last accessed Dec. 30, 2020).

<sup>8</sup> *Id.* at 11-12.

<sup>9</sup> *Id.* at 12.

<sup>10</sup> *Id.*

36. A claimant will be issued payment within 24-48 hours after a claims examiner determines that the claimant is eligible for benefits.<sup>11</sup>

37. If a claimant receives an unfavorable decision from the claims examiner, the claimant must file an appeal with the Appeals Tribunal within 15 days of issuance of the decision. O.C.G.A. § 34-8-220. Appeal hearings challenging the initial determination “*shall* be scheduled *promptly*.” Ga. Comp. R. & Regs. 300-2-5-.02(2)(a) (emphases added).

38. Despite the “prompt” processes mandated by Georgia statutes, regulations, and policy, GDOL is failing to act or perform in a prompt manner, which has caused Petitioners to experience extreme delays—for months at a time—at every step of the claims process, as detailed below.

***Respondents’ Failed Response to the Economic Crisis Caused by the COVID-19 Pandemic***

39. When the pandemic hit Georgia in March 2020, Respondents closed local career centers to the public, which limited access for applicants seeking GDOL’s help with filing and following up on their applications. *Accord* Affidavit of Lisa Dibble ¶¶ 6-9.<sup>12</sup>

40. Georgians continue to experience these difficulties in contacting GDOL via email, telephone, and GDOL’s website. *Id.*; Affidavit of Mary Huber ¶¶ 5-8.<sup>13</sup> These communication difficulties with GDOL, along with its closures and the failures to timely process, resolve, and

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<sup>11</sup> *Id.*

<sup>12</sup> See also Letter from Members of Ga. House Democratic Caucus Subcomm. on COVID-19 to Ga. Atty. Gen. Chris Carr (“Subcomm.’s Letter”) at 2 (Dec. 14, 2020), available at <http://bit.ly/3b16Rp6>; Aguilar, *supra* n.2.

<sup>13</sup> Subcomm.’s Letter, *supra* n.12; Aguilar, *supra* n.2; see also Ga. Dep’t of Labor, Official Facebook webpage, <http://bit.ly/3narCkv> (last accessed Jan. 3, 2021) (posting complaints about GDOL’s inaccessibility and payment and processing delays from March 2020 to December 2020); Ga. Dep’t of Labor, Official Twitter webpage, tweets & replies, <https://bit.ly/3hEWJ6E> (last accessed on Jan. 3, 2021) (same).



adjudicate claims, have led to a backlog of pending claims requiring Respondents’ prompt action. See Dibble Aff. ¶¶ 11-13.<sup>14</sup>

41. In early September 2020, Respondent Butler himself even acknowledged 38,698 unemployment compensation appeals were pending—one of GDOL’s biggest concerns and a number that has likely remained high since.<sup>15</sup>

42. More recently, Respondent Butler acknowledged a backlog of 40,000-50,000 applications awaiting processing and a determination of eligibility.<sup>16</sup>

43. Without necessary unemployment insurance benefits, countless Georgians cannot pay for housing, utilities, food, or medical care, leaving them in financially devastating situations. Thus, the level of urgency among underemployed and long-term unemployed Georgians, who are unable to support themselves and their families, remains high. Dibble Aff. ¶ 7; see Huber Aff. ¶¶ 6-8.<sup>17</sup>

44. Indeed, a brief scan of GDOL’s own social media pages reveals innumerable posts—from March 2020 to December 2020—highlighting the extent of GDOL’s inaccessibility and its severe delays in determining eligibility, paying benefits, and scheduling appeal hearings:

- “I’ve been waiting since Oct 2 and my claim is still pending eligibility NOT in appeals.”
- “I’ve been trying to schedule phone appointment online for 2 months every monday but its always technical issues or errors.”
- “Nothing and no one works at GDOL. I’ve called 20+ phone numbers and sent several emails since September without a single response from even one.”
- “I’ve been waiting for anything since June. A phone call email mail hell something to let me know if I’m approved or what’s going on would be nice.”
- “I’ve been eligible for awhile now and have received my letter stating that I should start filing and I have every week but have no recieved anything , and

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<sup>14</sup> See also Subcomm.’s Letter, *supra* n.12; see also Ga. Dep’t of Labor, Official Facebook webpage, *supra* n.13; Ga. Dep’t of Labor, Official Twitter webpage, tweets & replies, *supra* n.13.

