No. 24-5158

IN THE

Supreme Court of the United States

MARY ELIZABETH SEXTON,

Petitioner,

v.

MARTIN J. O'MALLEY, COMMISSIONER OF SOCIAL SECURITY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF *AMICUS CURIAE* NATIONAL ORGANIZATION OF SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES IN SUPPORT OF PETITIONER

MEREDITH E. MARCUS
OSTERHOUT BERGER DALEY, LLC
4256 North Ravenswood Avenue, Suite 104
Chicago, IL 60613
(312) 561-3030

CODY T. MARVIN
Counsel of Record
MARVIN & ASSOCIATES, P.C.
630 Davis Street, Suite 300
Evanston, IL 60201
(847) 864-0224
cody@marvin.law

CHARLOTTE W. HALL
ARROWOOD & HALL, PLLC
5640 Six Forks Road, Suite 101
Raleigh, NC 27609
(919) 803-8973

Counsel for Amicus Curiae

117039

TABLE OF CONTENTS

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Page

Cited Authorities

Page

Page

Statutes & Other Authorities

Cited Authorities

THE INTEREST OF AMICUS CURIAE

The National Organization of Social Security Claimants' Representatives (NOSSCR) is a national membership organization comprising over 2,000 individuals, mostly attorneys, who represent individuals applying and appealing claims for Social Security and Supplemental Security Income (SSI) benefits. NOSSCR members include employees of legal services organizations, educational institutions, and other nonprofits; employees of for-profit law firms and other businesses; and individuals in private practice.[1]

SUMMARY OF THE ARGUMENT

The Social Security Act requires that the Social Security Administration (SSA) "immediately redetermine the entitlement of individuals to monthly insurance benefits ... if there is reason to believe that fraud or similar fault was involved in the application of the individual for such benefits." 42 U.S.C. § 405(u)(1)(A). Despite discovery in 2006 of a fraudulent scheme carried out by one of SSA's administrative law judges, David Daugherty, and a private attorney, Eric Conn, it was not until 2014 that SSA identified "1,787 individuals—all of whom had been represented by Conn—whose applications, the Office of the Inspector General (OIG) 'had reason to believe,' were tainted by fraud." *Hicks v. Comm'r of Soc. Sec.,* 909 F.3d

1. Under Supreme Court Rule 37.6, NOSSCR states that no counsel for any party authored this brief in whole or in part; and that no person or entity, other than NOSSCR and its counsel, made a monetary contribution intended to fund the preparation and submission of this brief. All counsel were provided timely notice of the filing of this brief. Supreme Court Rule 37.2.

786, 794 (6th Cir. 2018). Yet the Office of the Inspector General (OIG) determined that SSA should not "take any adverse action against any individual on the list until further notice."[2] *Id.*

It was not until 2015 that SSA reviewed and remanded these cases to a new ALJ for redetermination hearings, in which any evidence related to possible fraud was excluded. *Hicks,* 909 F.3d at 795. In 2018, the Sixth Circuit determined that SSA violated the Due Process Clause of the Fifth Amendment by "refusing to allow plaintiffs to rebut the OIG's assertion of fraud as to their individual applications." 909 F.3d at 804. In 2021 the Fourth Circuit issued a similar opinion in *Kirk v. Comm'r of Soc. Sec.*, 987 F.3d 314 (2021). This prompted rule changes by the Agency in 2022 including Social Security Rulings[3] ("SSR") 22-1p and 22-2p. Sexton, one of the 1,787 individuals whose applications were flagged by the OIG, had her second redetermination hearing in 2022, over fifteen years after

2. The Social Security Administration has never produced a prosecutorial statement that redetermination of benefits would jeopardize a criminal prosecution, yet SSA waited nine years after becoming aware of the scheme to start the redetermination process for affected claimants. *See* 42 U.S.C. 405(u)(1)(A) (SSA "shall immediately" redetermine eligibility for benefits "unless a United States attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that such action by the Commissioner of Social Security with regard to beneficiaries in a particular investigation would jeopardize the criminal prosecution of a person involved in a suspected fraud.")

