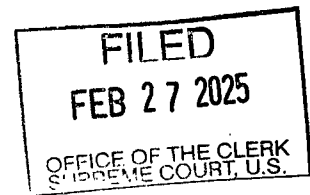


ORIGINAL



No. 24-942

In the Supreme Court of the United States

PATRICK COMACK, *Petitioner*,

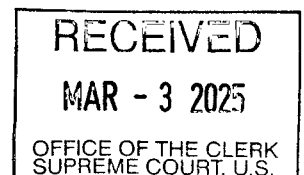
v.

COMMISSIONER, SOCIAL SECURITY
ADMINISTRATION, *Respondent*.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eleventh
Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Did the U.S. Court of Appeals for the 11th Circuit (“Appeals Court”) violate Supreme Court case precedent when it arbitrarily used a **three-part test** to decide whether the U.S. District Court for the Southern District of Florida – Key West Division (“District Court”) could waive administrative exhaustion of remedies (“administrative exhaustion”) for jurisdiction in a 42 United States Code (“U.S.C.”) §405 (g) Social Security Administration (“SSA”) disability case when *Mathews v. Eldridge* 424 U.S. 319 (1976) established the two-part “*Mathews v. Eldridge* test” for the District Courts to use when deciding whether to waive administrative exhaustion for 42 U.S.C. §405 (g) jurisdiction?

II. Was the Appeals Court correct when it ignored Plaintiff/Petitioner Patrick Comack’s (“Comack’s”) claim, which was **collateral** to Comack’s claim for disability benefits, that the Defendant/Respondent SSA Commissioner (“Commissioner”) violated Comack’s **constitutional** right to fair due process as dictated by the 5th Amendment of the U.S. Constitution when the Commissioner and her Miami SSA office forged and fabricated Comack’s wage evidence in the SSA disability administrative review process, and then used this false evidence in the Commissioner’s June 10, 2021 Second Remand Order in order to unlawfully remand Comack’s disability case back to the same Miami SSA office who manufactured the false evidence?

III. Did Comack meet the two-part *Mathews v. Eldridge* test in *Mathews v. Eldridge* 424 U.S. 319 (1976) in order for the District Court to waive administrative exhaustion for jurisdiction pursuant to 42 U.S.C. §405 (g) in Comack's disability case?

IV. Was the Appeals Court correct to ignore the **Federal Rules of Civil Procedure ("FRCP") 4(m) "good cause"** statute when determining whether the District Court should have granted Comack an extension of time to cure his alleged service deficiency?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties do not appear in the caption of the case on the cover page.

RELATED CASES

Comack v. Commissioner of Social Security, No. 4:21-cv-10065-JEM, U.S. District Court for the Southern District of Florida Key West Division. Judgment entered March 28, 2023.

Comack v. Commissioner of Social Security, No. 23-11115-HH, U.S. Court of Appeals for the Eleventh Circuit. Judgment entered November 8, 2024.

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Petitioner Patrick Comack ("Comack") respectfully petitions for a writ of certiorari ("petition") to review the judgment of the United States Court of Appeals for the Eleventh Circuit ("Appeals Court").

OPINIONS BELOW

The opinion of the Appeals Court was not published, and is attached and included in the appendix.

JURISDICTION

The District Court had jurisdiction of this instant case under 42 United States Code ("U.S.C.") §405 (g) and 42 U.S.C. §1383 (c) (3). The Appeals Court had jurisdiction of this instant case under 28 U.S.C. § 1651. This Supreme Court's jurisdiction of this instant case is invoked under 28 U.S.C. 1254(1). This petition is filed within the March 8, 2025 deadline date that was granted to Comack on December 30, 2024 by the Honorable Supreme Court Justice Clarence Thomas pursuant to extension application docket no. 24A632.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1) The Due Process clause of the United States Constitution's Fifth Amendment says:

No person shall ... be deprived of life, liberty, or property, without due process of law....

2) 42 U.S.C. § 405 (g) – “Evidence, procedure, and certification for payments says:

Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia. As part of the Commissioner's answer the Commissioner of Social Security shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a

rehearing. The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Commissioner of Social Security or a decision is rendered under subsection (b) of this section which is adverse to an individual who was a party to the hearing before the Commissioner of Social Security, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) of this section, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court may, on motion of the Commissioner of Social Security made for good cause shown before the Commissioner files the Commissioner's answer, remand the case to the Commissioner of Social Security for further action by the Commissioner of Social Security, and it may at any time order additional evidence to be taken before the Commissioner of Social Security, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding; and the Commissioner of Social Security shall, after the case is remanded, and

after hearing such additional evidence if so ordered, modify or affirm the Commissioner's findings of fact or the Commissioner's decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and, in any case in which the Commissioner has not made a decision fully favorable to the individual, a transcript of the additional record and testimony upon which the Commissioner's action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Commissioner of Social Security or any vacancy in such office.

3) Federal Rules of Civil Procedure ("FRCP")

4(m) Time Limit for Service says:

If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss

the action without prejudice against that defendant or order that service be made within a specified time. **But if the plaintiff shows good cause for the failure, the court *must* extend the time for service for an appropriate period.**

4) 28 U.S.C. § 144 says:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the **judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party**, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

5) 28 U.S.C. § 455 says:

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.... (b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts

concerning the proceeding;.... (4) **He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;... (c) A judge should inform himself about his personal and fiduciary financial interests...**

STATEMENT OF THE CASE

I. Comack complains about brain damage to two of the largest “Big Pharma” research hospitals in the United States; these hospitals claim Comack is fabricating the brain damage.

1) In January 2016, Comack was diagnosed with nerve cell demyelination in the central and peripheral nervous systems caused by Pernicious Anemia (“Vitamin B12 Deficiency”). The diagnosis was made by Dr. David Diuguid of Columbia University Hospital in Manhattan, NY (Doc 18 Exhibit 18).

- a) The central nervous system consists of the brain, spinal cord and optic nerve (Doc 14 pg. 8).
- b) Pernicious Anemia causes brain damage and dementia. (Doc 18 Exhibit 18).

- c) Pernicious Anemia is a terminal illness if left untreated (Doc 14 pg. 14).

2) In November 2013 (two years before being diagnosed with Pernicious Anemia), Comack complained of brain damage to Neurologist Dr. Andres Kanner ("Kanner") of the University of Miami Health System Hospital (which includes Jackson Hospital) in Miami, FL ("U of M") (Doc 18 Exhibit 21 pg. 1).

