

No. \_\_\_\_\_

**In the  
Supreme Court of the United  
States**

Originally Submitted: September 6, 2018

Resubmitted: October 9, 2018

*In re Pamela Denise Idlett,  
Petitioner,*

v.

Nancy A. Berryhill,  
Respondent,

On Petition for Extraordinary Writ  
of Mandamus

To the United States Court of Appeals for  
the Fourth Circuit  
USCA Case Number 17-1806

On Appeal from U.S. District Court Case  
4:16-cv-00134-MSD-RJK (E.D. Va.)

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**PETITION FOR EXTRAORDINARY  
WRIT OF MANDAMUS**

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Pamela Denise Idlett, *pro se*  
435 Woodbrook Run  
Newport News, VA 23606  
Telephone: (757) 272-7222

## Questions Presented for Review

Rule 14.1(a) and Rule 24

28 U.S.C. §1331, Federal Question

### Preface

All judges for the United States (U.S.) possess legally binding declaratory oaths and code of conduct clauses to abide by in support of the U.S. Constitution. *Marbury v. Madison* (1803).

1. Whether the Social Security Administration (SSA) Administrative Law Judge (ALJ) gives verbal acknowledgement in his federal hearing to a known disability determination by another federal agency?

2. Whether the ALJ conduct consists of “willingly” omitting “known” material facts from the petitioner’s federal record [Office of Personnel Management (OPM’s) Disability Retirement” (July 31, 2012)] in his conclusion of law which were

entered as evidence and referenced as part of his federal hearing exhibits? Whether “consideration of such evidence is mandatory” in the federal disability standard review process?

3. Whether the SSA Commissioner provides clear evidence to the U.S. District Court that “a violation of Social Security Policy”; “devoid of reference to a known disability determination by another federal agency” (material omission) has been committed by the ALJ?

4. Whether the SSA’s adjudicator made statements falsifying objective medical facts (brain MRIs) of a severe and progressive (rare) brain disorder detected by treating chief neurosurgeon, neurologists, and federal medical physician; “No” “limitations” and “no Chiari malformation and associated headaches”? Are the objective medical facts mandatory and material evidence?

5. Whether federal judicial conduct of omitting material evidence and making false statements fail to develop the record fairly, impartially and diligently? Does this conduct fail to uphold the integrity of the federal judiciary? Does this conduct breach legally binding code of conduct for U.S. Judges, declaratory decrees and oaths under the color of law if it deprives U.S. Constitutional rights?

6. Whether the ALJ omits material evidence and falsifies exertions/non-exertion limitations that have been medically assessed by certified treating neurologists and physical therapist? Is this federal judicial conduct an act of abuse of judicial discretion under the color of law?

7. Whether the ALJ's judicial conduct consist of an act of abuse of judicial discretion under the color of law by imposing "environmental limitations"

on the petitioner which are not supported by all substantial material facts or do not support erroneous conclusion of law statements; “No” “limitations” and “no Chiari malformation and associated headaches”?

8. As a matter of law, whether the act of remanding a federal case back to the violating federal agency for rehearing proceeding is unconstitutional after material evidence support the petitioner’s summary judgment and the Commissioner declines to file a legal defense or response to genuinely dispute substantial material evidence which support grossly judicial misconduct?

9. Whether judicial conduct of omitting known material evidence, making false statements, and abuse of judicial discretion dismissible as “moot” issues of concern under supremacy law and the U.S. Constitution?

10. Whether the lower federal courts' material omission of the ALJ's conduct of social security policy violations in their opinions, judgment and final order breaches legally binding U.S. Constitutional oaths, clauses and code of ethics under supremacy law?

11. Whether the lower federal courts material omission of the ALJ's misconduct conflicts with normal federal appellate procedure and authoritative decisions on deprivation of substantive due process rights in accordance with the U.S. Constitution and supremacy laws? Does the deprivation of the petitioner's constitutional rights to a fair standard of review due process create an exceptional importance to the public?

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**Certificate of Interested Persons**  
**Per Supreme Court of the United States**

Rule 14.1(b)

**List of persons having an interest in this case:**

BERRYHILL, NANCY A.,

Acting Commissioner of the Social Security  
Administration (**Respondent**)

CLERK OF THE COURT and other Judicial Officers  
of the U.S. District Court, Eastern District of  
Virginia, Newport News Division; and of the  
Court of Appeals for the Fourth Circuit

DAVIS, DISTRICT JUDGE MARK S.,

(U.S. District Court Eastern, District of  
Virginia, Newport News Division)

HAMILTON, SENIOR CIRCUIT JUDGE CLYDE  
H., (U.S. Court of Appeals, 4th Circuit)

HARRIS, JUDGE PAMELA A.,

(U.S. Court of Appeals, 4th Circuit)

IDLETT, PAMELA DENISE,

**(Petitioner, *pro se* if counsel not appointed)**

KELLEY, III, GEORGE MARALAN,

**(Respondent's U.S. Attorney)**

KING, JUDGE ROBERT B.,

**(U.S. Court of Appeals, 4th Circuit)**

KRASK, MAGISTRATE JUDGE ROBERT J.,

**(U.S. District Court Eastern District of  
Virginia, Newport News Division)**

OFFICE OF THE ATTORNEY GENERAL

**(Respondent's U.S. Attorney General)**

SOLICITOR GENERAL OF THE U.S.,

**(Respondent's U.S. Solicitor General)**

---

SUPREME COURT OF THE UNITED STATES  
FOR  
THE FOURTH CIRCUIT  
DISCLOSURE OF CORPORATE AFFILIATIONS  
AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is not required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 4:16-cv-00134 Caption: Appeal District Court

Final Order

No. 17-1806 (4<sup>th</sup> Cir. 2018) Appeal Court of Appeals

Unpublished Order

Pursuant to FRAP 26.1 and Local Rule 26.1,

Pamela Denise Idlett

(name of party/amicus)

---

Who is Appellant – Petitioner makes the following

disclosure:

(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other  
Publicly held entity?  YES  NO
2. Does party/amicus have any parent corporations?  
 YES  NO

If yes, identify all parent corporations, including all  
generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus  
owned by a publicly held corporation or other  
publicly held entity?  YES  NO

If yes, identify all such owners:

09/29/2016 SCC - 1-

4. Is there any other publicly held corporation or other  
publicly held entity that has a direct Financial  
interest in the outcome of the litigation (Local Rule  
26.1(a)(2)(B))?  YES  NO

If yes, identify entity and nature of interest:

5. Is the party a trade association? (amici curiae do not  
complete this question)  YES  NO

If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding?  YES  NO

If yes, identify any trustee and the members of any creditors' committee:

Signature: James Remick Blatt

Executed on: October 6, 2018

Counsel for: Pro Se

#### CERTIFICATE OF SERVICE

\*\*\*\*\*

I certify that the foregoing document was hand delivered upon the person at the address and on the date that appears below:

1.) Clerk: The Supreme Court of the U.S.  
One First Street, N.E.  
Washington, D.C. 20543

Carrie Anise Elliott October 9, 2018  
(signature) Executed on:

Executed on:

I certify that the foregoing document was mailed upon  
the persons at the addresses and on the dates that  
appears below:

Defendant: Nancy A. Berryhill,  
Acting, Commissioner Social Security  
Administration (SSA)

2.) Defendant 1: Attorney George M. Kelley, III  
Assistant U.S. Attorney  
101 West Main Street, Suite 8000  
Norfolk, Virginia 23510

3.) Defendant 2: Attorney General of the U.S.  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

4.) Defendant 3: Solicitor General of the U.S.  
Room 5616, Depart. of Justice  
950 Pennsylvania Ave., N.W.  
Washington, DC 20530-0001

I declare under penalty of perjury that the foregoing  
information provided in this Disclosure of Corporate  
Affiliations is true and correct.

Executed on: October 6, 2018

James R. Babb October 6, 2018  
(signature) Signature Date

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**Opinions and Orders Below**

(Citations; Rule 14.1(d)

**Appendix A: U.S. Court of Appeals (CoA),**

***Pamela Idlett v. Nancy Berryhill*, No. 17-1806 –**  
**Document 19 (4<sup>th</sup> Cir. 2018). (28 U.S.C.**  
**§1295); (FRAP 5-48). (Appendix A, pA1-11).**

**ORDER: ----- A1-2**

“The court defers consideration of the motion for appointment of counsel pending review of the appeal on the merits.” (CoA ECF No. 7, July 12, 2017).