<sup>15</sup> See Susanna Capelouto, *Backlog Of Appeals for Unemployment Benefits Collides with Georgia Evictions*, WABE, Sept. 1, 2020, <http://bit.ly/3pClseQ>.

<sup>16</sup> Rawlins, *supra* n.4.

<sup>17</sup> See Khalfani; *supra* n.2; Aguilar, *supra* n.2; Quinn & Kempner, *supra* n.2; Subcomms.’s Letter, *supra* n.12.

- you can absolutely forget anyone calling you back I cant even tell yall how many times I have left messages and sent emails to gdol. I dont know what else to do at this point . And I've worked my whole life to just be screwed basically. I guess all of the money I have paid in does us no good.”
- “I am five weeks behind in payments, I have called repeatedly and no one is calling me back to explain why I’m not getting paid. I have [gone] to the website, have my resume posted and supplied my ID along with proof of age. I’m an on my last ropes here if I don’t get help soon. I’m calling the DOL everyday and no one is calling me. The office is closed, I’m at a loss at what to do here and getting really desperate.”
  - “Come on I was APPROVED in May every rep I’ve talked to can't see why I haven't been paid . . . . I expected a lengthy delay but we are talking almost 9 months now...NINE!!!”
  - “[I’]ve been approved as well since august and nothing.. they don’t answer calls or emails . . . .”
  - “Made an appeal In May!! Still no appeal dates.”
  - “I filed an appeal almost 7 months ago and haven’t heard a friggin thing.”
  - “This is just another public excuse. I filed claims and 2 appeals, and I have yet to be heard.”<sup>18</sup>

45. Accordingly, notwithstanding their clear “promptness” duties under Georgia law, Respondents have failed to ensure that eligibility for unemployment benefits is promptly determined, eligible benefits are promptly paid, and appeal hearings are promptly scheduled for unemployed and underemployed Georgian claimants like Petitioners.<sup>19</sup> To illustrate:

46. **Petitioner Sulatha Blount** is a 61-year-old woman who lives in Bibb County, Georgia.

47. Before the COVID-19 pandemic, Petitioner Blount was self-employed for seven years cleaning office buildings and houses.

48. Once the pandemic hit, Petitioner Blount lost these jobs. She applied for unemployment and was approved for PUA in or around August 2020.

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<sup>18</sup> Ga. Dep’t of Labor, Official Facebook webpage, *supra* n.13 (sic throughout); *see also* Ga. Dep’t of Labor, Official Twitter webpage, tweets & replies, *supra* n.13 (posting similar complaints about GDOL’s inaccessibility and payment and processing delays).

<sup>19</sup> Subcomms.’s Letter, *supra* n.12.

49. Petitioner Blount has been certifying her claims weekly using the GDOL online portal, but she has not received any payments.

50. Petitioner Blount went to the GDOL career center in Macon, Georgia, to try to talk to a GDOL representative about her benefits, but the career center was closed to the public. She also repeatedly called the career center, but she was never able to speak to anyone.

51. In August 2020, someone from GDOL contacted Petitioner Blount because the identification card she had provided had expired. Petitioner Blount provided an unexpired ID card, and she called the telephone number back but was not able to reach anyone.

52. In October 2020, after her unsuccessful attempts to contact GDOL, Petitioner Blount retained legal counsel to contact GDOL on her behalf to find out why her benefits were not being paid.

53. Without her usual self-employment income, and absent payment of benefits, Petitioner Blount has struggled to pay rent and utilities. She has had to request assistance from her church and family, and she still struggles to pay her monthly bills.

54. **Petitioner Lisa English** is a 36-year-old resident of Rockdale County, Georgia.