- a) Comack thought his brain damage was caused by psychotropic medications (Lamictal and Lithium) researched by U of M and manufactured by its corporate clients (Doc 18 Exhibit 21 pg. 1 & Exhibit 7 pg. 4).

- b) Kanner and U of M had a paid relationship with GSK, the manufacturer of Lamictal (Doc 18 Exhibit 7 pg. 37), a drug Comack thought injured him.

- c) Another U of M doctor, the infamous psychiatrist Dr. Charles Nemeroff ("Nemeroff") owned a patent in a Lithium patch (Doc 18 Exhibit 7 pgs. 31-32), which is the other drug Comack thought injured him. Nemeroff was forced to resign his post at Emory for failure to properly disclose financial conflicts of interest to the National Institute of Health (Doc 18 Exhibit 7 pgs. 33-36).

d) U of M did not disclose to Comack their research and financial conflicts of interest. U of M did not disclose to Comack U of M's, Kanner's or Nemeroff's financial relationships with GSK, Kanner's favorable media quotes for Lamictal, Kanner's favorable research for Lamictal, Nemeroff's Lithium patent, or U of M's research in Lamictal and Lithium (Doc 18 Exhibit 7 pg. 4).

e) U of M found severe cognitive impairments in Comack's neuropsychological exam, as well as blood, grip, brain imaging and optic nerve imaging irregularities in Comack (Doc 18 Exhibit 21 pgs. 5-6 & Exhibit 40 & Exhibit 22 pg. 31).

f) However, U of M said Comack was fabricating the brain damage complaint (Doc 18 Exhibit 21 pg. 5).

g) U of M did not test Comack for Pernicious Anemia (Doc 18 Exhibits 21 & 40).

3) In August 2015 (five months before being diagnosed with Pernicious Anemia), Comack complained of "brain damage" to Dr. Martin Niethammer of Northwell Health Hospital in Great Neck, NY ("Northwell") (Doc 18 Exhibit 7 pg. 65).

a) Comack thought his brain damage was caused by psychotropic medications researched by Northwell and manufactured by

its corporate clients (Doc 18 Exhibit 7 pgs. 5 & 45).

b) Comack told Northwell that U of M had committed fraud against him (Doc 18 Exhibit 7 pgs. 6 & 48).

c) There is evidence that Northwell had discussions with U of M and/or its agents without Comack's permission (Doc 18 Exhibit 7 pgs. 67, 69 & 70).

d) Northwell deleted the entire memory section of Comack's neuropsychological exam (Doc 18 Exhibit 7 pgs. 65-73), which proved Comack's brain damage and dementia from Pernicious Anemia and corroborated the severe cognitive impairments found in the U of M neuropsychological exam. Northwell also found balance irregularities in Comack (Doc 18 Exhibit 22 pg. 1), which is a symptom of Pernicious Anemia (Doc 18 Exhibit 18).

e) Like U of M, Northwell said Comack was fabricating the brain damage complaint (Doc 18 Exhibit 7 pgs. 65-73).

f) Northwell did not disclose to Comack their research and financial conflicts of interest (Doc 18 Exhibit 7 pgs. 5 & 6).

g) Northwell did not test Comack for Pernicious Anemia (Doc (Doc 18 Exhibit 7 pgs. 65-73).

II. Comack turns these hospitals into the FBI

1) In October 2015, Comack personally submitted a package of evidence (Doc 18 Exhibit 7) to Federal Bureau of Investigation ("FBI") Agents Timothy Lucey and Robert Goldack at the FBI Field Office in Manhattan, NY that proves that two of the largest "Big Pharma" research hospitals in the US – U of M and Northwell -- sabotaged and covered up evidence of Comack's brain-damage from Pernicious Anemia in order to defend their research and financial conflicts of interest. These hospitals delayed Comack's Pernicious Anemia diagnosis and caused the Pernicious Anemia to inflict more nerve damage to Comack's brain, spinal cord and optic nerve.

2) Comack told the FBI (Doc 18 Exhibit 7 pg. 2) that these hospitals could be indicted for:

a) intentional sabotage of Comack's neuropsychological test scores that proved Comack's brain damage from Pernicious Anemia in order to defend their corporate research clients (i.e. GSK) and financial conflicts of interests (i.e. Nemeroff's Lithium patch patent)

b) attempted murder of patient whistleblower Comack by these hospitals, since Pernicious Anemia is a terminal illness, if not appropriately treated

- c) Pay for research fraud at these hospitals
- d) Racketeering at these hospitals led by Nemeroff of U of M (now at University of Texas at Austin)
- e) Failure of both research hospitals to disclose corporate research conflicts of interest to its patient Comack.
- f) Failure of both hospitals to disclose personal financial conflicts of interest to its patient Comack.

III. Comack is diagnosed with Pernicious Anemia ("Vitamin B12 Deficiency"), which causes brain damage; Comack files for disability with the Commissioner; the Commissioner concurs with the brain damage diagnosis

1) In January 2016, as mentioned above, Comack was diagnosed with Pernicious Anemia by Columbia University Hospital in Manhattan, NY. Comack's doctor at Columbia Dr. David Diuguid says Pernicious Anemia ("Vitamin B12 Deficiency") causes brain damage, dementia, balance irregularities and grip irregularities via nerve demyelination in the Central Nervous System (brain, spinal cord and optic nerve) and peripheral nervous system (Doc 18 Exhibit 18).

2) In July 2016, Comack filed for Supplemental Security Income ("SSI") disability benefits under Title XVI of the Social Security Act with the Commissioner (Doc 18 Exhibit 8).

3) In December 2016, the Commissioner's own neurologist Dr. Edmund Molis confirmed Comack's brain damage from Pernicious Anemia and put Comack's "Pernicious Anemia" in the "11.17" primary and severe neurological impairment listing called "Neurodegenerative disorders of the central nervous system" (Doc 18 Exhibits 5 & 6 pgs. 9-10).

a) The Commissioner says Comack who has an MBA, CPA, CFA, 18 years of Wall Street analyst experience and named by the Financial Times as one of the top 10 stocker pickers in the United States in 2007 (Doc 18 Exhibit 7 pg. 14) is now only "capable of simple routine tasks in a socially limited setting" (Doc 18 Exhibit 6 pg. 13), because of his brain damage from Pernicious Anemia.

b) The Commissioner says Comack is limited to "unskilled work because of the impairments" (Doc 18 Exhibit 6 pg. 14).

c) The Commissioner's vocational expert told Comack that he can **NEVER** be a Wall Street securities analyst again, which is Comack's past relevant work (Doc 18 Ex 14 pg. 17).