Unpublished per curiam OPINION ----- A2-4

**FINDING: (CoA Opinion ECF Doc. No. 18, March 09, 2018).**

“We review a district court’s summary judgment decision de novo, *Lee v. Town of Seaboard*, 863 F.3d 323, 327 (4<sup>th</sup> Cir. 2017), and district court’s choice of remedy in a social security action for an abuse of discretion, *Radford vs. Colvin*,

734 F.3d 288, 295 (4<sup>th</sup> Cir. 2013). We have reviewed the record and perceive no reversible error.”

JUDGMENT: ----- A5

“In accordance with the decision of this court, the judgment of the district court is affirmed.” (CoA ECF No. 19, March 9, 2018)

ORDER: ----- A6-7

“The court denies the petition and suppl. petition for rehearing en banc. The court denies the motion to appoint counsel.” (CoA ECF No. 26, June 12, 2018). [28 U.S.C. §2101(c, and f)].

CoA Other Relevant Electronic ----- A7-11

Case File (ECF) docket data:

**Appendix B: U.S. District Court (D.C.),**

***Idlett v. Berryhill*, No. 4:16-cv-00134. Document 20 (E.D. Va. 2017) (Appendix B, pA11-52).**

**U.S. MAGISTRATE JUDGE'S ----- A11-34**

REPORT AND RECOMMENDATION: (D.C. ECF No. 18, May 5, 2017).

Court Standard of Review Due Process:

“Thus, reversing the denial of benefits is appropriate only if either (A) the record is devoid of substantial evidence supporting the ALJ’s determination, or (B) the ALJ made an error of law. Coffman, 829 F.2d at 517.” (Appendix B, pA24).

Court’s Procedural Background Finding:

“Without reference to this known disability determination by another federal agency, on January 12, 2015, the ALJ denied Idlett’s claim, finding that she was not disabled from October 1, 2011<sup>3</sup> through the date of the decision.” (Appendix B, pA14).

Court’s Recommendation (Appendix B, pA30-31):

“For the foregoing reasons, this court recommends that the Commissioner’s motion to remand to the SSA (ECF No.

12) be GRANTED, and that the Commissioner's decision on Idlett's claim be VACATED and the case be REMANDED to the Acting Commissioner of Social Security pursuant to sentence four of Section 405(g) of the Social Security Act, 42 U.S.C. §405(g). On remand, the Appeals Council should send the case back to the Administrative Law Judge for further administrative proceedings consistent with this report and recommendation. Plaintiff's motion for summary judgment (ECF No. 10) should be DENIED as MOOT."

**PLAINTIFF'S OBJECTION TO ----- A34-43**

**REPORT AND RECOMMENDATION:** (D.C. ECF No. 19, May 12, 2017). (Appendix B, pA40, D.C. Respondent's ECF No. 12, Dec. 13, 2016, and No. 15, Dec. 23, 2016).

Argument: "The Magistrate Judge mistakenly disregarded the proper standard of review process for errors in law and abuse of judicial discretion." "These errors in law are "devoid" [material omission] "with" reference to a known disability

determination by another federal agency; and assessing the duration of a “severe” impairment on a rescinded review process.”

Petitioner’s Conclusion - DEPRIVATION OF U.S. CONSTITUTIONAL RIGHTS: (Appendix B, pA42). “These violations deprive the hearing of fairness mandated by federal, civil, SSA and United States Constitution, Article III. The federal and civil standard of review processes for reversing the denial of benefits without remanding this case for rehearing have been met.”

FINAL ORDER -----A43-48

(28 U.S.C. §1291); (D.C. ECF No. 20, May 31, 2017); (28 U.S.C. §2107). (Appendix B, p46).

“Following a de novo review of the Magistrate Judge’s Report and Recommendation, and the objections filed thereto, and finding no error, the Court **ADOPTS** the findings and recommendations set forth in the Report and Recommendation of the

United States Magistrate Judge filed on May 5, 2017." "Further, Plaintiff's Motion for Summary Judgment (ECF No. 10) is DENIED AS MOOT."

District Court Other Relevant ----- *A48-52*

Electronic Cases File (ECF) docket data.

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### **Jurisdiction Statement**

Rule 14.1(e)

Petitioner, Pamela D. Idlett, respectfully files a petition for extraordinary writ of mandamus after the U.S. Court of Appeal's JUDGMENT on March 09, 2018 (CoA ECF No. 19; Appendix A, pA5-6) which is being sought for review. (28 U.S.C. §1295). The appellate jurisdiction of this Court is invoked under the Supreme Court of the United States (SCOTUS), Rule 20.2-3; 18 U.S.C. §242, 18 U.S.C. §1001, 28 U.S.C. §636, 28 U.S.C. §1651(a), 28 U.S.C. §2101, 42 U.S.C. §405(g), 42 U.S.C. §1983, Code of Conduct for U.S. Judges, Canons 1-3; U.S.

Constitution, Amendment V, Amendment XIV (substantive due process and equal protection rights); and Article VI.

Idlett files her petition for rehearing en banc and supplemental petition on April 9, 2018 and April 19, 2018 in the U.S. CoA (CoA ECF No. 20, and No. 24). U.S. CoA denies her petition and supplemental petition for rehearing en banc on June 12, 2018 which establishes the timeliness of the petition of extraordinary writ. (CoA rehearing denial ECF No. 26); (Appendix A, pA6-7). The Solicitor General of the U.S. has been served (Rule 29.4(a)).

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### **Index of Constitutional Provisions**

Rule 14.1(f)

(See Appendix D for Statutory Text)

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**Reasons to Grant this Petition of**

**Extraordinary Writ of Mandamus**

SCOTUS Rule 14.1(g and h) and 20.2-3

**Exceptional Circumstance**

Extraordinary Writs of mandamus will assist the Court's appellate jurisdiction standard review process in the first instance. This case presents an exceptional circumstance and federal questions to the Supreme Court of the United States (U.S.). The lower courts deviate from normal federal appellate practice and entered a decision on **deprivation of substantive due process and equal protection rights** in conflict with the decision of the U.S. CoA and U.S. Supreme Court. This federal law violation warrants the immediate supervision of this Court's discretionary powers.

The purpose of this extraordinary writ of mandamus is to seek relief as a matter of law in the restoration of Idlett's substantive due process and equal protection rights. Idlett is petitioning for reversal of "errors on the face" of material evidence. These federal law errors were committed by the **unlawful judgment and final order** of the lower federal courts' judges and unlawful judicial conduct of SSA Administrative Law Judge (ALJ) William T. West, Jr. (Norfolk Office) in the federal disability insured benefits (DIB) process. Idlett is requesting that the Court address the ALJ's judicial conduct in breach of the U.S. Judges' declaratory decree, U.S. Constitution and supremacy law oaths and provisions. [U.S. Constitution, Amendment V, XIV, Article VI; 20 CFR 404.988(c)(8), 18 U.S.C. §242, 18 U.S.C. §1001, 28 U.S.C. §453, 42 U.S.C. §1983, 42

U.S.C. §2000d, SSR17-1p, and SSA's Program Operations Manual System (POMS) DI27505.001A4b].

**Deprivation of Constitutional Rights**

As a matter of federal law, the lower federal courts OPINIONS, JUDGMENT and ORDERS are unconstitutional. The lower courts' opinions, judgment and final order omit material evidence which harmfully alter the integrity of the federal standard review process. This unlawful judicial conduct deprives Idlett's guaranteed rights to a fair review due process.

Unlawful actions by the lower courts vacate and dispose of Idlett's judgment while dismissing all federal judicial conduct violations under "MOOT" issues of concern. Therefore, the deprivation of Idlett's

**substantive due process right has not been addressed. *Marbury v. Madison* (1803).**

The lower courts omit the material fact that the SSA Commissioner provides clear material evidence that “**a violation of Social Security Policy**” has been committed by the SSA’s ALJ. This conduct violation was committed through means of “...devoid of reference to a known disability determination by another federal agency.” [Material omission]. (D.C. Appellee’s/Respondent’s ECF Nos. 12, and 15).