3. SSRs do not have the same force and effect as statutes or regulations, but they are binding on all components of the Social Security Administration. 20 C.F.R. §402.35(b)(1).

the initial discovery of fraud. *Sexton v. Comm'r of Soc. Sec.*, No. 23-5981, 2024 WL 1994918, at *1–3 (6th Cir., May 6, 2024).

The Social Security Administration's practice of waiting nine years or more to hold redetermination hearings violated the requirements of the Social Security Act, and the delay caused harm to Social Security beneficiaries who were not participants in the fraudulent scheme. Further, the statutory requirement that SSA immediately redetermine eligibility for benefits in cases of suspected fraud, 42 U.S.C. § 405(u)(1)(A), is inconsistent with the Administration's regulation, which states that a decision may be reopened "[a]t any time if [i]t was obtained by fraud or similar fault…" 20 C.F.R. §§ 404.988(c)(1); 416.1488(c). Granting certiorari, either to vacate and remand to the Sixth Circuit, or to evaluate the case on the merits, would allow the Courts to address the conflict between the statute and regulation and prevent future harm to Social Security beneficiaries.

ARGUMENT

I. The Court Should Grant Certiorari, Vacate The Lower Court's Decision, And Remand The Case In Light Of This Court's Decision In *Loper Bright*.

Loper Bright Enterprises v. Raimondo, 144 S.Ct. 2244, 254 (2024) was decided seven weeks after the Sixth Circuit's decision in *Sexton*, 2024 WL 1994918. This Court's decision in *Loper Bright* likely would have affected the outcome of this case, given inconsistencies between the Social Security Act and SSA's reopening regulation. The Social Security Act requires that the Social Security Administration (SSA) "immediately redetermine the

entitlement of individuals to monthly insurance benefits ... if there is reason to believe that fraud or similar fault was involved in the application of the individual for such benefits." 42 U.S.C. § 405(u)(1)(A). But according to SSA's regulations, a decision may be reopened "[a]t any time if – [i]t was obtained by fraud or similar fault…" *See* 20 C.F.R. §§ 404.988(c)(1); 416.1488(c). As the Court explained in *Connecticut Nat'l Bank v. Germain*, "[w]e have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what is says there." 503 U.S. 249, 254 (1992). Congress required SSA to act immediately, yet SSA's regulation permits the Administration to act at any time (even nine years later, as in this case). In light of *Loper Bright*, courts need not defer to SSA's interpretation of the statute, which appears inconsistent with the intent of Congress. *See Loper Bright Enterprises*:

> *Chevron* is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA [Administrative Procedure Act] requires. Careful attention to the judgment of the Executive Branch may help inform that inquiry. And when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it. But courts need not and under the APA, may not defer to an agency interpretation of the law simply because a statute is ambiguous.

144 S.Ct. at 2273.

It would be appropriate to grant certiorari, vacate, and remand (GVR) this case. As this Court explained in *Lawrence by Lawrence v. Chater*, "[w]e have GVR'd in light of a wide range of developments, including our own decisions" as well as new federal statutes, changed factual circumstances, and confessions. 516 U.S. 163, 167 (1996) (collecting cases). This serves several important purposes:

> In an appropriate case, a GVR order conserves the scarce resources of this Court that might otherwise be expended on plenary consideration, assists the court below by flagging a particular issue that it does not appear to have fully considered, assists this Court by procuring the benefit of the lower court's insight before we rule on the merits, and alleviates the "potential for unequal treatment" that is inherent in our inability to grant plenary review of all pending cases raising similar issues…
>
> When intervening developments, or recent developments that we have reason to believe the court below did not fully consider, reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome of the ligation, a GVR order is, we believe, potentially appropriate.