4) In June 2018, Primary Care Physician Dr. Jerome Covington said Comack is totally disabled from the

brain damage caused by Pernicious Anemia (Doc 18 Exhibits 48 pgs. 2-3 & 19 pgs. 2-3).

5) In July 2018, Administrative Law Judge ("ALJ") Rebecca Wolfe at the Social Security Administration ("SSA") Office of Hearing Operations in Miami, FL ("Miami SSA office") held a hearing with Comack and in December 2018 issued an "Unfavorable" disability decision for Comack (Doc 18 Exhibit 11).

6) In August 2019, the Commissioner's Appeal Council ("Appeals Council") vacated ("First Remand Order") this first Unfavorable decision from the Miami SSA office and remanded the case back to the Miami SSA office (Doc 18 Exhibit 13).

IV. The Commissioner's staff fabricates Comack's wage evidence in order to disqualify Comack from disability in order to protect these "Big Pharma" research hospitals from criminal and civil liability.

1) In June 2020, another ALJ at the Miami SSA office -- Lornette Reynolds ("Reynolds") -- held a "remand" hearing with Comack and in December 2020 issued an yet another "Unfavorable" disability decision for Comack (Doc 18 Exhibit 14).

2) However, in a scheme to inflate Comack's wages above the Commissioner's substantial gainful activity ("SGA") levels in order to disqualify Comack from disability and ignore Comack's medical records from July 2017 to December 2020, Reynolds and the Miami SSA office forged and tampered with

Comack's wage evidence (Doc 18 Exhibit 3, which is called Exhibit "22D" in the record), and Reynolds used this forged evidence in her remand decision (Doc 18 Exhibit 14 pg. 8).

- a) This forged, counterfeit document fraudulently states that Comack earned \$15,750 from the Navy Exchange Service Command ("Navy Exchange") in the fourth quarter of 2019 (Doc 18 Exhibit 3). Comack only earned \$5,253 from the Navy Exchange for the **full year 2019** (Doc 18 Exhibit 23 pg. 3 & Exhibit 4 pg. 49). Reynolds quotes the fraudulent wage number of \$15,750 in her decision (Doc 18 Exhibit 14 pg. 8).
- b) ALJ Reynolds also fabricated Comack's 2020 wages out of thin air without any documented evidence whatsoever -- forged or real -- when she said Comack earned \$21,958 from the Navy Exchange in the first quarter of 2020 (Doc 18 Exhibit 14 pg. 8). Comack only earned \$4,692 from the Navy Exchange for the **full year 2020** (Doc 18 Exhibit 4 pg. 51). The false 2020 \$21,958 wage number is not in any document in the list of exhibits for Reynolds' decision (Doc 18 Exhibit 14 pgs. 23-31). It is a pure fabrication by Reynolds and the Miami SSA office.
- c) Reynolds' scheme was designed to protect these Big Pharma research hospitals (U of M & Northwell) and their staff (which includes Nemeroff) from criminal and civil liability. A disability award would help Comack in his

medical conflicts of interest fraud lawsuits against these hospitals. Hence, the Miami SSA office has compromised ALJs.

d) Fabrication of evidence and the use of false evidence in a federal case are felony offenses pursuant to 18 U.S.C §1519. Hence, the Commissioner's Miami SSA office committed crimes against Comack, and violated Comack's constitutional right to due process in the Commissioner's administrative review process in order to protect U of M and Northwell.

e) Furthermore, the Reynolds decision in December 2020 (Doc 18 Exhibit 14) contains similar language and mistakes as the decision by Miami SSA office ALJ Rebecca Wolfe in December 2018 (Doc 18 Exhibit 11), which was also vacated and remanded by the Commissioner and her Appeals Council. This is more evidence of a Miami SSA office-wide corruption problem rather than two faulty decisions by two corrupt Miami ALJs.

3) In the Appeals Council's June 2021 Second Remand Order for Comack ("Second Remand Order") (Doc 18 Exhibit 2), the Commissioner's Appeal Council yet again vacated this second Unfavorable decision from the Miami SSA office and Reynolds, but then shockingly remanded Comack's disability case back to the corrupt Miami SSA office and the wage fabricator Reynolds for an unconscionable

third hearing, which was five years after Comack first applied for disability in 2016.

a) Comack told the Appeals Council that he did not believe he could get a fair hearing from the Miami SSA office due to the wage evidence crime (Doc 18 Exhibit 4 pg. 42).

b) To Comack's knowledge, the Commissioner's Office of Appellate Operations' Division of Quality Service ("DQS") is currently investigating the Miami SSA office and Reynolds for fraud, misconduct and intentional sabotage related to the wage evidence fabrication in Comack's disability case (Doc 18 Exhibit 16).

4) Then, to Comack's surprise, the Second Remand Order from the Commissioner's Appeals Council actually cited (Doc 18 Exhibit 2 pg. 1) the fabricated and forged wage evidence (Doc 18 Exhibit 3, which is called Exhibit "22D" in the record) manufactured by the Miami SSA office and Reynolds in order to unlawfully remand Comack's disability case back to the corrupt Miami SSA office who committed the wage falsification crimes in the first place. This was an unlawful violation by a federal agency of Comack's constitutional right to due process as dictated by the 5th amendment of the US constitution. Fabrication of evidence and the use of false evidence in a federal case are also felony offenses (see 18 U.S.C §1519).

V. The brain-damaged Comack asks the District Court to intervene in this instant case and protect him from the corrupt Commissioner; the DOJ, which controls the FBI, defends the Commissioner and files motions to dismiss this instant case for insufficient service of process and a lack of subject matter jurisdiction for failure to exhaust administrative remedies.