The lower federal courts overlook the fact that the “Commissioner provides no defense for confirmed improper standard of the [federal] law.” [D.C. Idlett’s ECF Doc. 14 (December 16, 2016), Doc. 16 (December 27, 2016), Doc. 19 (May 12, 2017) and CoA, ECF Doc. 5 (July 12, 2017)]. The lower federal courts overlook the fact that the Commissioner

declines to file any genuine dispute to Idlett's material facts (CoA Appellee's/Respondent's ECF No. 14, July 21, 2017). These material facts support Idlett's summary judgment and contentions of grossly misapplied federal law through means of **material omission, making false statement and abuse of judicial discretion** by the SSA's ALJ.

These federal law violations deprive Idlett's guaranteed rights for a fair due process which create an exceptional circumstance of imperative public importance.

#### **Restore Constitutional Rights**

Adequate relief cannot be obtained in any other form, or from any other court. Idlett has depleted all administrative resolutions in accordance with 42 U.S.C. §405(g) and lower federal courts to restore her substantive due process and equal

protection rights to claim her disability benefits to no avail.

As a matter of federal law, Idlett is respectfully petitioning for a legal remedy which restores her constitutional rights by reversing the lower courts' judgment and final order. Idlett is also seeking answers from this Court addressing the federal questions to determine if the SSA ALJ's judicial conduct is in violation under the color of law. (18 U.S.C. §242, 18 U.S.C §1001, and 42 U.S.C. §1983).

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## **I. Introduction**

October 31, 2012, Idlett (petitioner) protectively filed a Title II application for disability insured benefits (DIB). Idlett's application was denied on January 9, 2013 and upon reconsideration on September 17, 2013. October 28, 2013, a written

request for a hearing was filed. Video hearing was held on October 7, 2014. [Hearing transcript, SSA Administrative Record (AR) p63-89].

On October 22, 2014, Idlett's legal counsel, Binder and Binder, filed a letter of medical explanation to the SSA ALJ. This letter pointed out that there are various magnetic resonance imaging (MRI) diagnostic results on Idlett. These MRIs are designed to detect **two different types of rare and progressive brain impairments**; (1.) "Arnold Chiari" and (2.) "Syringomyelia". Attorney's letter explained brain and cervical spine MRI results: (1.) "...nothing again evidence of Chiari 1 malformation." [2.] Cervical and Thoracic spine MRIs "...did not show evidence of syringomyelia and that it was unclear whether surgery would reduce Ms. Idlett's symptoms. (Exhibit 3F)". (AR p167-

168). January 12, 2015; ALJ denied DIB. (AR p45-62).

January 28, 2015, Idlett's attorney requested remand based on legal errors. (AR p17, 44, 335-337). Approximately 17 months from denial date elapsed without a response. "ODAR Appeals Council denied DIB" on June 9, 2016; "We found no reason under our rules to review the Administrative Law Judge's decision." (AR p1-7). This notification came after the ODAR Appeals Council requested and received "duplications of Idlett's medical records covering timeframe September 12, 2000 through March 07, 2016." (AR p1175-2286). On August 8, 2016, Idlett filed her initial civil action complaint of erroneous law execution and abuse of judicial discretion with the U.S. District Court, E.D. Virginia, Newport News Division. (D.C. ECF No. 1, August 8, 2016).

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## **II. Issues on Appeal**

Pamela D. Idlett respectfully petitions this Court to exercise its discretionary power under SCOTUS Rule 20 to grant an extraordinary writ of mandamus to the U.S. Court of Appeals for the fourth circuit on appeal from the U.S. District Court E.D. Virginia. The lower federal courts' conclusions of federal law, opinions, judgment and final order conflict with relevant decisions on deprivation of U.S. Constitutional rights as they far depart from accepted and usual course of federal judicial proceedings.

As a matter of law, "errors on the face" of material evidence have been committed by the SSA's ALJ and have reversible remedies to restore federal law and Idlett's substantive due process and equal protection rights. (DI27505.001A4b); (SSR-17-1p);

(20 CFR 404.988(c)(8); (U.S. Constitution, Amendment XIV).

Undisputed material evidence presented to lower federal courts and in this petition to the Supreme Court support Idlett's contentions that the SSA ALJ's judicial conduct of **grossly misapplied federal law by material omission, making false statements and abuse of judicial discretion** violates the U.S. Constitution and supremacy laws. This judicial conduct deprives Idlett's U.S Constitutional rights under the XIV Amendment.

[Lambert ex rel. Lambert v. Comm'r of Soc. Sec., 886 F.Supp.2d 671 (S.D. Ohio 2012)].

Material omission of the ALJ's misconduct and erroneous federal law execution in the lower federal courts' opinions, judgment and final order is unconstitutional. These federal law violations alter the integrity of the federal standard review due

process and breaches legally binding U.S. Constitutional decrees, oaths and codes of ethical conduct for federal judges. (Code of Conduct for U.S. Judges decree, Canons 1 – 3; 18 U.S.C. §242; 18 U.S.C. §1001; 28 U.S.C. §453; 42 U.S.C. §1983; 42 U.S.C. §2000d; U.S. Constitution; Amendment V; Amendment XIV; and Article VI).

These legal conflicts call for an exercise of this Court's supervisory power.

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### **III. Disability Procedures and Facts**

Disability Insurance Laws for  
“Progressive” Disorders - Compassionate  
Allowance (CAL) Initiative:

“The CAL initiative is designed to quickly identify diseases and other medical conditions that invariably qualify under the Listing of Impairments

based on minimal, but sufficient, objective medical information." (DI11005.604); (DI23022.080).

"Discontinue development when: The impairment(s) present at onset has been documented as being severe; and It is of a chronic or progressive nature." (DI22505.-010B1-3); (DI34001.030P).

The Commissioner has established a "five-step sequential evaluation process" to determine whether a claimant satisfies disability criteria. (See 20 CFR §404.1520(a)(4)(i)-(v)).

At step one, the Commissioner considers the claimant's work activity. [20 CFR 404.1520(a)(4)(i)].

"First, the claimant must possess the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to prevent the individual from engaging in a SGA for a continuous period of not less than twelve months." [42 U.S.C. §416,

Section 216(i)(1)(A), and Social Security  
Ruling (SSR) 82-52].

[Second, the claimant's] "...an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy...". [42 U.S.C. § 1382c(a)(3)(B)].

"...[A] "physical or mental impairment" is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." [42 U.S.C. §423, Section 223(d)(3)].

At step three, the Commissioner compares the claimant's impairment to several impairments recognized by the Commissioner to be so severe as to

preclude a person from engaging in substantial gainful activity. [20 CFR § 404.1520(a)(4)(iii)].

“Your impairment must prevent you from doing past relevant work.” [20 CFR 404.1520(e)]. The listing of impairments is identified in Appendix 1 to Subpart P of Part 404.

“When we determine if an impairment(s) medically equals a listing, we consider all evidence in the claimant’s case record about their impairment(s) and its effects on them that are relevant to this finding.” (DI24505.015B3).

“Exception: Symptom evaluation is not required if you can make a fully favorable determination based solely on the objective medical findings.” (DI24501.021A1-2, DI22505.010B.1, and DI24515.020A).

“When the medical evidence supports a fully favorable allowance, do not pursue additional

evidence to establish or evaluate additional alleged impairments." (DI24515.020C).

"If we can find that you are disabled or not disabled at a step, we make our determination or decision and we do not go on to the next step." 20 CFR 404.1520(a)(4). "If you have an impairment(s) that meets or equals one of our listing in appendix 1 of this and meets the duration requirement, we will find that you are disabled." [20 CFR Part 404, Subpart P, Appendix 1, 20 CFR 404.1520(a)(4)(iii); and SSA Program Operations Manual System (POMS) Disability Insurance (DI) 22001.001C].

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#### **IV. Statements of the Case**

Johns Hopkins Chief of Cerebrovascular Neurosurgery, Judy Huang, M.D.; Neurologists Frederick Patterson, M.D. and Adel Boulos-Mikhaiel, M.D.; Family Health Care Providers (Federal); and Physical Therapists MacMaster are treating physicians who have diagnosed and defined

Idlett's severe and progressive brain disorder,

“Chiari Malformation Type 1”:

“Idlett has been “diagnosed with Arnold Chiari Malformation (rare brain malformation) which is a chronic and progressive brain defect resulting in cerebellar tonsillar herniation and relative crowding of the cervical medullary junction at the foramen magnum”. (AR p255-263).

