25-6174

No. 18-____

ORIGINAL

Supreme Court of the United States

Jill Capobianco.

Petitioner,

vs.

Commissioner, Social Security Administration.

Respondent

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Eleventh Circuit 42-10344

PETITION FOR A WRIT OF CERTIORARI

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I.

QUESTIONS PRESENTED

Under 20 § C.F.R. §§ 404.1527(c), Social Security determinations are designed to be informal and non-adversarial. The Administrative Law Judge (ALJ) is required to gather facts and develop arguments for all sides to ensure a fair, objective decision is made based on the evidence. Additionally, *Social Security Regulation: SSR 96-2p:* Titles II and XVI: Give Controlling Weight to Treating Source Medical Opinions for claims filed before March 27, 2017. And 20 C.F.R. § 404.1529 (c); SSR 16-3p, 2016 WL 1119029 regulate how the ALJ must formulate his decision.

1. The questions presented are:

During an application for Supplemental Security Insurance (SSI) and Disability Benefits (SSDI), under 20 § C.F.R. §§ 404.1527(c), SSR-2p, and SSR 16-3p, does an ALJ have the authority to disregard all claimant medical evidence supporting disability, relying solely on Agency sources for determination?

And

2. The question presented is:

Under the scope of Administrative Law, is it acceptable for the lower court to hold claimants responsible for the actions of former counsel and to impose issue exhaustion forfeiture rules during the appeal process?

LIST OF PARTIES

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

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Capobianco v. Commissioner of Social Security Administration

List of Parties

In accordance with the Supreme Court's rules, this list is of all parties to the proceedings who this Court whose judgment is the subject of this petition:

1. Blake, Richard V. , Attorney, Social Security Administration (SSA). Counsel for Defendant-Appellee;

2. Boyd, Bradley K., former and current counsel for plaintiff –Appellant;

3. Capobianco, Jill R., Plaintiff-Appellant;

4. Capobianco, Kaylin R.; daughter of Plaintiff-Appellant;

5. Capobianco, Laurie, A.; sister of plaintiff-Appellant;

6, Davis, Traci B., Deputy Associate General Counsel, SSA counsel for Defendant-Appellee;

7. Donohue, Lisa, Attorney, SSA, counsel for Defendant-Appellee;

8. Elder, Nadine DeLuca, Supervisory Attorney, SSA, counsel for Defendant-Appellee;

9. Lapointe, Markenzy, United States Attorney, Southern District of Florida, counsel for Defendant-Appellee;

10. Le Willy M., Associate General Counsel, SSA, counsel for Defendant-Appellee;

11. Mariani, Nicole D., Assistant United States Attorney, Southern District of Florida, counsel for Defendant-Appellee;

12. McCabe, Ryon M., United States Magistrate Judge, Southern District of Florida;

13. Bisignano, Frank J., Commissioner of Social Security;

14. Parkhurt, Beverly Susler, Administrative Law Judge;

15. Rogers, Ronald M., Administrative Appeals Judge, SSA;

16. Sprague, Jonathan, Administrative Law Judge, SSA;

17. Windham, R. Dalton, Special Assistant United States Attorney and Attorney, SSA, counsel for Defendant-Appellee; and

18. Winters, Richard H. Attorney, SSA, counsel for Defendant-Appellee.

19. Greyer, Joy, former Attorney for Plaintiff-Appellant.

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III. Table of Authorities

Other Authorities

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts:**

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was March 19, 2025

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 27th, 2025, and a copy of the order denying rehearing appears at Appendix B.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

IV. Petition for Writ of Certiorari

Jill R. Capobianco respectfully petitions for a Writ of Certiorari to review the judgment of the U.S. Court of Appeals for the Eleventh Circuit in this case.

V. Opinions and Orders Below

The Eleventh Circuit's March 19th, 2025 opinion is unpublished and reproduced at Appendix A [pg.1-13]. The Eleventh Circuit's June 27th, 2025 order denying rehearing is reproduced at Appendix B [pg. 15-18].

The District Court's December 14th, 2023 Order Affirming Social Security Decision is reproduced at Appendix C [pg. 20-33].

The Social Security Administration's OHO January 28, 2022 Denial of Disability Decision is reproduced at Appendix D [pg. 35-70].

VI. Jurisdiction

This Court has jurisdiction under 28 U.S.C. §1254(1) based on The Eleventh Circuit's judgment on March 19, 2025, see app. A [pg. 1-13] and denied a timely rehearing petition on June 27th, 2025, see app. B [pg. 15-18].

VII. Constitutional Provisions Involved

United States Constitution - 5th and 14th Amendments.
Administrative Procedures Act, 5 U.S.C. §§ 701 et seq. (APA)
Social Security Act 42 U.S.C. §§ 405(g) & 1383 (c)(2) and

Social Security 42 U.S.C. 20 C.F.R. § 404.1529 (c); SSR 16-3p, 2016 WL 1119029

VIII. Related Proceedings

Arakas v. Commissioner, No. 19-1540 (4th Cir. 2020)

The Fourth Circuit reversed the district court's order affirming the SSA's denial of plaintiff's application for disability insurance benefits, holding that the ALJ erred by determining that plaintiff was not disabled during the relevant period. The court concluded that the ALJ erred in discrediting plaintiff's subjective complaints by applying the wrong legal standard by effectively requiring plaintiff to provide objective medical evidence of her symptoms; improperly cherry-picking, misstating, and mischaracterizing facts from the record; and drawing various conclusions unsupported by substantial evidence and failing to explain them adequately.