1) On July 7, 2021, Comack filed this instant case via a federal complaint ("complaint") (Doc 1) against the Commissioner as Case # 4:21-cv-10065-JEM, which asked the District Court to intervene and protect him from the corrupt Commissioner.

a) Comack's complaint sought the District Court's review of the Commissioner's June 10, 2021 decision (Doc 18 Exhibit 2) in her unlawful Second Remand Order (Doc 18 Exhibit 2) by her Appeals Council to vacate and remand for a second time Comack's SSI disability benefits application ("disability case") under Title XVI of the Social Security Act.

b) Comack argued that District Court jurisdiction of this instant case was proper under 42 U.S.C §1383 (c) (3), which points to 42 U.S.C §405 (g).

c) Comack's complaint against the Commissioner (Doc 1 pg. 3) was that the

Second Remand Order (Doc 18 Exhibit 2) was unlawful, since this order cited forged wage and counterfeit wage evidence (Doc 18 Exhibit 3; called Exhibit “22D” in the Second Remand Order) manufactured by the Miami SSA office in the disability case, which violated Comack’s constitutional right to due process as dictated by the 5th amendment of the US Constitution.

d) Fabrication of evidence and the use of false evidence in a federal case are also felony offenses (see 18 U.S.C §1519).

e) The Commissioner was defended in this instant case by the Department of Justice (“DOJ”), which controls the Federal Bureau of Investigation (“FBI”). The FBI has criminal evidence related to Comack’s disability case (Doc 18 Exhibit 7) that involves two of the biggest “Big Pharma” research hospitals in the United States – U of M and Northwell. These hospitals delayed the diagnosis of Comack’s Pernicious Anemia disability and caused the Pernicious Anemia to inflict more injury to Comack’s brain, spinal cord and optic nerve. Shockingly, the DOJ and the Commissioner tried to protect these hospitals against criminal and civil liability.

2) On July 12, 2021, Comack served the Commissioner with a copy of the complaint and Summons according to the Commissioner’s website instructions for disability applicants with

impairments (Doc 12/13 Exhibit 1 pg. 1, Doc 18 Exhibit 1 pg. 1 & Doc 5).

3) On July 21, 2021, Comack submitted to the District Court his Proof of Service to the Commissioner (Doc 5).

4) On October 18, 2021, Counsel for the Commissioner -- the DOJ -- (which controls the FBI who has the Comack package of criminal evidence against U of M and Northwell) filed a Motion to Dismiss this instant case for Insufficient Service of Process (Doc 11) and argued that Comack's service of process was insufficient, because Comack did not serve the offices of the United States Attorney for the Southern District of Florida and the United States Attorney General, despite the fact that the Commissioner's service instructions makes no mention of servicing the U.S. Attorney or Attorney General.

5) On October 19, 2021, Comack responded (Doc 12/13) to the Motion to Dismiss for Insufficient Service of Process by stating that he followed the Commissioner's website instructions (Doc 12/13 Exhibit 1 pg. 1, Doc 18 Exhibit 1 pg. 1 & Doc 5) on how to serve the Commissioner. **Comack also asked the District Court for instructions on how to proceed in this service dispute (Doc 12/13 pg. 3).**

6) As Comack waited for the Court's instructions regarding the service controversy, Comack sent copies of the Complaint and Summons via certified

mail/return receipt to the following recipients in order to satisfy the Commissioner's counsel, the DOJ:

- a) Assistant U.S. Attorney (defendant's counsel) – received & signed for on October 21, 2021 (Doc 21 Exhibit A pgs. 1-6).
- b) The U.S. Attorney for the Southern District of Florida – received & stamped on October 27, 2021 (Doc 21 Exhibit A pgs. 1-6).
- c) The United States Attorney General -- received & stamped for on November 1, 2021 (Doc 21 Exhibit A pgs. 1-6).

7) Hence, Comack cured the Commissioner's Counsel's claim of insufficient service of process without needing his entitled legal right pursuant to Federal Rules of Civil Procedure ("FRCP") Rule 4 (m) from the District Court to extend Comack time to cure the alleged service deficiency.

8) Furthermore, the District Court never responded to Comack's request for instructions on how to resolve this service dispute and violated Comack's right to an extension of time to cure any service deficiency pursuant to FRCP 4 (m).

9) On October 19, 2021, Comack also filed:

- a) a Motion for Preliminary Injunction pursuant to FRCP 65 "precluding Reynolds

and anyone at the corrupt Miami SSA office from holding another hearing of this case until the Court has exhausted its rulings on this case.” (Doc 15).

b) a Motion for Default Judgment (Doc 12/13) pursuant to FRCP 55, because the Commissioner had not filed her Answer or pleading to Comack’s Complaint (Doc 1) with Comack’s Social Security “administrative record” in over 90 days. The administrative record would include a copy of the forged wage evidence that was created by the Commissioner’s Miami SSA office. FRCP 12 allowed the Commissioner 60 days to file her Answer or Pleading. However, the Clerk of the Court illegally refused to sign (Doc 10) Comack’s Entry of Default (Doc 9 Exhibit 1).

c) a Memorandum of Law (Doc 14) (with exhibits located in Doc 18) that supports the Motions for Preliminary Injunction (Doc 15) and Default Judgment (Doc 12/13), as well as the Response to the Motion to Dismiss for Insufficient Service of Process (Doc 12/13).

10) Knowing that their Motion to Dismiss for Lack of Insufficient Service of Process was a failing argument, the Commissioner and the DOJ on November 2, 2021 filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction for failure to exhaust administrative remedies (Doc 19).

11) On November 16, 2021 Comack filed a Response to the Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc 21) by arguing that administrative exhaustion of remedies (“administrative exhaustion”) is not required by the District Court pursuant to the two-part test (“*Mathews v. Eldridge* test”) in *Mathews v. Eldridge* 424 U.S. 319 (1976) and reiterated in *Bowen v. City of New York* 476 U.S. 467 (1986). *Mathews v. Eldridge* 424 U.S. 319 (1976) and *Bowen v. City of New York* 476 U.S. 467 (1986) allowed the District Court to waive administrative exhaustion, because this instant case met the two-part *Mathews v. Eldridge* test as the Social Security Commissioner committed constitutional due process crimes and irregularities against the disability applicant Comack that were collateral to the applicant Comack’s claim for benefits, and attempted to use administrative exhaustion to irreparably harm the applicant Comack.

12) On November 30, 2021, Comack filed a Motion to Recuse/Disqualify District Court Judge Martinez and District Court Magistrate Judge Jacqueline Becerra pursuant to 28 U.S. Code § 144 and 28 U.S. Code § 455 due to their affiliations with U of M and the DOJ (Doc 25).

a) Judge Martinez is currently employed by U of M (Doc 25 Exhibit. A).

b) Both Judge Martinez and Magistrate Judge Becerra are graduates of U of M.

c) Both Judge Martinez and Magistrate Judge Becerra were employed by the DOJ who

defended the Commissioner in this instant case and who controls the FBI.

d) On December 16, 2021 (Doc 29) and January 3, 2022 (Doc 30), respectively, Judge Martinez and Magistrate Judge Becerra dismissed Comack's Motion to Recuse/Disqualify (Doc 25).