Id. at 516 U.S. at 167; *see also Stutson v. U.S.*, 516 U.S. 163, 180-81 (1996) (dissent) ("The 'intervening event' branch of our no-fault V & R practice has been extended to the

seemingly analogous situation…in which an intervening event (ordinarily a post judgment decision of this Court) has cast doubt on the judgment rendered by a lower federal court of a state or a state court concerning a federal question."). As of August 26, 2024, this Court has GVR'd no fewer than nine cases to Courts of Appeals in light of *Loper Bright*. *See Bastias v. Garland*, No. 22-868, --- S.Ct. ----, 2024 WL 3259654 (Mem); *Solis-Flores v. Garland*, No. 23-913 --- S.Ct. ---- 2024 WL 3259670 (Mem); *Foster v. Department of Agriculture*, No. 23-133, --- S.Ct. ---- 2024 WL 3259663 (Mem); *Diaz-Rodriguez v. Garland*, No. 22-863, --- S.Ct. ---- 2024 WL 3259656 (Mem); *Cruz v. Garland*, No. 23-538, --- S.Ct. ---- 2024 WL 3259660 (Mem); *Lissack v. Commissioner of Internal Revenue*, No. 23-413, --- S.Ct. ---- 2024 WL 3259664 (Mem); *Edison Electric Institute v. Federal Energy Regulatory Commission*, No. 22-1246, --- S.Ct. ---- 2024 WL 3259657 (Mem); *KC Transport, Inc. v. Su*, No. 23-876, --- S.Ct. ---- 2024 WL 3259666 (Mem); *United Natural Foods, Inc. v. National Labor Relations Board*, No. 23-558, --- S.Ct. ---- 2024 WL 3259667 (Mem).

A GVR is warranted here so that the lower court can interpret and apply 42 U.S.C. § 405(u)(1)(A) without *Chevron* deference to SSA's regulatory interpretation of the statute. As this Court explained in *Loper Bright*, "Chevron has been a distraction from the question that matters: Does the statute authorize the challenged agency action?" *See Loper Bright*, 114 S.Ct. at 2269. As applied to this case, there is a question whether the statute, which requires SSA to immediately redetermine eligibility for benefits, permits SSA to wait nine years or more after learning of possible fraud before redetermining eligibility for Social Security recipients.

II. Social Security Beneficiaries Have Suffered Harm Due To SSA's Delays

The claimants in the Conn-related cases primarily resided in "the impoverished intersection of West Virginia, Kentucky and Ohio." Damien Paletta, *Disability-Claim Judge Has Trouble Saying "No,"* Wall St. J., May 19, 2011. These are typically lower income, lower education or blue-collar workers.[4] By definition, Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI) recipients are individuals whose disabilities prevent them from engaging in substantial gainful activity, *see* 20 C.F.R. §§ 404.1505(a), 416.905(a). The current average monthly benefit of a claimant on DIB is $1,401.30,[5] slightly higher than the national poverty line.[6] For SSI benefits, the rate is significantly less at $943 for an individual and $1,415 for a couple, and recipients are subject to strict limits on assets and other income.[7] For many recipients, their monthly disability payment represents most of their income.[8] The benefits are modest payments that "allow people to meet

4. https://www.cbpp.org/research/social-security/social-security-disability-insurance-0 (lower poverty rate and educational level for SSDI recipients) (last visited August 23, 2024).

5. https://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/ (last visited August 23, 2024).

6. https://www.healthcare.gov/glossary/federal-poverty-level-fpl/ (listed at $15,060 for 2024)(last visited August 23, 2024).

7. https://www.ssa.gov/oact/cola/SSI.html (last visited August 23, 2024).

8. https://www.ssa.gov/disabilityfacts/facts.html (last visited August 23, 2024).

their basic needs and the needs of their families."[9] These are the claimants that hired Conn to represent them in their disability cases.[10]

A. The Social Security Administration's Failure to Act Immediately Caused Substantial Barriers to Obtaining Medical Evidence for Redetermination Hearings.