“There is low lying cerebellar tonsils [lower brainstem] demonstrated with the tip of the cerebellar tonsils approximately 7 mm below the foramen of magnum.” (AR p369-370).

“Mrs. Pamela Idlett is a 46 year-old woman who is under my care for an Arnold Chiari Malformation, which was originally diagnosed on 1/27/2011. She was seen in Neurosurgery clinic at Johns Hopkins Bayview Medical Center on 11/29/2011. This is a serious and progressive condition, causing the patient to suffer from frequent headaches with pressure, chronic neck, back, and upper extremity pain,

dizziness, occasional blurred vision, muscle weakness, upper extremity tremors, paresthesias, and numbness. These symptoms are debilitating for Mrs. Idlett and cause interference and hardship with her daily work activities and performance of budgetary functions.” “It is my medical opinion that Mrs. Idlett’s condition prevents fulfillment of essential functions and workload responsibilities.” (AR p258-259). (DI23022.080); (DI23022.281).

Brain MRIs and neurological examinations verify the objective medical finding and duration of (1) “Chiari Malformation, type 1” with “progressive bulbar” and “ataxia” medical signs which are “episodic” in nature. Cervical spine MRIs verify objective medical finding of no (2) “syringomyelia”/“syrinx”: (DI23022.080) (DI23022.281); (DI34131.013).

- 01/26/2011: [Initial neurological appointment with Dr. Bojarski, Peninsula Neurology.] “**NEUROLOGICAL [Exam findings]**” “**Facial symmetry:** There is mild left facial asymmetry.” “There is decreased

temperature sensation and vibratory sense left arm." "There are mild deficits in extensor muscle strength lower extremities with deficit greater on left than right." **Assessment:** Ms. [I]dlett present for evaluation for facial occipital pain which has intensified over the past several months. She admits mild chronic pain for at least 10 year." "Suspect possible multiple factors such as chronic sinus disease as well as cervical spine degenerative disease and mild arthritic changes may be contributing to symptoms. **Plan:** 1. Will obtain and MRI of the cervical spine as well as brain to investigate mild asymmetric findings regarding facial deficit and upper extremity sensory deficits. 2. Would advise patient start on daily aspirin therapy and fish oil capsules. 3. May take naproxen or Aleve for acute pain treatment. 4. Also advise starting on low-dose muscle relaxant 10-20 mg. q.h.s...". (AR p338-340).

- 02/09/2011: [Follow up with Dr. Bojarski:] **HISTORY OF PRESENT ILLNESS:** Ms. Idlett returns for a followup visit." "Since her last visit, she did have an MRI of cervical spine as well as brain [1/27/2011]. These were grossly normal; however, a mild Chiari 1 malformation was noted on C-spine." **MEDICATIONS:** Current medications

include Tylenol and Claritin.” “**ASSESSMENT:** The patient returns for continued evaluation and treatment for headache initially explained occurring in the left facial area extending to occipital region intensifying over the past several months.” “The patient returns to ENT for further evaluation and was prescribed antibiotics. Headache symptoms resolved.” (AR p338-340, 354-355, 408-409). (DI23022.080); (DI23022.281); (DI34131.013).

01/27/2011: [Brain and Cervical Spine MRI; 11/29/2011: First visit to Johns Hopkins; Dr. Huang (Chief Neurosurgery) with Mary Immaculate 1/27/2011 MRI disk copy.] [Prescribed by outside treating physicians] “**Medications:** Cyclobenzaprine/10mg twice a day; Triamterene/37.5mg half a tablet a day; Ibuprofen – 800mg 3 times a day; Oxycodone, diazepam, Naproxyn, Aspirin, Topiramate, meloxicam were previously prescribe, but she has discontinued them [ineffective or caused side-effects].” “**Major Findings:** [Extremity strength based on 5/5 scale]:...She has 5/5 strength throughout the bilateral upper and lower extremities with the exception of the left grip, which is 4 and right wrist extension 4+.” “She has 3+ left arm and leg, reflexes were 2+ on the right.” “She

has a positive Romberg [detect sensory ataxia: balance problem].” “Her imaging studies performed at Mary Immaculate Hospital of Virginia were reviewed. There is a [first MRI] brain MRI dated January 27, 2011, which demonstrates tonsillar herniation measuring approximately 6.6mm. The [second MRI] cervical spine MRI dated January 27, 2011 does not demonstrate any evidence of syringomyelia or spondylotic changes. **Assessment:** Ms. Idlett has a Chiari malformation and is markedly troubled by persistent headache, neck pain, and upper extremity paresthesias. She has undergone extensive evaluation with no other etiology to account clearly for her symptoms. She may be a candidate for suboccipital decompression.” **Plans:** In order to better determine her likelihood of symptomatic improvement with surgical interventions, she is asked to undergo a CSF flow study as well as a thoracic MRI without contrast to assess for the presence of syringomyelia.” (AR p356-375, 399-407). (DI23022.080); (DI23022.281); (DI34131.013).

- 12/20/2011: [Johns Hopkins; Dr. Huang's follow-up exam:] **Major Findings:** [Based on 5/5 scale]...She has a 3+ reflexes in the left biceps and triceps as well as knee jerks. All other reflexes are 2+ on the right.”

**“Assessment:** [Brain MRI<sup>1</sup> results] Ms. Idlett has a Chiari malformation with multiple associated symptoms. However, [cervical spine MRI<sup>2</sup> results] she has no radiographic evidence of functional cerebrospinal fluid obstruction at the cervical medullary junction, and there is no evidence of syringomyelia. Therefore, prognosis of improvement in her symptoms with decompressive suboccipital craniectomy is unclear.” **“Plan:** She understands that she has no activity restrictions. She is given a prescription of tramadol/50mg every 8 hours p.r.n quantity 50 with 3 refills. She is encouraged to discontinue the Flexeril as that may adversely impact her ability to concentrate.” (ARp356-375, 399-407). ([\(DI23022.080\)](#); ([\(DI23022.281\)](#)); ([\(DI34131.013\)](#)).

11/13/2012, 3/11/2013: [Visit with neurologist Dr. Boulos-Mikhail; Sentara Neurology for follow-up exam and interpretation of 09/10/2012 Cervical Spine MRI ordered by him on 8/29/2012]. **“Assessment:** Cervical radiculopathy, Chiari 1 malformation, Tension headache, Migraine headache”. **“Plan:** 1. TENS unit Rx, 2. Left wrist brace, 3. Continue flexeril and ibuprofen, 4. F/u in 4 months.” **“HPI:** the patient has some Improvement after PT. She has hand

numbness at night and around her left wrist though she is [RIGHT] handed.”  
“...she is still complaining of left neck, shoulder pain and left upper extremity numbness and some times extend down to her left lower extremity.”

**“Outpatient prescriptions marked as taking for the 11/13/12 encounter (Office Visit) with BOULOS-MIKHAIEL, ADEL A.** Medication buspPIRone/5mg Take 10mg by Mouth Once a Day., ibuprofen/600mg Take 600 mg by Mouth Take as Needed. Tricor 145mg Take 145 mg by Mouth Once a Day. tramadol/50mg by Mouth Every 6 Hours as Needed. triamtereme-hctz 37.5-25 mg Take 1 cap by Mouth Once a Day.

Cyclobenzaprine (FLEXERIL)/Take 10mg by Mouth One a day. Naproxen/500mg by Mouth take as needed. Esomeprazole (NEXIUM)/ 40mg Take by Mouth Once a Day.”

**“[Objective] Imaging:...3.** The cerebellar tonsils extend 5 mm below the foramen magnum, consistent with the tonsillar ectopia seen on the prior brain MRI.” (AR p945-953).  
(DI23022.080);                   (DI23022.281);  
(DI34131.013).

- 09/16/2014: “Cervical Spine MRI” (Hampton Diagnostic Center). (AR p1132-1133) [Written MRI interpretation and 09/09/2014 office visit transcribed on 10/16/2014; Dr.