13) On July 1, 2022, Comack filed into District Court his July 1, 2022 letter ("letter") to the esteemed Senator Charles Grassley (Doc 31), which was cc'd to Judge Martinez and Magistrate Judge Becerra. The letter stated that this instant case is a "medical mafia conflicts of interest case (that) exposes "corruption at two of the largest "Big Pharma" research hospitals in the U.S and at the Social Security Administration"; "has links to the infamous Dr. Charles Nemeroff, the FBI & the Department of Justice" and "connects the SSA to the medical mafia".

VI. The District Court unlawfully dismisses this instant case for insufficient service of process and a lack of subject matter jurisdiction for failure to exhaust administrative remedies.

1) On July 27, 2022, Magistrate Judge Becerra issued an Omnibus Report and Recommendation (Doc 34) in this instant case with the following recommendations:

a) To Grant the Commissioner's Motion to Dismiss for Insufficient Service of Process (Doc 11).

b) To Grant the Commissioner's Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc 19).

c) To Dismiss This Instant Case (Doc 1) Without Prejudice.

d) To Deny as Moot Comack's Motion for Default Judgment (Doc 12/13).

e) To Deny as Moot Comack's Motion for Preliminary Injunction (Doc 15).

2) On August 2, 2022, Comack filed his objections (Doc 35) to Magistrate Becerra's recommendations (Doc 34), because her recommendations contained material errors, violated the law and reflected her conflicts of interest in this instant case.

3) On August 16, 2022, the Commissioner and the DOJ responded (Doc 40) to Comack's objections (Doc 35) to Magistrate Becerra's Report and Recommendation (Doc 34).

4) On March 28, 2023, Judge Martinez issued an Omnibus Order ("Order") (Doc 42), which affirmed and adopted all of Magistrate Judge's Becerra's recommendations (Doc 34), and illegally dismissed this instant case. Judge Martinez overruled all of Comack's objections (Doc 35).

Hence, Judge Martinez:

a) Granted the Commissioner's Motion to Dismiss for Insufficient Service of Process (Doc 11).

b) Granted the Commissioner's Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc 19).

c) Dismissed This Instant Case (Doc 1) Without Prejudice.

d) Denied as Moot Comack's Motion for Default Judgment (Doc 12/13).

e) Denied as Moot Comack's Motion for Preliminary Injunction (Doc 15).

5) On April 6, 2023, Comack filed a timely Notice of Appeal (Doc 45) of Judge Martinez's Omnibus Order on Report and Recommendation & Appeal of Order on Emergency Motion (Doc 42) to the Appeals Court. Judge Martinez's Order (Doc 42) violated the law and reflected his conflicts of interest. Comack's Appeal Brief was filed on December 5, 2023.

6) On November 8, 2024, the Appeals Court illegally affirmed ("Order to Affirm") the District Court's decision to dismiss the case for Insufficient Service of Process and Lack of Subject Matter Jurisdiction.

REASONS FOR GRANTING THE WRIT

I. THE APPEALS COURT SHOULD HAVE USED THE TWO-PART *MATHEWS V. ELDRIDGE* TEST ESTABLISHED BY THE SUPREME COURT, NOT AN ARBITRARY THREE-PART TEST, WHEN DECIDING WHETHER THE DISTRICT COURT COULD WAIVE ADMINISTRATIVE EXHAUSTION FOR 42 U.S.C. §405 (G) SOCIAL SECURITY DISABILITY JURISDICTION

1) Supreme Court case precedent in *Mathews v. Eldridge* 424 U.S. 319 (1976) and *Bowen v. City of New York* 476 U.S. 467 (1986) allows federal district courts to waive **administrative exhaustion** at the Social Security Administration ("SSA") in order for these courts to have 42 U.S.C §405 (g) jurisdiction in an SSA disability case.

Justice Powell said in *Mathews v. Eldridge* 424 U.S. 319 (1976):

On its face § 405(g) thus bars judicial review of any denial of a claim of disability benefits until after a "final decision" by the Secretary after a "hearing." It is uncontested that Eldridge could have obtained full administrative review of the termination of his benefits, yet failed even to seek reconsideration of the initial determination. Since the Secretary has not "waived" the finality requirement as he had in *Salfi*, supra,

at 767, 95 S.Ct., at 2467-2468, he concludes that Eldridge cannot properly invoke § 405(g) as a basis for jurisdiction. **We disagree.** ... (see *Mathews v. Eldridge* 424 U.S. 319 (1976), *Weinberger v. Salfi* 422 U.S. 749 (1975)).

2) Supreme Court case *Mathews v. Eldridge* 424 U.S. 319 (1976) established a **two-part test (“Mathews v. Eldridge test”)** to determine if federal District Courts can waive SSA administrative exhaustion for jurisdiction pursuant to 42 U.S.C §405 (g).

The **two-part Mathews v. Eldridge test** in *Mathews v. Eldridge* 424 U.S. 319 (1976) is defined as:

Although respondent concededly did not exhaust the Secretary's internal review procedures, and ordinarily only the Secretary has the power to waive exhaustion, this is a case where the claimant's interest in having a particular issue promptly resolved is so great that deference to the Secretary's judgment is inappropriate. The facts that respondent's **constitutional challenge was collateral** to his substantive claim of entitlement, and that (contrary to the situation in *Salfi*) **he colorably claimed that an erroneous termination would damage him in a way not**

compensable through retroactive payments warrant the conclusion that the denial of his claim to continued benefits was a sufficiently "**final decision**" with respect to his constitutional claim to satisfy the statutory exhaustion requirement. (see *Mathews v. Eldridge* 424 U.S. 319 (1976)), *Weinberger v. Salfi* 422 U.S. 749 (1975)

3) The **two-part *Mathews v. Eldridge* test** was reiterated in *Bowen v. City of New York* 476 U.S. 467 (1986).

Justice Powell defined the two-part *Mathews v. Eldridge* test in *Bowen v. City of New York* 476 U.S. 467 (1986) as:

The District Court certified a class, and decided that the class properly included claimants who had not exhausted administrative remedies. Relying on *Mathews v. Eldridge*, 424 U. S. 319 (1976), the court concluded that this was an appropriate case in which to waive the statutory exhaustion requirement. In the court's view, **both parts of the *Eldridge* test** were satisfied here: **the claims were collateral to any claim for benefits, and the harm imposed by exhaustion would be irreparable.**

(see *Bowen v. City of New York* 476 U.S. 467 (1986)).