Sometime in 2006 or 2007, the SSA was alerted to "possible wrongdoing" involving Kentucky attorney Eric C. Conn, SSA Administrative Law Judges ("ALJs"), and four physicians. *Hicks,* 909 F.3d at 793; *U.S. ex rel. Griffith v. Conn*, No. CIV. 11-157-ART, 2015 WL 779047, at *1–2 (E.D. Ky. Feb. 24, 2015).[11] Yet "concern about Mr. Conn's methods first surfaced publicly in May 2011, when The Wall Street Journal published an article about his relationship with David B. Daugherty, an ALJ in SSA's Huntington, West Virginia Office of Disability Adjudication and Review."[12] Mr. Conn, Judge Daugherty and Chief Judge Andrus all took reactionary steps as a result of this article, and Mr. Conn "systematically destroyed several dozen

9. *Id.*

10. How Some Legal, Medical, and Judicial Professionals Abused Social Security Disability Programs for the Country's Most Vulnerable: A Case Study of the Conn Law Firm, United States Senate COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS (p. 1, 24-25) https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/REPORT%20Conn%20case%20history%20report-final%20%20(10-7-13).pdf (last visited August 23, 2024).

11. *Id.* at 39 citing Damian Paletta, *Disability-Claim Judge Has Trouble Saying "No,"* Wall St. J., May 19, 2011.

12. *Id.* at 1.

of the Conn Law Office's computers, and hired a local shredding company to clear out a large warehouse full of documents."[13] Included in the documents disposed of were medical records for active disability claims.[14] Conn sent documents to be shredded in the equivalent of around 2.7 million sheets of paper.[15]

When Conn went to prison, "approximately 6,000 to 7,000 client files relating to claims for social security benefits remained in his former Kentucky law office," which was forfeited to the United States. *Court Appoints Receivers to Inventory and Distribute Client Files of Lawyer Involved in Largest Social Security Fraud Scheme in History*, United States Department of Justice (Nov. 1, 2008).[16] "Yet, the Government did not provide these files—which indisputably belong to the clients—or even acknowledge their existence until after the initial redetermination hearings concluded." *Kirk v. Berryhill,* 388 F. Supp. 3d 652, 664 (D.S.C. 2019), *aff'd sub nom. Kirk v. Comm'r of Soc. Sec. Admin.*, 987 F.3d 314 (4th Cir. 2021). With these files destroyed or buried during the relevant period, Conn's clients faced an immense burden to reconstruct their prior claims.

The redetermination hearings originally excluded from the proceedings any medical evidence which SSA had reason to believe was fraudulent. *See e.g., Kirk v.*

13. *Id.* at 2-3.

14. *Id.* at 122.

15. *Id.* at 123.

16. https://www.justice.gov/opa/pr/court-appoints-receivers-inventory-and-distribute-client-files-lawyer-involved-largest-social (last visited August 23, 2024).

Comm'r of Soc. Sec. Admin., 987 F.3d 314; *Hicks*, 909 F.3d at 793. Notices of the redeterminations specified that claimants' benefits would be redetermined without use of the evidence tainted by fraud. *Robertson v. Berryhill*, No. CV 3:16-3846, 2017 WL 1170873, at *2 (S.D. W.Va. Mar. 28, 2017). "Claimants had ten days to submit new evidence demonstrating disability at the time of the original benefits award." *Id.* Claimants, some of whom had been receiving benefits for over ten years and many of whom were poor or homeless,[17] had no knowledge of this fraud[18] and could not have reasonably collected records demonstrating disability years in the past in this brief amount of time. *See* 45 C.F.R. § 164.524 (allowing for 30 calendar days to provide records); *see also Bryant v. Saul*, No. 1:17-CV-220, 2020 WL 7137874, at *5 (N.D. Ind. Dec. 7, 2020) ("Rather than give the claimants a chance to argue that the medical evidence in their case honestly supported their claims, Defendant threw out the evidence and required the claimants to, years later, present entirely new evidence. For Defendant to continue to argue that this procedure was substantially justified borders on the unconscionable.").

