

IN THE SUPREME COURT OF THE UNITED STATES

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No. 17-773

RICHARD ALLEN CULBERTSON, PETITIONER

v.

NANCY A. BERRYHILL,  
ACTING COMMISSIONER OF SOCIAL SECURITY

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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MOTION OF THE RESPONDENT FOR DIVIDED ORAL ARGUMENT

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Pursuant to Rules 21 and 28.4 of the Rules of this Court, the Solicitor General, on behalf of the Acting Commissioner of Social Security, respectfully moves for divided argument in this case. This case presents the question whether 42 U.S.C. 406(b)(1)(A) establishes that 25% of a claimant's past-due benefits under Title II of the Social Security Act is the maximum aggregate amount of attorney's fees that may be charged for representing the claimant in both administrative and court proceedings under Title II. The government requests that petitioner and the government each be

allotted 15 minutes of argument time and that the appointed amicus curiae be allotted 30 minutes of argument time. Counsel for petitioner does not object to this request.

Petitioner is an attorney who represents Social Security claimants. In this case, petitioner represented a claimant in proceedings before the Social Security Administration and, after the agency denied benefits, successfully represented the claimant in her district court challenge to that agency decision. The court of appeals later affirmed an attorney's fee order that limited the amount of attorney's fees that petitioner may charge his client for his work in district court, based on the court's view that Section 406(b)(1)(A) imposed a 25% cap on the total amount of fees that may be charged for both administrative and court proceedings. Petitioner has an obvious interest in being able to proceed with his challenge to that fee decision.

The Acting Commissioner of Social Security is the other party, and she is a party in all district court fee proceedings under Section 406(b)(1)(A). Although the Acting Commissioner agrees with petitioner that Section 406(b)(1)(A) caps the amount of fees that may be charged to petitioner's client only for representing her in court proceedings (not the aggregate amount of fees for both agency and court proceedings as the court of appeals held), the Acting Commissioner has a substantial interest in the proper application of Section 406(b). The Acting Commissioner administers Section

406(a)'s provisions governing fees for work in agency proceedings; the Acting Commissioner is a party in all district court judicial-review proceedings including fee proceedings under Section 406(b); and this case concerns the interaction of Section 406(a) and (b). For the foregoing reasons, the government requests that the Court grant the motion for divided argument.

Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General  
Counsel of Record

AUGUST 2018