Two factors influenced the Court's judgment that *Eldridge* was a case in which deference to the agency's determination of finality was not necessary. **First, the constitutional challenge brought there was "entirely collateral to [a] substantive claim of entitlement."** *Ibid.* **Second, the claim rested "on the proposition that full relief cannot be obtained at a postdeprivation hearing."** *Id.*, at 331", ...the claimants in this case would be irreparably injured were the exhaustion requirement now enforced against them. (see *Bowen v. City of New York* 476 U.S. 467 (1986)).

4) However, in this instant case, the Appeals Court violated Supreme Court case precedent that established the two-part *Mathews v. Eldridge* test when it arbitrarily used a **three-part test** to decide whether the District Court could **waive administrative exhaustion** for 42 U.S.C §405 (g) jurisdiction in Comack's SSA disability case. The Appeals Court in this instant case strangely used a three-part test taken from some unknown District Court precedent that was mentioned in *Crayton v. Callahan* 120 F.3d (11th Cir. 1997) in order to determine if the District Court in this instant case

could waive administrative exhaustion for jurisdiction in a 42 U.S.C 405 (g) SSA disability case.

5) The Appeals Court in their Order to Affirm in this instant case said on Page 7:

...because Comack cannot meet **two of the three parts of the test** that we use to determine whether waiver is applicable, waiver of exhaustion is not applicable to his case.

6) The Appeals Court in their Order to Affirm in this instant case said on Page 6:

We have **“applied a three-part test to determine whether waiver is applicable: (1) are the issues entirely collateral to the claim for benefits; (2) would failure to waive cause irreparable injury; and (3) would exhaustion be futile.”**

7) Comack has no idea where the Appeals Court got the third part of their test --- **“would exhaustion be futile”**. There is nothing in Supreme Court rulings *Mathews v. Eldridge* 424 U.S. 319 (1976) and *Bowen v. City of New York* 476 U.S. 467 (1986) that discusses a third part to the test for whether a federal District Court can waive SSA administrative exhaustion. The word “futile” is not even mentioned in *Mathews v. Eldridge* 424 U.S. 319 (1976), and this instant case is about the two-part *Mathews v. Eldridge* test.

**II. THE APPEALS COURT IGNORED
COMACK'S CLAIM THAT THE
COMMISSIONER COMMITTED
CONSTITUTIONAL DUE PROCESS CRIMES
AND IRREGULARITIES IN THE
ADMINISTRATIVE REVIEW PROCESS THAT
WERE COLLATERAL TO COMACK'S CLAIM
FOR DISABILITY BENEFITS**

- 1) As argued above, *Mathews v. Eldridge* 424 U.S. 319 (1976) established the **two-part *Mathews v. Eldridge* test that determines whether the District Court can waive administrative exhaustion** in order to have jurisdiction in a 42 U.S.C §405 (g) SSA disability case.
- 2) In its Order to Affirm for this instant case, the Appeals Court did not argue against the fact that the Commissioner's administrative exhaustion of Comack's disability case would cause irreparable harm to Comack. Hence, one of the two-parts of the *Mathews v. Elridge* test was met in this instant case. Indeed, the Commissioner used false evidence in her Second Remand Order to remand Comack's disability case back to same Miami SSA office and ALJ who fabricated the false wage evidence against Comack, which doomed Comack to more corruption by the Miami SSA office.
- 3) In regards to the second part of the *Mathews v. Elridge* test, the Appeals Court erred when it ignored Comack's claim that the Commissioner committed constitutional due process crimes and irregularities in the administrative review process

that were collateral to Comack's claim for disability benefits.

4) The Appeals Court in this instant case actually made the argument for Comack when it said on page 6 of its Order to Affirm:

In *Mathews v. Eldridge*, when the claimant's disability benefits were terminated, he did not seek agency reconsideration, but rather brought an action in federal district court alleging the termination of benefits without a hearing violated his constitutional due process rights. The Supreme Court held that judicial waiver of exhaustion was appropriate **because he had challenged the constitutional validity of administrative procedures.** We later interpreted *Mathews* as holding that exhaustion may be excused only when the contested issue is constitutional, collateral to the consideration of the claimant's claim, and its resolution, therefore, falls outside the agency's authority. *Crayton*, 120 F.3d at 1222.

This instant case is about constitutional due process crimes and irregularities committed against Comack by the Commissioner.

Comack uses the terms "constitution", "constitutional" and "constitutionality" 41 times in his Appeal Brief for the Appeals Court.

5) The Appeals Court again in this instant case makes the argument for Comack when it said on page 7 of its Order to Affirm:

Unlike *Mathews*, where the claimant alleged the termination of his benefits without a hearing **violated his due process rights**, Comack's allegations specifically involve the behavior of the Miami Office, and the wage information considered by the two Administrative Law Judges, all of which falls with the SSA's agency authority.

This instant case is about constitutional due process crimes and irregularities committed against Comack by the Commissioner.

Comack uses the term "due process" 30 times in his Appeal Brief for the Appeals Court.

6) Furthermore, the Appeals Court says on Page 6 of its Order to Affirm in this instant case:

In *Bowen v. City of New York*, the Supreme Court determined the claimants stood "on a different footing from one arguing merely that an agency incorrectly applied its regulation," as the district court in that case had found "a systemwide, unrevealed policy that was inconsistent in critically important ways with established regulations.

Bowen v. City of New York 476 U.S. 467
(1986).

This instant case is about constitutional due process crimes and irregularities committed against Comack by the Commissioner that include, but are not limited to:

- a) the Commissioner and her Miami SSA office forging (Doc 18 Exhibit 3) and fabricating (Doc 18 Exhibit 14 pg. 8) Comack's wage evidence in the SSA disability administrative review process in order to disqualify Comack from disability. These criminal irregularities in a federal disability application administrative review process are felony offenses pursuant to 18 U.S.C. §1519.
- b) the Commissioner's Appeal Council then unlawfully used the forged wage evidence (Doc 18 Exhibit 3; called Exhibit "22D" in the SSA record) in their Second Remand Order of June 10, 2021 (Doc 18 Exhibit 2 pg. 1) to remand Comack's disability case back for an unconscionable third hearing to the corrupt Miami SSA office with the exact same ALJ who forged and fabricated Comack's wage evidence. Hence, this is the finality component of the Commissioner's unlawful Second Remand Order, which doomed Comack's chances at a fair and impartial hearing as prescribed

by the Social Security Act and the 5th Amendment of the U.S. Constitution.