This likewise delayed proceedings and increased the burden on claimants to produce evidence of disability occurring ten to fifteen years prior. *See* 20 C.F.R. § 404.1520(a)(4)(i)-(v); *See* 20 C.F.R. §§ 404.1512, 416.912. While Social Security hearings are inquisitory in nature, *Sims v. Apfel*, 530 U.S. 103, 111 (2000), "medical evidence

17. *Id.*

18. *Kirk*, 987 F.3d at 318 (SSA has never alleged that claimants knew anything about the fraud that triggered their redeterminations).

is the cornerstone of the disability determination under both the title II and title XVI programs."[19] "Each person who files a disability claim is responsible for providing medical evidence showing he or she has an impairment(s) and the severity of the impairment(s)."[20]

SSA imposed significant hardship on claimants by failing to act immediately. "Many, if not most, claimants provide the only copies of their medical records to their attorneys during the claims process." *Kirk v. Berryhill*, 388 F. Supp. 3d 652, 664 (D.S.C. 2019), *aff'd sub nom. Kirk v. Comm'r of Soc. Sec. Admin.*, 987 F.3d 314 (4th Cir. 2021). "It is unrealistic to require a claimant to be able to reconstruct their medical history from a decade ago, particularly within the short timetable allotted by the SSA." *Id*. Further, distributing the files to prior claimants included a host of additional problems, including recontacting claimants "who now may be homeless, destitute, and without a working telephone number." *Id*. Claimants were left scrambling, having no knowledge of the fraud triggering these proceedings[21] and left with little time to find representation or obtain new evidence.[22]

---

19. https://www.ssa.gov/disability/professionals/bluebook/evidentiary.htm#:~:text=Medical%20evidence%20is%20the%20cornerstone,of%20the%20impairment(s). (last visited August 23, 2024).

20. *Id.*

21. *Kirk,* 987 F.3d at 318 (SSA has never alleged that claimants knew anything about the fraud that triggered their redeterminations).

22. Tragically at least four former Conn clients have committed suicide after receipt of the notices of termination of benefits and the short time to secure evidence. *See Kirk*, 388 F.

For example, in the case of *Tyler J.*, when the claimant sought to obtain records from his providers from 2007 for the redetermination hearing in 2016, his provider only had retained one record unrelated to his primary disability. *Tyler J. v. Saul*, No. 17-CV-50090, 2019 WL 3716817, at *7 (N.D. Ill. Aug. 7, 2019), *aff'd sub nom. Jaxson v. Saul*, 963 F.3d 645 (7th Cir. 2020), and *aff'd sub nom Jaxson v. Saul,* 970 F.3d 775 (7th Cir. 2020). Tyler had also moved to a different state and lost touch with prior providers, and the providers' ability to recall his treatment from over eight years ago was unlikely. *Tyler*, No. 17-CV-50090, 2019 WL 3716817, at *7. Thus, as a result of SSA's failure to act immediately, major portions of the evidence that could have substantiated claimants' allegations of disability could not be reconstructed.

In the case of *Hicks*, the claimant was required to testify at an administrative hearing about the state of her health in 2007, almost ten years prior.[23] 909 F.3d at 802. Her application for disability had alleged mental deficits which likewise impeded her ability to recall her medical history.[24] She testified at her hearing that what evidence

---

Supp. 3d at 657; *See also Jude v. Comm'r of Soc. Sec.,* 908 F.3d 152, 156 (6th Cir. 2018)(claimants with mental illness distressed by the notices and immediate suspension of benefits committed suicide).

23. The Agency recognizes the hurdle in testifying with mental illness and emphasizes the use of third-party information, which would likewise be difficult to reconstruct ten to fifteen years after a disability proceeding. *See e.g.,* 20 C.F.R. § 404.1529; 20 C.F.R. § 404.1565; SSR 16-3p; SSR 85-16; Appendix 1 to Subpart P of Part 404 §12.00(C)(3).