Patterson, Riverside Neurology:]  
"REASON FOR CONSULTATION:  
Chiari malformation."  
"NEUROLOGICAL EXAMINATION:  
...On Romberg testing she does sway.  
Actually she had some tremors when  
she held the right hand out... There is  
a postural tremor of mild to moderate  
amplitude." "...She has decreased  
pinprick and light touch in digits 1-3 on  
the left hand." "ANCILLARY DATA: I  
reviewed a CD that she provided to me  
that has reports of MRI of the cervical  
spine with and without contrast, dated  
January 27, 2011. [Brain MRI<sup>1</sup>] Mild  
Chiari 1 malformation was described,  
otherwise unremarkable with no  
intrinsic cord signal abnormalities.  
[Spine MRI<sup>2</sup>] An MRI of the thoracic  
spine dated December 9, 2011,  
unremarkable, no evidence of thoracic  
cord syrinx. An MRI of the brain, with  
and without contrast, dated January  
27, 2011, showing a mild Chiari 1  
malformation, otherwise unremarkable  
brain MRI. The extent of the tonsillar  
displacement below the level of the  
foramen magnum was described as  
6.6mm. I reviewed her brain MRI [1]  
and cervical and thoracic spine MRIs  
[2] and agree with the mild Chiari  
malformation and no evidence for  
syrinx." "**REVIEW OF SYSTEMS**  
**General:** Complains of fatigue,  
**weight loss...Eyes:** Complains of

blurred or double vision, eye pain...Ears/Nose/Throat: ...ringing in ears... Musculoskeletal: muscle pain, stiffness...Neurologic: convulsions or seizures, difficulty with balance, dizziness, headaches, loss of consciousness, memory loss, muscle twitching, numbness or tingling, tremors, weakness... Psychiatric:...anxiety, depression, insomnia... Endocrine:...hot flashes..." "IMPRESSION: 1. Mild Chiari 1 malformation, radiographically. 2. Patient has a number of symptoms including headaches, tremors in the right upper extremity, numbness in the left upper extremity, intermittent unsteady gait." "...4. She did not elaborate on the symptoms while she was in the office with me, but reviewing her outpatient records I saw mention made of a couple of episodes of loss of consciousness, earlier in the year." RECOMMENDATION: [Ordered] "1. Cervical spine for Arnold-Chiari malformation, to look for syrinx. 2. Begin trial of propranolol to see if this helps with the vascular component of her headaches. Begin at 10mg one-half tablet twice a day for a week and then increase to 1 tablet p.o. b1d. 3. Continue the conservative management for the musculoskeletal component of her headaches using and moist heat. She also used tramadol and ibuprofen

and may continue this. 4. Follow up in 6 months or sooner as needed.” (AR p1169-1173). (DI23022.080); (DI23022.281).

- 04/14/2015: “Mary IMMACULATE HOSPITAL, ER” “Diagnoses Vasovagal syncope, Chiari malformation (HCC) Headache (784.0)”. **“Syncope This is a recurrent problem.”** “...MDM Number of Diagnoses or Management Options Chiari malformation (HCC), Headaches (784.0), Vasovagal syncope: [Temporary loss of consciousness]”. **“MEDICATIONS GIVEN:** sodium chloride 0.9% bolus infusion 1,000ml...” “morphine injection 2mg...”, “metoclopramide HCl (REGLAN) injection 5mg...”, “ketorolac (Toradol) injection 30 mg...” **“...DISCUSSION** **NOTE:** Pt has a hx of Chiari malformation and has had related syncopal episodes before...She had a syncopal episode tonight. Her vitals are stable and lab evaluation and CT were negative. She will be discharged home on Fioricet and follow up with Dr. Patterson her neurologist.” (AR p18-37); (DI23022.080); (DI23022.281).
- 05/04/2015: [Follow-up to Dr. Patterson, Riverside Neurology:] **“History of Present Illness:**...Ms. Idlett presents today in followup for her mild Chiari 1 malformation and constellation of

symptoms, including tension-type headaches, probable weekly migraines, neck pain, low back pain, tremor.”. “...On exam today,...very low amplitude postural tremor in her hands...  
**PHYSICAL EXAMINATION:** ...She had some mild tenderness to palpation at the base of her skull, upper part of her neck, and along the neck muscles and trapezius on the left...The back pain that she described was in the center of her back over the spinous processes of the mid lumbar spine...She notes that the Flexeril that she tried affected her memory, though it did help to relax her and help the tremor. **ANCILLARY DATA:** We did send her for a MRI of the cervical spine since the neurosurgeon had suggested that due to her Chiari to periodically get that to rule out a syrinx. In fact, her September 16, 2014, MRI showed mild broad-based posterior disc bulge osteophyte complexes at C4-5 and C5-6 without cord compression or forminal stenosis. No acute findings were seen No syrinx was reported.” “...What makes it difficult to learn?/Barriers are: Cognitive, Emotional...”  
**IMPRESSION:** [(1) MRI Brain results] Ms. Idlett has a history of mild chiari 1 malformation with the tonsils extending 5-6 mm below the foramen magnum. She has [(2)] cervical spine MRI that does not show any evidence of

syrinx, but just shows mild arthritic changes..." "RECOMMENDATION: Begin trial of low-dose amitriptyline/10mg a day for 1-2 weeks and increase to 20/mg at bedtime...Medication removed today: Propranolol HCL 10mg...". (AR p38-43), (DI23022.080); (DI23022.281).

A reasonable inference of sporadic episodes of medical sign can be made from treating neurologists' statements of severe impairment; "...produce good days and bad days". (AR p11-16; p1005-1013; p1115-1122). Disability hearing testimony from Idlett of sporadic episodes of medical signs:

"A That's - - I can't say constantly but it's daily. I have sporadic episodes throughout the day. It's like I said it varies but it's every day. And I have several sporadic episodes." (AR p75).

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## V. Argument Facts on the Merits

A. The lower federal courts’ “[opinions, judgment,] [f]inal order and [r]eport and [r]ecommendation are based on oversights of these errors in the disability standard review process.” These unlawful oversights prove “...harmful to Idlett’s substantial right[s] as a requirement under the United States (U.S.) Constitution.” (CoA Petitioner’s Brief ECF No. 5, July 12, 2017). “[N]umerous acts of Federal adjudication violations [have been] committed by the Administration Law Judge (ALJ) of the Office of Disability with[in] the Social Security Administration (SSA).” (D.C. Plaintiff’s Motion to Object Remand Based on “Bad Faith” Conduct, ECF No. 14, filed December 16, 2016).

The ALJ's "noncompliant conduct" by "erroneous law execution and abuse of judicial discretion" "...violate[s] numerous [f]ederal adjudication procedures in accordance with various Social Security Ruling (SSR) laws and Code of Federal Regulations (CFRs)." (D.C. ECF No. 14) "...[T]his misconduct violates mandated rules of law in accordance with the Judiciary Code of Conduct,...and the United States Constitution, Article III." (D.C. ECF No. 14). "These violations deprive the hearing of fairness mandated by federal, civil, SSA [laws] and United States Constitution, Article III." [CoA Petitioner's ECF No. 5, July 12, 2017; D.C. Plaintiff's ECF Nos. 14 and 16 (December 27, 2016), and D.C. Plaintiff's Objection to Report and Recommendation, No. 19, Appendix B *A34-43*].

B. Harmful and grossly misapplied federal law by U.S. Judges violates U.S. Constitutional

declaratory oaths, decrees, supremacy law, and  
“Code of Conduct for U.S. Judges, Canons 1 - 3.”  
(CoA Petitioner’s ECF No. 5).

C. Lower courts’ omission of “errors on the face” of material evidence conflict with the authoritative decision of **deprivation of substantive due process law and equity protection rights** under the U.S. Constitution. (18 U.S.C. §1001, 42 U.S.C. §1983, Code of Conduct for United States Judges, U.S. Constitution, Amendment V, Amendment XIV, and Article VI, SSR17-1p).

D. The ALJ’s law conclusion yields a decision based on grossly misapplication of federal law (“omitting material evidence, making false statements and abuse of judicial discretion”) in a standard review due process. The ALJ’s law conclusion was not supported by all relevant

substantial evidence, federal (SSA disability insurance law or the U.S. Constitution.

E. The lower federal courts overlook the ALJ's legal "**errors on the face**" through means of **omitting material evidence**. Material omission of the ALJ's violations in federal law execution at sequential step three:

1. Improperly omitting material evidence by failing to consider "[d]ecisions by any governmental or nongovernmental agency about whether you are disabled or blind;...[is] based on the review of the evidence in your case record." (20 CFR 404.1512(b)(5-6). The ALJ verbally reference and acknowledge Idlett's permanent federal disability status in his hearing, but "willingly" omit material evidence in his conclusion of federal law:

[ALJ's Question:] "Q Now, are you currently retired from federal government, NASA? [Plaintiff's

answer:] A Yes,...Your Honor. Q Okay. A I retired under disability. Q Right. Is that a permanent disability ma'am? A Yes, sir." (Hearing Transcript, AR p68).