- c) The Commissioner used excessive time to put Comack in an unending loop of vacates and remands for over 5 years of proceedings in order to deprive Comack of his disability, which could be used in civil actions against two of the biggest "Big Pharma" research hospitals in the US -- U of M and Northwell.
- d) The Fifth Amendment of the U.S. Constitution tells the federal government that no one shall be "deprived of life, liberty or property without due process of law."

Procedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment (see *Mathews v. Eldridge* 424 U.S. 319 (1976)).

Instead of requesting such reconsideration respondent brought this action **challenging the constitutionality of the procedures** (see *Mathews v. Eldridge* 424 U.S. 319 (1976))

Thus, unlike the situation in *Salfi*, denying Eldridge's substantive claim "for other reasons" or upholding it "under other provisions" at the post-termination stage, 422 U.S., at 762, **would not answer his constitutional challenge.** (see *Mathews v. Eldridge* 424 U.S. 319 (1976), *Weinberger v. Salfi* 422 U.S. 749 (1975)).

Nor did this policy depend on the particular facts of the case before it; **rather, the policy was illegal** precisely because it ignored those facts. (see *Bowen v. City of New York* 476 U.S. 467 (1986))

(D)ue process is flexible and calls for such procedural protections as the particular situation demands (see *Mathews v. Eldridge* 424 U.S. 319 (1976) & *Morrissey v. Brewer* 408 U.S. 471 (1972))

Accordingly, **resolution of the issue whether the administrative procedures provided here are constitutionally sufficient** requires analysis of the governmental and private

interests that are affected. (see
Mathews v. Eldridge 424 U.S.
319 (1976))

e) As explained in Comack's Memorandum of Law (Doc 14), the motive for the Commissioner to violate and stomp on Comack's constitutional right to fair and neutral due process was to protect two of the largest "Big Pharma" research hospitals in the United States – U of M and Northwell -- from criminal and civil liability. In October 2015, Comack submitted evidence (Doc 18 Exhibit 7) to the FBI (which is controlled by the DOJ – the Commissioner's counsel in this instant case) that proves that these two hospitals sabotaged and covered up evidence of Comack's brain-damage from Pernicious Anemia in order to defend the hospitals' corporate clients and research conflicts of interest. These hospitals delayed Comack's Pernicious Anemia diagnosis and caused the Pernicious Anemia to inflict more nerve damage to Comack's brain, spinal cord and optic nerve.

1. The Commissioner's administrative review process is supposed to be impartial, neutral and "non-adversarial" pursuant to the Commissioner's rules and regulations (see 20 Code of Federal Regulations ("C.F.R.") 416.1400(b)).

2. Comack did not believe he could get a fair hearing from the corrupt Miami SSA office, which he made clear to the Commissioner's Appeal Council in his second Appeal Brief (Doc 18 Exhibit 4 pg. 42).

**The claimants here
were denied the fair
and neutral procedure
required by the statute
and regulations, and
they are now entitled to
pursue that
procedure. (see *Bowen v.
City of New York* 476 U.S.
467 (1986))**

3. Comack even filed a Motion for Preliminary Injunction (Doc 15) in this instant case to preclude the corrupt Miami SSA office from conducting any more Comack disability hearings and injuring Comack any further.

A. The regulations provide that:

**An administrative
law judge shall
not conduct a
hearing if he or
she is prejudiced
or partial with
respect to any**

party or has any
interest in the
matter pending
for decision. (See
20 C.F.R. 416.1440).

In fact, there is evidence that
proves the entire Miami SSA
office is prejudiced and partial
against Comack.

B. The Commissioner must
operate as an adjudicator and not
as an advocate or adversary.

But, as the
Government's brief
here accurately
pronounces, "**Such
a system must be
fair – and it must
work**" (see
Richardson v.
Perales 402 U.S. 389
(1971)).

C. The Supreme Court says the
claimant's hearing with the SSA
ALJ is supposed to be
"**nonadversary**" – "The hearing
is nonadversary" (see *Mathews v.*
Eldridge 424 U.S. 319 (1976)).
The vulnerable, brain-damaged
Petitioner/Claimant Comack

should not have been subjected to
forged and fabricated wage
evidence manufactured by the
Commissioner and her staff.

**III. HENCE, COMACK MET THE TWO-PART
MATHEWS V. ELDRIDGE TEST, AND THIS
INSTANT CASE SHOULD NOT HAVE BEEN
DISMISSED FOR LACK OF SUBJECT
MATTER JURISDICTION**

1) Plaintiff/Petitioner Comack met the two-part
Mathews v. Eldridge test, which gave the District
Court jurisdiction in this instant case pursuant to 42
U.S.C §405 (g). Hence, this instant case should not
have been dismissed by the District Court, and their
decision should not have been affirmed by the
Appeals Court.

a) the Appeals Court accepted Comack's claim
that exhaustion would cause irreparable harm
to Comack by the Commissioner by not
arguing against Comack's claim. Indeed, the
Commissioner unlawfully used fabricated
wage evidence in her Second Remand Order to
remand Comack's disability case back to the
corrupt Miami SSA office who manufactured
the false wage evidence. In this instant case,
Comack submitted the fabricated wage
evidence (Doc 18 Exhibits 3 & 14 pg. 8)
manufactured by the Commissioner's Miami
SSA office and its ALJ Lornette Reynolds
("Reynolds"). Comack made the colorable
claim over and over that the Appeals Council's

use of the fabricated wage evidence in the Second Remand Order in order to remand Comack's disability case back to the same corrupt Miami SSA office who fabricated the wage evidence would cause Comack irreparable harm. Obviously, Comack will never receive a fair disability hearing from the Commissioner's criminals at the Miami SSA office who fabricated the wage evidence.

b) the Appeals Court incorrectly ignored Comack's claim that the Commissioner committed constitutional due process crimes and irregularities against Comack in the administrative review process that were collateral to Comack's claim for disability benefits when the Commissioner's staff fabricated Comack's wage evidence, and then the Commissioner's Appeals Council used this false evidence in their Second Remand Order to remand Comack's disability case back to Commissioner's staff who fabricated the wage evidence.