24. Mental health disabilities were the second most frequent qualifying conditions in 2021. https://www.ssa.gov/policy/docs/

she had she apparently provided to Conn, which was either lost or destroyed. *Hicks,* 214 F. Supp. 3d at 632; *see also Hicks*, 909 F.3d at 802 (acknowledging that it is difficult to obtain new evidence of past disability).

Centers for Medicare & Medicaid Services require that providers maintain medical records for seven years from the date of service. 42 C.F.R. § 424.516(f)(1)(A). Thus, in redetermination hearings like the case of *Sexton* (or *Taylor* or *Hicks*) who had her most recent redetermination hearing in 2022, supplementing the record with new medical evidence relating to the earlier period may be impossible. *Sexton*, 2024 WL 1994918, at *1 (Daugherty issued a decision in her favor in April 2007, relying exclusively on a report from Dr. Huffnagle to find that she was disabled). Thus, claimants suffered both by unknowingly being involved in a fraudulent scheme, and then by being informed many years later that they were in danger of losing their livelihood unless they could carry the burden of establishing onset of disability many years in the past. Accepting a decade-long time horizon renders the requirement of immediacy toothless. *See e.g.*, *Massachusetts v. E.P.A.*, 549 U.S. 497, 542, 127 S. Ct. 1438, 1468, 167 L. Ed. 2d 248 (2007) (dissent).

Claimants who sought to file new applications after the termination of payments fared no better due to the time delays. To qualify for DIB, claimants must prove that they became disabled on or before their "date last insured"—approximately five years after the day they stopped working. *See* 20 C.F.R. § 404.130; Policy Operations Manual System, DI 25501.320, Soc. Sec. Admin. (May 15,

---

statcomps/di_asr/2021/sect05.html#table69 (last visited August 23, 2024).

2020).[25] Former Conn clients who filed new applications faced a similarly onerous task of proving retrospectively that they were disabled at an earlier time. SSA did not notify these beneficiaries in the roughly ten years between SSA's discovery of the fraud and the cessation of benefits that they might one day need medical records from this time period to reestablish their entitlement to disability benefits. Thus, the delay of redetermination proceedings caused prejudice in both obtaining evidence related to the relevant time period, and in attempting to mitigate harm resulting from payment terminations. *See e.g., Kirk v. Comm'r of Soc. Sec. Admin.,* 987 F.3d at 325.

B. The Failure to Act Immediately Caused the Additional Harm of Massive Overpayments.

Social Security disability recipients have a substantial interest in receiving their benefits, as "the hardship imposed upon the erroneously terminated disability recipient may be significant." *Mathews v. Eldridge*, 424 U.S. 319, 342 (1976). "Denial of benefits results in a failure to receive income required to purchase the necessities of life, including medication, and causes anxiety and distress which can aggravate existing conditions." *Day v. Shalala*, 23 F. 3d 1052, 1059 (6th Cir. 1994).

The redeterminations caused a wave of overpayments, and SSA demanded that the claimants return the benefits they received. *See e.g., Kirk v. Comm'r of Soc. Sec. Admin.,* 987 F.3d at 319; *Taylor v. Berryhill*, No. 1:16-CV-00044, 2018 WL 1003755, at *22 (W.D. Va. Feb. 21, 2018). In