The ALJ's falsifying statement:

**"11. The claimant has not been under a disability, as defined in the Social Security Act, from October 1, 2011, through the date of this decision (20 CFR 404.1520(g))."** (AR p57). (*Note: Onset date officially amended to "April 1, 2012"; last day in paid status*). (AR p.50).

"Office of Personnel Management (OPM's) Retirement Disability" (July 31, 2012) federal record is enclosed as part of the SSA's hearing exhibits listing. (AR p248-263). "OPM FERS supervisor's statement (NASA)" verifies Idlett's physical limitations which "prevent[ed her] from doing past relevant work": [20 CFR 404.1520(f)].

“Employee’s health impairing medical condition has decreased her physical ability to fulfill essential budgetary functions and workload responsibilities. Her symptoms have caused her absence within the workplace...” “Due to her debilitating and uncontrollable medical illness, her condition is incompatible with other useful service or retention in this position.” “Due to her incapacitating condition of a progressive and uncontrollable nature, this agency has exhausted all reasonable means to retain & accommodate the employee in a productive capacity. There is an absence of an available position for reassignment.” (AR p248-263).

Federal “Agency Certification of Reassignment and Accommodation Efforts and Confirmation of Request for Reasonable Accommodation” (“EEO-NASA”) verifies that Idlett “...is not only unable to do her previous work, but cannot...engage in any other kind of substantial gainful work which exists in the national economy”:  
[42 U.S.C. §423, Section 223(d)(1-3)].

“...[U]nsuccessful accommodation efforts”.

“Reassignment is not possible. There are no vacant position(s) at this agency, at the same grade or pay level and tenure, within the same commuting area, for which the employee meets minimum qualifications standards.” (AR p260-261).

“Mrs. Idlett’s serious and uncontrollable condition continued to get progressively worse, with frequent memory loss, tremors, headaches, dizziness, occasional blackouts, and occasional seizures. Due to these symptoms and the medical opinion of her Neurosurgeon, she can no longer fulfill essential functions and workload responsibilities; therefore, her chronic and progressive condition is incompatible with useful and efficient service in her current position or retention in other positions. As a result, reassignment was not possible.” (AR p262-263).

ALJ makes false statements discrediting objective medical evidence and opinions from

treating physicians and governmental agency nonmedical opinions (AR p95):

“While her brain disorder may cause some limits regarding her frequency of headaches, the severity is not of a disabling level.”

“It is not credible that she is limited with memory, completing tasks, concentration, understanding, following instructions as there is no medically determinable impairment to cause these symptoms. There are no noted visual limitations by any medical source. While her brain disorder may cause some limits regarding her frequency of headaches, the severity is not of a disabling level.”

The ALJ’s conduct violates federal law by making false statements discrediting material evidence which harmfully alters the integrity of the federal standard review process. (DI24503.020D1-2 and DI24503.035C-G; for “[c]laims filed before March 27, 2017.”). “Errors on the face” of material evidence have “reversible” remedy.

Idlett pointed out in her objection to the report and recommendation (District Court ECF No. 19) that the Commissioner's clear and reliable evidence confirmed an error in federal law in the disability legal due process. (DI27505.001A4b); (SSR17-1p); (20 CFR 404.988(c)(8). The Commissioner's provides two (2) written confessions of the ALJ's federal violation of "omitting" "known" and "mandatory evidence" which were overlooked by lower federal courts:

"Upon further review by counsel for the Commissioner, the Commissioner has determined that additional evaluation of the claim of the Plaintiff pro se claim is warranted due to the fact that the decision of Administrative Law Judge below does not demonstrate consideration of the Plaintiff's disability award by another governmental agency, that consideration of such evidence is mandatory and that a failure to

consider such evidence is a violation of Social Security Policy." (D.C. ECF No. 12, Dec. 13, 2016). (20 CFR 404.1512(b)(5-6); (DI24503.005B3-6 for "Opinion filing date before March 27, 2017")).

"Specifically, the opinion of the Administrative Law Judge (ALJ) below is devoid of reference to a known disability determination by another federal agency." (D.C. ECF No. 15, December 23, 2016); [20 CFR 404.1512(b)(5-6)]; (DI24503.005B3-6).

The Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." [Hill v. Astrue, 688 F.3d 1144, 1149 (9th Cir. 2012)]. [42 U.S.C. §405, Section 205(g)].

"Objective medical evidence means signs, laboratory findings, or both, from a medical sources." (DI24503.005B1).

“This category of evidence is relevant only in a claim whose filing date is before March 27, 2017. An opinion is evidence from either a medical source who is not a [acceptable medical source] AMS or from a nonmedical source that reflects judgment about the nature and severity of a claimant’s impairments, including symptoms, diagnosis and prognosis, what the claimant can still do despite impairments, and the claimant’s physical or mental restrictions.”  
(DI24503.005B1-6).

2. Improperly omitting material evidence by failing to consider the “progressive” nature of Idlett’s severe neurodegenerative disorder (Chiari Malformation) supported by various MRI findings, neurological exams in compliance with DI and SSR laws. (DI22505.010B1-3); (DI24501.015B); (DI23022.281); (DI24501.021A2); (DI24503.035C-G); (DI34131.013). “Errors on the face” of material evidence. (DI27505.001A4b); (SSR17-1p); (20 CFR 404.988(c)(8).

The ALJ's sequential steps under federal disability insurance laws assessed the following (AR p50):

**"1. The claimant meets the insured status requirement of Social Security Act through December 31, 2017 (Exhibit 7D). 2. The Claimant has not engaged in substantial gainful activity (SGA) since April 01, 2012, the amended alleged onset date (20 CFR 404.1571 *et seq.*). 3. The Claimant has the following severe impairment: an Arnold Chiari malformation by history (20 CFR 404.1520(c))."**

ALJ's conduct erred by willingly omitting material evidence by making false statements discrediting objective MRI findings, neurological exams, and opinions from treating physicians and nonmedical sources (AR p52):

"The claimant does not have an impairment or combination of impairments that meet or medically equal the severity of one of the listed impairments in 20 CFR Part 404, Subpart P, Appendix 1 (20 CFR

404.1520(d), 404.1525 and 404.1526). The claimant's physical impairment was evaluated under section 11.00 Neurological Disorders. This impairment is not attended with the specific clinical signs and diagnostic findings required to meet or equal the requirement set forth in the Listing of Impairments., Appendix 1 to Subpart P. 20 CFR Part 404 (Exhibits 2F, 3F, 4F, 6F, 7F, 10F, 17F, 18F, 21F and 22F”.

Objective material evidence (MRIs) have confirmed the existence of Chiari Malformation with qualifying clinical progressive bulbar signs (see Statement of the Case section IV above; p23-35). (DI24501.021A2). [*Stephens v. Astrue*, No: 12-cv-0160-TOR (E.D. Wash. December 14, 2012)]. Idlett's progressive neurodegenerative (permanent) disorder with episodic clinical signs meet specific criteria for a fully favorable claim under severe impairment listings below for “*claims filed from 12/15/04 to 09/28/2016*”: (DI34131.013); (20 CFR Part 404, Subpart P, Appendix 1).

“Impairment Diagnosis: 3310-Other Cerebral Degenerations”; “Severity: Severe” “Listing: 11:17”; “Description: Other Cerebral Degenerations”. (AR p107).

**“11.17 Neurodegenerative disease not listed elsewhere, such as Huntington’s chorea, Friedreich’s ataxia, and spino-cerebellar degeneration. With: A. Disorganization of motor function as described in 11.04B; or B. Chronic brain syndrome. Evaluate under 12.02.”** [Idlett’s impairment satisfies A]. (DI34131.013).

**“11.04 Central nervous system vascular accident. With one of the following [A or B] more than 3 months postvascular accident:”** “B. Significant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movement, or gait and station ([impairment is not postvascular accident] see 11.00C).” (DI34131.013).