2) Hence, the District Court did err and violate the law when it dismissed this instant case for lack of subject matter jurisdiction due to failure to exhaust administrative remedies. *Mathews v. Eldridge* 424 U.S. 319 (1976) and *Bowen v. City of New York* 476 U.S. 467 (1986) both say that **the District Court can waive administrative exhaustion** to attain jurisdiction of a 42 U.S.C §405 (g) SSA disability case when the disability applicant files a federal complaint against the Commissioner and meets the

two-part (not three-part) test *Mathews v. Eldridge* test.

We should be especially sensitive to this kind of harm where the Government seeks to require claimants to exhaust administrative remedies merely to enable them to receive the procedure they should have been afforded in the first place. (see *Bowen v. City of New York* 476 U.S. 467 (1986)).

IV. THE APPEALS COURT IGNORED THE DISTRICT COURT'S VIOLATION OF FRCP 4(M) WHEN IT DISMISSED THIS INSTANT CASE FOR INSUFFICIENT SERVICE OF PROCESS

1) The Appeals Court erred when it ignored the fact that the conflicted District Court violated the **Federal Rules of Civil Procedure ("FRCP") 4(m) "good cause"** statute when it granted the Commissioner's Motion to Dismiss for Insufficient Service of Process (Doc 11) and dismissed this instant case (Docs 34 & 42). The District Court should have used FRCP 4(m) to grant Comack an extension of time to cure his alleged service failure.

2) Comack showed **good cause** for the alleged service failure as the brain damaged Comack followed the Commissioner's website (Doc 12/13 Exhibit 1 pg. 1, Doc 18 Exhibit 1 pg. 1 & Doc 5) instructions on how to serve the Commissioner in a

42 U.S.C 405 (g) lawsuit against the Commissioner. These service instructions for plaintiffs/claimants with impairments on the Commissioner's website did not mention any instructions to serve either the United States Attorney for the Southern District of Florida or the United States Attorney General.

a) Comack submitted the Commissioner's website instructions into District Court (Doc 12/13 Exhibit 1 pg. 1, Doc 18 Exhibit 1 pg. 1 & Doc 5). The Commissioner's website clearly instructed Comack and other plaintiffs/disability claimants with impairments on how to properly serve the Commissioner if plaintiffs/disability claimants utilized 42 U.S.C §1383 (c) (3) and 42 U.S.C. § 405(g) to bring their disability cases before the District Court.

These instructions said:

As explained in detail in the notice you receive from the Appeals Council, if you file a civil action, you must send us copies of the complaint you filed and of the summons issued by the court. These copies must be sent by certified or registered mail to the Social Security Administration's Office of the General Counsel that handles the area where the complaint

is filed. (Doc 12/13 Exhibit 1 pg. 1, Doc 18 Exhibit 1 pg. 1 & Doc 5).

- b) Hence, promptly after Comack filed his complaint (Doc 1) against the Commissioner on July 7, 2021, Comack followed the Commissioner's website instructions and promptly delivered a copy of the complaint and summons (Doc 12/13 Exhibit 1 pgs. 5-11 & Doc 5) via certified mail/return receipt to the office of the Commissioner's Regional Chief Counsel in Atlanta, Georgia. It was signed for by a N. Wright on July 12, 2021 (Doc 12/13 Exhibit 1 pgs. 2-3 & Doc 5).
- c) On July 21, 2021, Comack submitted his proof of service to the Court (Doc 5).
- d) However, on October 18, 2021, the Commissioner filed a Motion to Dismiss for Insufficient Service of Process, since according to the DOJ (the Commissioner's counsel and who controls the FBI who has the evidence that Comack gave them that incriminates U of M and Northwell), Comack was also supposed to serve the US Attorney General and the U.S. Attorney of the Southern District of Florida pursuant to FRCP Rule 4 (i) (3), which are not in the Commissioner's website instructions (Doc 12/13 Exhibit 1 pg. 1, Doc 18 Exhibit 1 pg. 1 & Doc 5).

3) The Commissioner has already said that Comack is permanently brain-damaged from Pernicious Anemia (Doc 18 Exhibits 5 & Exhibit 6 pgs. 9-10), so Comack showed good faith by following the defendant's own instructions on how to serve her, and presented a "good cause" for the alleged service deficiency.

4) Furthermore, Comack also asked the District Court for instructions and guidance (Doc 12/13 pg. 3) in regards to curing this service controversy. However, the conflicted, U of M affiliated District Court judges ignored Comack's request for service instructions and guidance in regards to this controversy. Indeed, Comack said he would follow the District Court's instructions on how to proceed on this service discrepancy (Doc 12/13 pg. 3). However, those instructions never came. As Comack waited in vain for District Court instructions regarding clarification of service instructions in order to cure the Commissioner's counsel claim of service deficiency (Doc 12/13 pg. 3), Comack cured the service deficiency claimed by the Commissioner (Doc 21 Exhibit A pgs. 1-6), which went way beyond the Commissioner's service website instructions. Comack served copies of the Complaint and Summons via certified mail/return receipt upon the United States Attorney General, the Assistant U.S. Attorney and the U.S. Attorney for the Southern District of Florida on October 19, 2021 & October 25, 2021:

a) Assistant U.S. Attorney (defendant's counsel) – received & signed for on October 21, 2021 (Doc 21 Exhibit A pgs. 1-6).

b) The U.S. Attorney for the Southern District of Florida – received & stamped on October 27, 2021 (Doc 21 Exhibit A pgs. 1-6).

c) The United States Attorney General -- received & stamped on November 1, 2021 (Doc 21 Exhibit A pgs. 1-6).

5) Shockingly, after the complaint in this instant case was filed, the Commissioner eliminated the requirement for plaintiffs/disability applicants to serve the complaint and summons to anyone.

a) As of April 11, 2022, the FRCP no longer requires service by the plaintiff in a 42 U.S.C. § 405(g) case against the Commissioner (“the 2022 change”) pursuant to the FRCP “Supplemental Rules for Social Security Review Actions Under 42 U.S.C. § 405(g) (Rules 1 to 8).”: “The plaintiff need not serve a summons and complaint under Civil Rule 4”.

b) The Commissioner recognized that she was giving disability candidates with impairments like Comack wrong service instructions on her website, perhaps on purpose.

c) The Appeals Court did not tell the truth in Footnote 3 in its Order to Affirm when it said that Comack argued that the “Supplemental

Rules should apply” to this instant case.
Comack simply pointed out the 2022 change,
and noted that the change was filed *after*
Comack’s complaint was filed.

CONCLUSION

Comack respectfully requests that this petition for a writ of certiorari be granted.

Respectfully submitted by:

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