55. She was temporarily laid off from her job as a 1099 employee at an outdoor recreation store in March 2020 due to the pandemic.

56. Petitioner English filed an application for unemployment benefits on March 23, 2020.

57. On April 23, 2020, a Field Tax Agent with the GDOL reached out to Petitioner English to gather more information, which she provided.

58. After reaching out to the GDOL several times for an update, Petitioner English never received a benefit determination letter, never received a claims examiner's decision, never had a benefit eligibility review, and never received a link to apply for PUA.

59. Petitioner English was out of work for 8 weeks before her employer reopened and brought her back to work—this time as a W2 employee.

60. Petitioner English was fired and filed a new application for unemployment benefits in October 2020.

61. It has now been nine months since Petitioner English filed her initial application and she has never received any communication from GDOL regarding her claim.

62. Petitioner English has had to heavily depend on family and friends for financial support to pay her bills during this difficult time. She moved from her apartment in Fulton County to a shared apartment in Rockdale County, because she could no longer afford her rent. She is unsure if she can make upcoming rent payments and may have to move into her parents' camper. Her son lives in Florida with his father and usually comes to Georgia in the summers to stay with Petitioner English. But this year, she was unable to financially provide for her son, so he had to stay to Florida.

63. **Petitioner Kristy Townley** is a 41-year old woman who lives in Barrow County, Georgia.

64. When the restaurant that Petitioner Townley managed for two years closed in March 2020 due to the pandemic, her employer filed for unemployment benefits on her behalf.

65. GDOL found Petitioner Townley eligible for \$277.00 in weekly benefits for 26 weeks, beginning March 15, 2020.

66. When Petitioner Townley's employer reopened in April 2020, she returned to work for two weeks.

67. Petitioner Townley had a doctor's note stating that she should not wear a mask due to her lupus. Petitioner Townley was unable to comply with her employer's mask requirement, and she was unable to be around customers due to her immunocompromised condition.

68. Petitioner Townley received unemployment benefits the weeks she did not work from March 15, 2020, until mid-May 2020. Without warning, the benefits stopped when her employer stopped certifying on her behalf.

69. Petitioner Townley filed a new unemployment application on May 29, 2020.

70. Petitioner Townley began certifying weekly using GDOL's online portal, but she has not received any payments. Petitioner Townley has not received an eligibility determination on her application.

71. In December 2020, Petitioner Townley retained legal counsel to assist her in getting GDOL to make an eligibility determination on her claim, but she still has not received a determination from GDOL.

72. Due to her loss of employment, Petitioner Townley lost her rental home and was homeless for two months, moving from one friend's home to another. Petitioner Townley now lives with a friend but is unable to pay rent. Petitioner Townley's friend has been loaning her money to pay for her medical expenses, which she hopes to repay when she is approved for unemployment benefits. Because she is experiencing homelessness, Petitioner Townley was denied visitation with her minor child.

73. **Petitioner Harriet Rogers** is a 60-year-old resident of Cobb County.

74. Petitioner Rogers was laid off from her job at a collection agency in March 2020 due to the pandemic.

75. Petitioner Rogers received unemployment benefits for a few weeks, but then was offered the opportunity to return to work if she could secure an Internet connection at her own expense so that she could work from home. Petitioner Rogers could not afford the cost of the connection and was unable to return to work.

76. In August 2020, Petitioner Rogers' unemployment benefits were exhausted, and she filed a new claim as instructed.

77. She was told in October that she was potentially eligible for \$365.00 per week.

78. On October 21, 2020, Respondent GDOL told Petitioner Rogers' legal representative that her August 2020 claim for unemployment would not be scheduled for a benefit eligibility review by a claims examiner until March 2021.

79. Petitioner Rogers has not received any unemployment benefits since August 2020. She is unable to afford to refills on her prescriptions and worries she may need to give up her dog soon because she cannot afford to care for it. Petitioner Rogers also worries that she would soon lose her car and will be evicted.