**“11.00C. Persistent disorganization of motor function in the form of paresis or paralysis, tremor or other**

involuntary movement, ataxia and sensory disturbances (any or all of which may be due to cerebral, cerebellar, brain stem, spinal cord, or peripheral nerve dysfunction) which occur singly or in various combinations, frequently provides the sole or partial basis for decision in cases of neurological impairment. The assessment of impairment depends on the degree of interference with locomotion and/or interference with the use of fingers, hands and arms.". (DI34131.013C).

**"11.00D. In conditions which are episodic in character such as multiple sclerosis or myasthenia gravis, consideration should be given to frequency and duration of exacerbations, length of remissions, and permanent residuals."** (DI34131.013D).

Compassionate Allowance (CAL) laws also identify Idlett's severe neurodegenerative condition. Idlett's medical signs also meet CAL criteria as a fully favorable claim with slowly progressive bulbar signs in accordance with DI laws:

**"DESCRIPTION:                    Progressive  
    Bulbar Palsy (PBP) is a motor neuron**

disease [disorder] that involves the brain stem—the bulb-shaped region containing lower motor neurons needed for swallowing, speaking, chewing, and other functions. Symptoms include pharyngeal muscle weakness (involved with swallowing), weak jaw and facial muscles, progressive loss of speech, and tongue muscle atrophy. Limb weakness with both lower and upper motor neuron signs is almost always evident but less prominent.” **DIAGNOSTIC TESTING, PHYSICAL FINDINGS, AND ICD-9-CM CODING:** Diagnostic testing: The Diagnosis of PBP is based on history and neurological examination; electrophysiological and neuroimaging testing [computer tomography (CT) and magnetic resonance imaging (MRI)] to rule out other impairments; needle electromyogram (EMG); nerve conduction study; and analysis of the cerebral spinal fluid to rule out other cases of symptoms.” **“ONSET AND PROGRESSION:** The prognosis for PBP is poor. The symptoms of PBP slowly worsen with onset beginning between the ages of 50-70 years. Most people with PBP die from respiratory failure, usually within ten years from the onset of symptoms.” **“TREATMENT:** Treatment of PBP is symptoms specific and supportive. Medications such as riluzole/[Amitriptyline for progressive

supranuclear palsy] are prescribed to prolong survival.” “**SUGGESTED PROGRAMMATIC ASSESSMENT\*** Clinical history and examination that describes the diagnostic features of the disorder. Full neurological examination with emphasis on motor function and coordination, gait and balance, eye movement and gaze, and cognitive function. Brain imaging may provide supporting evidence.” **“Suggested Listings for Evaluation: Meets Listing 11.17, 11.22, 111.17, 111.22”.** (DI23022.080); (DI23022.281).

“Neurodegenerative disorders of the central nervous system are disorders characterized by progressive and irreversible [permanent and incurable is inferred] degeneration of neurons or their supporting cells. Over time, these disorders impair many of the body’s motor, cognitive, and other mental functions. We consider neurodegenerative disorders of the central nervous system under 11.17 that we do not evaluate elsewhere in section 11.00, such as Huntington disease (HD), Friedreich’s ataxia, spinocerebellar degeneration, Creutzfeldt-Jokob disease (CJD), progressive supranuclear palsy (PSP), early-onset Alzheimer’s disease, and frontotemporal dementia (Pick’s disease).” (DI34001.030P).

“Particularly in the case of slowly progressive impairments, it is not necessary for an impairment to have reached listing severity (i.e., be decided on medical grounds alone) before onset can be established. In such cases, consideration of vocational factors can contribute to the determination of when the disability began.” (DI24501.015B); (SSR83-20).

“Some impairments are subject to temporary remissions, which can give the appearance of medical improvement (MI) when in fact there has been none. These types of impairments can appear to be in remission when, in fact, the impairments are only stabilized.” “Temporary improvements will not warrant a finding of MI.” (DI28010.115A).

“Temporary improvement” or “temporary remission” periods are **not** factors of “medical improvement” in an “incurable impairment” with “irreversible (permanent) progressive motor neuron degeneration.” (DI28010.115A). “Discontinue development when: The impairment(s) present at onset [April 1, 2012] has been documented as being

severe; and It is of a chronic or progressive nature.”

(DI22505.010B1-3); (DI34001.030P). [Tyser v.

Astrue, 4:09CV3078. (D. Neb. Jun. 17, 2010)].

3. Violation of federal law: Failure to “give controlling weight” to “objective laboratory findings”, “medical signs”, “treating physicians and [federal] nonmedical opinions”. (DI24503.035C-G). [Turner v. Commissioner of Social Sec., 613 F.3d 1217 (9<sup>th</sup> Cir., 2010)].

“For claims with a filing date before March 27, 2017, give controlling weight to (adopt) the medical opinion of a treating source only when it is both well supported by objective medical evidence and is consistent with the other substantial evidence in the claim.” (DI24503.035C-G).

False statements were made by the ALJ that discredit objective medical evidence, treating chief neurosurgeon, neurologists, federal medical

physician and federal governmental agency opinions in the ALJ's conclusions of law:

"The claimant reported constant headaches, but examinations consistently show no acute distress and normal neurological findings. (Exhibits 2F, 6F, 7F, 10F, 17F, 18F, and 22F)." (AR p51).

A false statement was made in the residual functional capacity (RFC) section of the SSA Disability Determination Explanation dated "1/9/2013":

"Explain environmental limitations and how and why the evidence supports your conclusions. Cite specific facts upon which your conclusions are based." Assessment answer (false statements): "No" "limitations" and "no Chiari malformation and associated headaches". (AR p95-96).

The ALJ's conclusion of federal law is not supported by all substantial evidence (see section IV

Statements of the Case; p23-35 above). Substantial evidence meet “severity impairment” and “CAL progressive bulbar” listings criteria). (DI11005.604); (DI22505.010B13); (DI23022.080); (DI23022.281); (DI24503.035C-G); (DI34131.013); (20 CFR Part 404, Subpart P, Appendix 1); (SSR83-20).

The ALJ imposed “environmental limitations”; “Noise: Avoid even moderate exposure.” (AR p96) and “...no climbing of ladders...” (AR p52). These environmental limitations are not supported by substantial material evidence or false statements made in the residual functional capacity (RFC) conclusion of law; “No” “limitations” and “no Chiari malformation and associated headaches”. (AR p95-96). The ALJ failed to give a legally sufficient reason for imposing environmental limitations not supported by material evidence or his erroneous conclusion of law.

4. Abuse of Judicial Discretion: The ALJ's conduct of "significantly increasing RFC" beyond what is supported by MRIs and treating physician opinions.

Objective brain MRI findings, opinions of treating neurologists (Dr. Boulos-Mikhail, Dr. Patterson), physical therapist (MacMaster), and neurological examinations all have assessed "RFC" at "less than a full range of sedentary work". Note: Medical limitation assessment section has been consolidated from 3 Disability Impairment Questionnaire forms. Corresponding numbers reflecting the same question between the different forms are in bold print (AR p11-16; p1005-1013; p1115-1122):

"...[2a]**2.** Patient's diagnoses: Arnold Chiari Malformation, Tension Headaches, Migraine Headaches, Tremor, neck pain, back pain...4. Identify the positive clinical findings

that demonstrate and/or support your diagnosis and indicate location where applicable. Frequent headaches with pressure, chronic neck, back, and upper extremity pain, dizziness, blurred vision, paresthesias, numbness. [2b.]5. Clinical and laboratory findings that support your diagnoses (please attach test results):...Brain MRI Johns Hopkins, "...Chiari Malformation 5-6mm...foremen magnum". [3a.] Are your patient's ongoing impairments expected to last at least 12 months? Yes...7. Are your patient's symptoms and functional limitations reasonably consistent with the patient's physical and/or emotional impairment described in this evaluation? Yes...[6a/]12a1 In an eight-hour workday, my patient can only Sit: 2 (hours); [6b/]12a2...Stand/Walk 1 (hour); [7a/]12a3...[M]edically recommended for your patient not to sit continuously in a work setting? Yes;...[7ai/]12a3(a) "...[M]ust...get up and move around?...every 2 hours." [updated 7/03/15] [7aii/]12a3(b) How long before your patient can sit again? 20-30 min. [8/]12b. Lift Occasionally up to 10 lbs (maximum); Carry occasionally up to 10 lbs (maximum) on Left&Right; [9a/]13...[H]ave significant limitation in doing repetitive reaching, handing, fingering or lifting? Yes; Grasping, turning and twisting exacerbates left