25. Available at https://secure.ssa.gov/apps10/poms.nsf/lnx/0425501320 (last visited August 23, 2024.)

Taylor's case, he had received about $1,779 per month in SSDI payments prior to SSA's redetermination. *Taylor v. Berryhill*, No. 1:16-CV-00044, 2018 WL 1003755, at *2 (W.D. Va. Feb. 21, 2018). Subsequent to Taylor's termination of benefits, he was subject to a $116,167.70 overpayment. *Id.* Taylor qualified for SSI, but due to the overpayment received only about $191 per month in SSI benefits. *Id.* This nearly 90% reduction in benefits left Taylor's family unable to pay their bills. *Id.* There were approximately 800 people in Taylor's position with overpayments stretching over ten years and adding up to huge amounts, making repayment practically impossible. *Kirk v. Comm'r of Soc. Sec. Admin.*, 987 F.3d at 325; *see also Jeannie S. v. Saul*, No. 1:16-CV-04681-LTW, 2020 WL 13561582, at *3 (N.D. Ga. Mar. 3, 2020) (overpayment was listed at over $104,000). This Court has previously recognized "the severity of depriving a person of the means of livelihood." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 543 (1985) (collecting cases). The purpose of the immediacy requirement is to protect the Trust Fund and ensure claimants are not faced with massive overpayments.

While individuals whose benefits were terminated and owed money on overpayments could still apply and obtain SSI benefits, those benefits would be a "woefully inadequate substitute for the SSDI payments" that they received prior to redetermination. *Kirk v. Comm'r of Soc. Sec. Admin.*, 987 F.3d at 325. The current full SSI benefit is $943,[26] prior to any offset caused due to an overpayment, like the case of *Taylor*. In Taylor's case, if he received

26. https://www.ssa.gov/oact/cola/SSI.html (last visited August 23, 2024).

the full monthly benefit amount, it would take him over 10 years to repay the overpayment. In the meantime, he would receive only $191 per month to support an entire family.

SSA's failure to act immediately makes the risk of erroneously depriving claimants of a fair hearing intolerably high. *Kirk v. Berryhill,* 388 F. Supp. 3d at 664; *accord Hicks,* 909 F.3d at 800 ("[A]ny time a citizen is deprived of 'notice of the factual basis' for a governmental determination and 'a fair opportunity to rebut the Government's factual assertions before a neutral decisionmaker,' the risk of error is too high.") (quoting *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004)). Here, "SSA waited nearly ten years after first learning about possible misconduct involving Conn and Daugherty to initiate redetermination proceedings." *Jeannie S. v. Saul*, No. 1:16-CV-04681-LTW, 2020 WL 13561582, at *6 (N.D. Ga. Mar. 3, 2020). "One can hardly argue that an individual's interest in avoiding the termination of disability benefits is anything short of extremely weighty" and the delay caused significant harm due to the failure to act immediately. *Kirk v. Comm'r of Soc. Sec. Admin.,* 987 F.3d at 324; *Cleveland Bd. of Educ.*, 470 U.S. at 543.

CONCLUSION

We ask the Court to grant certiorari in this case. Without resolution of this issue, future beneficiaries may also be harmed by delays. The Social Security Act requires SSA to immediately redetermine benefits in cases of suspected fraud. SSA's failure to follow this requirement of the Act caused harm to numerous Social Security beneficiaries. SSA cannot be permitted to

interpret the instruction to act "immediately" to mean "[a]t any time" the Agency decides to act. In 2023, over 67 million people received some form of Social Security benefit.[27] If SSA is not required to act immediately as directed by Congress, the next time the agency suspects widespread fraud the results might be even more dire, both for impacted individuals and the endangered Trust Fund.

Respectfully submitted,

MEREDITH E. MARCUS
OSTERHOUT BERGER DALEY, LLC
4256 North Ravenswood Avenue, Suite 104
Chicago, IL 60613
(312) 561-3030

CODY T. MARVIN
Counsel of Record
MARVIN & ASSOCIATES, P.C.
630 Davis Street, Suite 300
Evanston, IL 60201
(847) 864-0224
cody@marvin.law

CHARLOTTE W. HALL
ARROWOOD & HALL, PLLC
5640 Six Forks Road, Suite 101
Raleigh, NC 27609
(919) 803-8973

Counsel for Amicus Curiae

27. https://www-origin.ssa.gov/OACT/STATS/OASDIbenies.html (last visited August 23, 2024).