80. In late October, Petitioner Rogers had to visit a hospital emergency room for ongoing problems with her blood pressure and anxiety connected to stress.

81. Despite her age and underlying medical conditions, she recently accepted temporary work as an election worker in Cobb County. She has also continued to seek other jobs.

82. Nevertheless, Petitioner Rogers continues to struggle to pay her expenses. She is getting calls from creditors, her cell phone company, and her car insurance company for payments.

83. **Petitioner Krista Emilien** is a 34-year-old single mother with a four-year-old child who lives in Dekalb County, Georgia.

84. In March 2020, her employer closed its doors due to the pandemic. In April she applied for unemployment insurance benefits with GDOL.

85. In July 2020, her employer reopened. Petitioner Emilien contacted them to resume work but told her that her position was no longer available. At that juncture, she still had not heard anything from the GDOL or received any unemployment benefits.

86. After her legal representative's month-long attempt to get information from Respondent GDOL, a GDOL legal department representative finally replied that the problem with Petitioner Emilien's claim was that she had checked a box on her claim form indicating that she had not worked in two years, though she had worked in March 2020. The GDOL was unable to check its own records to fix the mistake. Since that time, there has been no decision on her claim and no benefits paid.

87. She has had to move in with her sister to cut down her expenses. She has not been able to find other employment and has gone without unemployment benefits or a decision on her claim that she filed over seven months ago.

88. **Petitioner Danielle Robitshek** is a 30-year-old resident of Cobb County, Georgia.

89. She worked as a dog groomer for five years. The store where she worked closed for a few weeks when the pandemic started, but later reopened.

90. Upon reopening, the employer and employees established a written protocol that specified that customers would not be allowed to enter the premises. Instead, employees would come and go from the parking lot with pets and products.

91. Despite the written protocol, the employer continued to allow customers to enter and wait inside the salon.

92. Petitioner Robitshek and other employees spoke to the employer about their discomfort with customers entering the salon, but the situation did not improve.

93. When another customer came inside, Petitioner Robitshek asked the customer to wait outside. The employer yelled at Petitioner Robitshek, and she stepped outside to take a break.

94. Petitioner Robitshek felt uncomfortable going back inside the store after being yelled at and having safety protocols disregarded. She told the employer she would take the rest of the day off. Petitioner Robitshek told her employer she would return to work when it felt safe. The employer terminated her in June 2020.

95. In June 2020, Petitioner Robitshek filed a claim for unemployment benefits. Benefits were initially denied. She filed an appeal on September 12, 2020, but no administrative hearing has been scheduled. When Petitioner's legal representative contacted the GDOL in, a GDOL legal department staff member responded that they could not say when Petitioner's Robitshek's appeal would be heard and that only appeals filed at the beginning of May 2020 were currently being scheduled for hearings.

96. Petitioner Robitshek has spent her savings, and if not for a family member's help, she believes that she would now be homeless. She worries about every cent that she spends and about her ability to pay her bills. She has no income currently and must wait indefinitely for an appeal hearing.

**CAUSE OF ACTION**  
*Writ of Mandamus against Respondents*  
O.C.G.A. § 9-6-20

97. Petitioners incorporate all the preceding paragraphs by reference.



98. Georgia law provides that “[a]ll official duties should be faithfully performed, and whenever, from any cause, a defect of legal justice would ensue from a failure to perform, . . . the writ of mandamus may issue to compel a due performance” of an official duty when.” O.C.G.A. § 9-6-20.

99. Here, Petitioners Townley, Rogers, Emilien and English have a clear legal right to receive prompt determination of their eligibility by the GDOL. O.C.G.A. § 34-8-192(a).

100. Petitioner Blount has a clear legal right to receive prompt payment of unemployment compensation benefits for which the GDOL has found her eligible. O.C.G.A. § 34-8-192(d).

101. Petitioner Robitshek has a clear legal right to prompt scheduling of a hearing in her requested appeal. Ga. Comp. R. & Regs. 300-2-5-.02(2)(a).