neck pain and upper and lower back pain and very high heart rate with extreme fatigue; She can Moderate/Occasionally do light grasping, reaching, handling, fingering and light lifting on Left& Right [updated 7/03/15]; Moderate/Occasionally (Significantly limited but not completely precluded) in [u]sing finger/hands for fine manipulations on Left&Right; Moderate/Occasionally (Significantly limited but not completely precluded) in [using] arms for reaching (including overhead) on Left&Right;... **[5a/]**14. List medication(s)...Tramadol (50mg) cause drowsiness, Motrin (600mg), HCTZ(25mg)/lowers potassium, amitriptyline (10mg), Propranol/ 10mg, flexeril(10mg) cause drowsiness, Clonazepam(.5mg) cause downiness, Ambien (5mg) cause drowsiness, Lovaza(1mg)...**[10a/]**17. Would your patient's symptoms likely increase if he/she were placed in a competitive work environment? Yes. How so? Stress increases symptoms...**18.** Does your patient's condition interfere with the ability to keep the neck in a constant position (e.g. looking at a computer screen, looking down at the desk? Yes...**[3b/]**22. Is your patient a malingerer? No...**[12/]**25. On average, how often is your patient likely to be absent from work as a result of her/his

impairment or treatment? More than three times a month. [/]Are your patient's Impairment likely to produce "good days" and "bad days"? Yes, but good days are what I completed the form as described; bad days she can not get out of bed. Good day: Head doesn't swell, I don't have tremors and I am not dizzy."

The ALJ acknowledges Idlett's functional limitations in his conclusions of law, but discredits treating physicians' opinions by making false statements about neurological exam findings being inconsistent with objective clinical findings. (See section IV Statements of the Case for objective medical facts, p23-35). The existence of Idlett's minimal quality of life (i.e., exercise) is discredited by the ALJ. (AR p55):

"Treating physician Dr. Adel Boulos-Mikhiel, M.D. and physical therapist Wayne MacMasters noted on February 14, 2014 that the claimant could sit, two hours in an eight-hour workday, stand and walk one hour, and lift and carry up to ten pounds occasionally.

Dr. Boulos-Mikhiel also noted that the claimant had marked limitations in grasping, turning, and twisting objects and would likely be absent from work more than three time a month (Exhibits 12F, 13F, and 20F). This assessment is given little weight because it is inconsistent with objective clinical findings of normal strength, gait, and sensation, the conservative level of treatment, and the claimant's activities of daily living including going to the gym two to three times a week and going to the mall to walk (Exhibits 6E, 2F, 6F, 7F, 10F, 17F, and testimony) (20 CFR 404.1527 and SSR 96-5p)."

The ALJ significantly increased RFC assessed by certified treating physician without legally sufficient reasoning. (AR p52):

"5. After careful consideration of the entire record, the undersigned finds that the claimant has the residual functional capacity to perform less than a full range of light work as defined in 20 CFR 404.1567(b). The claimant can lift and carry ten pounds frequently and twenty pounds occasionally, sit six hours in an eight-hour workday, and walk or stand four hours with the option to alternate between sitting and standing every thirty minutes for

comfort. The claimant can perform jobs that require not climbing of ladders and no work at unprotected heights or around dangerous machinery. She can perform jobs that require no frequent grasping as would be required on an assembly line. She is limited to simple, repetitive job tasks.”

The ALJ’s conduct violates 18 U.S.C. §1001 by omitting material evidence and making a false statement by significantly increasing sitting limitation from 2 hours to “6 hours”; and stand/walk limitation from 1 hour to “4 hours” without a legally sufficient reason. After revision, the RFC satisfies vocational standards. (AR, p52, par. 5).

Idlett is currently 53 years old (January 29).

DI laws for RFC (SSR96-9p); (DI25025.020D):

“Residual Functional Capacity [RFC]: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s),” direct a decision of “disabled” for individuals age 50 and over who are limited to a full range of sedentary work, unless the individual

has transferable skills or education that provides for direct entry into skilled sedentary work, the impact of an RFC for less than the full range of sedentary work in such individuals is less critical.”

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## **VI. Conclusion and Prayer**

The ALJ’s conduct of grossly misapplied federal law by “knowingly” and “willingly” omitting material evidence, making false statements and abuse of judicial discretion deprives Idlett’s substantive due process and equal protection rights. The ALJ’s conduct in executing federal law fails to develop the record fairly, impartially, faithfully, and diligently. The ALJ’s conduct violations harmfully alter the federal standard of review due process.

The ALJ’s conduct fails to uphold the integrity of the federal judiciary. The ALJ’s conduct breaches “Code of Conduct for United States Judges decree, Canons 1 – 3” (Appendix D, *pA70*); “U.S.

Constitutional oath for Justices and Judges", and "supremacy law" provisions. (18 U.S.C. §242, 18 U.S.C. §1001, 42 U.S.C. §1983, 42 U.S.C. §2000d, U.S. Constitution, Amendment V, Amendment XIV, and Article VI).

The ALJ's erroneous conclusion of federal law yields a decision not supported by all relevant evidence or U.S. Codes of federal regulations, SSR, DI laws or the U.S. Constitution. The ALJ's judicial conduct causes harm to Idlett's constitutional rights to her DIB.

The Commissioner "declines to file a response brief" in the U.S. CoA to genuinely dispute material facts supporting Idlett's summary judgment. (CoA Appellee's/Respondent ECF No. 14).

**Relief Judgment Sought (FRCP 60):**

A. Idlett respectfully petitions that a discretionary review of undisputed evidence be

granted. As a matter of federal law, Idlett petitions that the Court finds that she is rightfully entitled to disability insurance benefits judgment relief. [FRCP 56(a)]. “Errors on the face” of material evidence have reversible remedies to restore Idlett’s constitutional rights. (DI27505.001A4b); (SSR17.1p); (20 CFR 404.988(c)(8)).

Idlett respectfully petitions for reversal of the CoA’s unlawful judgment affirming the District Courts final order. The final order grants the Commissioner’s summary judgment for a remand for further rehearing proceedings while vacating and dismissing these constitutional law violations of judicial misconduct and denying Idlett’s summary judgment.

B. Idlett respectfully petitions for “immediate payment of past-due” and “maximum monthly DIB” under the “surviving widows insurance benefits”

“retroactive to onset date of disability”; “April 01, 2012”. [42 U.S.C. §1383(c)(3)].

C. Idlett respectfully petitions that the Commissioner cease the extensive and harassing developmental investigation on her, her family members and close friend in compliance with Disability Insurance (DI) laws. (DI22505.010B1-3, U.S. Constitution). Harassment in forms of constant daily wiretapping, physical stalking, telecommunication (home security system and surveillance cameras) intrusions, approximately 2,000 spoofing calls and text messages and uncountable harassing electronic mail commenced when Idlett filed for disability back on October 31, 2012. This harassment did not exist until after Idlett filed her disability case with the SSA.

A motion for subpoenas by this court will be respectfully filed if allowed by the Court to verify

Idlett's harassment contentions. These subpoenas will aid the Court in obtaining material evidence which support Idlett's contentions of extensive harassment and staking activity being inflicted on her.

"Continuous developmental investigation" based on judicial violations of grossly misapplied federal law and abuse of judicial discretion proves harmful to Idlett's substantive due process and equal protection rights. (DI24515.020C1, U.S. Constitution, Amendment XIV).

There are no outstanding disputes that must be resolved before a proper disability determination can be made. Idlett's disability administrative record has been thoroughly developed by the SSA and contains substantial evidence which clearly meets SSA's statutory standard for a fully favorable claim.

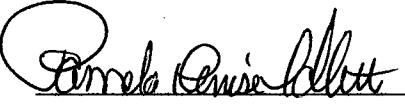
There will be no separate brief on the merits filed in support of this extraordinary writ of mandamus by the petitioner unless requested by the Court. (Rule 14.2).

As an honorably discharged U.S. Military Soldier (Army, 1988) and Civil Servant (Disabled Retiree, 2012), I still vow to protect and defend the United States and its values. In GOD we trust.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: October 6, 2018

October 6, 2018  
Signature date:

  
Pamela Denise Idlett  
Pamela Denise Idlett, *pro se*

U.S. Army Veteran and

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