102. Respondents thus have corresponding clear legal duties to timely determine Petitioners Townley, Rogers, Emilien and English’s eligibility, pay Petitioner Blount due unemployment compensation benefits, and schedule Petitioner Robitshek’s requested administrative appeal hearing. *See* O.C.G.A. § 34-8-192(a), (d); Ga. Comp. R. & Regs. 300-2-5-.02(2)(a).

103. Respondents, however, have failed to faithfully perform these promptness duties in their administration of Georgia’s Employment Security Act, O.C.G.A. § 34-8-1 *et seq.*, and its related regulations.

104. As a result of Respondents’ failures, Petitioners have suffered catastrophic financial harm from the unlawful delays in the processing of their applications and determination of eligibility, payment of their unemployment claims, and scheduling of the requested administrative appeal hearing.

105. Thus, a writ of mandamus is warranted to compel Respondents to perform their “promptness” duties in connection with Petitioners’ unemployment insurance claims.

106. Petitioners have “no other specific legal remedy” for Respondents’ “failure to perform” their public duty than to request that a writ of mandamus be issued. O.C.G.A. § 9-6-20.

107. An administrative appeal is unavailable to Petitioners Townley, Rogers, Emilien and English who have applied but have not received a determination of eligibility; Petitioner Blount who is owed benefits but has not been paid; and Petitioner Robitshek who has not been scheduled for the appeal hearing she requested months ago.

108. Moreover, Petitioners cannot and do not seek damages. Nor do they seek a specific outcome on their applications.

109. Rather, Petitioners simply seek to compel Respondents to do what they are obligated to do under Georgia’s unemployment compensation law and promptly determine eligibility, pay owed benefits, and schedule an appeal hearing.

110. Accordingly, Petitioners request that this Court issue a writ of mandamus compelling Respondents to comply with their public legal duty to ensure: eligibility is promptly determined for Petitioners Townley, Rogers, Emilien and English; benefits are paid promptly to Petitioner Blount; and an administrative hearing is promptly set in Petitioner Robitshek’s requested appeal.

### **PRAYERS FOR RELIEF**

WHEREFORE, Petitioners respectfully request that this Court:

a. Issue a Mandamus Nisi as soon as practicable, directing Respondents to appear before this Court within no fewer than ten and no more than thirty days, as required by O.C.G.A.

§ 9-6-27(a); to be heard, and show cause, if any they have, why a Writ of Mandamus Absolute should not be granted to Petitioners;

b. Issue a Writ of Mandamus compelling Respondents to issue benefit payments due to Petitioner Blount;

c. Issue a Writ of Mandamus compelling Respondents to make determinations of eligibility on Petitioners Townley, Rogers, Emilien, and English's applications;

d. Issue a Writ of Mandamus compelling Respondents to schedule an administrative hearing in connection with Petitioner Robitshek's appeal;

e. Order Respondents to report to the Court that all steps have been and will be taken to ensure that Respondents fulfill the above promptness duties under the law;

f. Issue findings of facts and conclusions of law for any orders issued in this matter;  
and

g. Grant such other and further relief as may be just and proper, including an award of attorney's fees and costs to Petitioners.

Respectfully submitted this 4th day of January 2021.

/s/ Emily C.R. Early  
Emily C.R. Early

Adrienne C. Freeman  
Georgia Bar No. 426106  
Georgia Legal Services Program®  
1865 W. Broad St., Ste. B  
P.O. Box 1788  
Athens, GA 30603-1788  
(470) 577-9080/(706) 227-5347 (fax)  
afreeman@glsp.org

Emily Early  
Georgia Bar No. 810206  
The Southern Poverty Law Center  
P.O. Box 1287  
Decatur, Georgia 30031-1287  
Tel.: 404-521-6700  
emily.early@splcenter.org

Miriam Gutman  
Georgia Bar No. 170768  
The Atlanta Legal Aid Society, Inc.  
54 Ellis Street NE  
Atlanta, Georgia 30303  
Tel: 404-164-3986  
mgutman@atlantalegalaid.org

*Attorneys for Petitioners*