Bunnell v. Sullivan 947 F.2d 341 (9th Cir. 1991)

Reaffirmed the Cotton standard and elaborated on the evaluation of symptom severity. Adopting the report and recommendation of the magistrate, the court held that the ALJ had failed to explain with sufficient specificity the basis of his rejection of Bunnell's claims of disabling pain. The case was accordingly remanded to the Secretary for further proceedings.

Carr v. Saul 593 U.S. (2021) Landmark- The U.S. Supreme Court

This court unanimously held that the petitioners did not forfeit their constitutional challenges, by failing to comply with the administrative law doctrine of "issue exhaustion" Supreme Court reversed. The Courts of Appeals erred in imposing an issue-exhaustion requirement on petitioners'.

Carmickle v. SSA Commissioner, No. 05-36128 (9th Cir. 2008)

The court of appeals affirmed in part and reversed in part a district court judgment. The court held that an administrative law judge's error in connection with his adverse credibility finding was harmless where there was substantial evidence in support of the finding and the error did not negate the validity of the ALJ's ultimate credibility conclusions.

Obrien V. Bisignano, No. 22-55360 (9th Cir. 2025)

Given that SSA ALJ hearings are "informal, nonadversarial proceedings," and ALJs are required to "look fully into the issues themselves" before rendering a decision on

the disability determination, Obrien had no further responsibility to specifically flag the issue before the ALJ. Therefore, no administrative issue-exhaustion requirement precluded the panel's consideration of Obrien's arguments on the merits. The Ninth Circuit reversed the district court's judgment and remanded the case for further proceedings consistent with its opinion.

Raper v. Commissioner of Social Security, No. 22-11103 (11th Cir. 2024)

The Eleventh circuit held that the ALJ articulated good cause for discounting Raper's treating physician's opinion, finding the opinion inconsistent with the record. The court found that the ALJ had properly considered Raper's subjective complaints in light of the record as a whole and adequately explained his decision not to fully credit Raper's alleged limitations on his ability to work. The United States Court of Appeals for the Eleventh Circuit affirmed the lower court's decision.

Robbins v. Commissioner of Social Security, No. 1:2023cv00183 - Document 20 (N.D. Ind. 2024)

Held that: While an ALJ may find testimony not credible in part or in whole, he or she may not disregard it solely because it is not substantiated affirmatively by objective medical evidence. ORDER: the Commissioner's decision is REVERSED, and the case is REMANDED to the Commissioner in accordance with this Opinion and Order. The Clerk is DIRECTED to enter a judgment in favor of Robbins and against the Commissioner.

Rubin v. O'Malley, No. 23-540 (2d Cir. 2024)

Plaintiff Michelle Rubin applied for Social Security Disability Insurance benefits in 2019, citing major depressive disorder as her disabling condition. The United States Court of Appeals for the Second Circuit reviewed the case and found that the ALJ's decision was not supported by substantial evidence. The court noted that the ALJ had misinterpreted the medical and lay evidence, failing to appreciate the consistent narrative that supported Dr. Paul's opinion. The court concluded that the ALJ erred in determining that Rubin did not meet the criteria for a listed impairment, particularly the paragraph C criteria of Listed Impairment 12.04. The court vacated the district court's judgment and remanded the case to the agency for further proceedings, including a fuller consideration of the existing evidence and the results of a consultative examination.

Shelley C. v. Commissioner of Social Security Administration, No. 21-2042 (4th Cir. 2023)

The Fourth Circuit reversed and remanded with instructions to grant disability benefits. The court found that the ALJ failed to sufficiently consider the requisite factors and record evidence by extending little weight to the treating physician's opinion. The ALJ also erred by improperly disregarding Plaintiff's subjective statements. Finally, the court found that the ALJ's analysis did not account for the unique nature of the relevant mental health impairments, specifically chronic depression. The court explained that because substantial evidence in the record clearly establishes Plaintiff's disability, remanding for a rehearing would only "delay justice."

Sims v. Apfel, 530 U.S. 103 (2000) The U.S. Supreme Court

JUSTICE THOMAS delivered the opinion of the Court with respect to Parts I and II-A, concluding that Social Security claimants who exhaust administrative remedies need not also exhaust issues in a request for review by the Appeals Council in order to preserve judicial review of those issues. Reversed and remanded.

Smolen v. Chater (9th Cir. 1996) Landmark Case

Landmark Case marked a pivotal advancement in the adjudication of Social Security disability claims, particularly emphasizing the essential evaluation of subjective symptom testimony and the authoritative weight of treating physicians' opinion.

Application of the Cotton Test: The court reinforced that claimants must provide objective medical evidence showing that their impairments could reasonably cause the alleged symptoms, without necessarily proving the severity of those symptoms. Ultimately, the court concluded that the ALJ's failure to adequately consider and credibly assess the evidence of subjective symptoms and professional opinions warranted a reversal and remand for the proper awarding of benefits.

Reinforced the necessity for ALJs to thoroughly evaluate both subjective and objective evidence when determining disability status. Established that subjective symptom testimony must be given due consideration, especially when supported by credible medical opinions and lay witness accounts. Clarified the elevated importance of opinions from treating and specialized physicians in the evaluation of disability claims. Emphasized the ALJ's duty to fully develop the record, including seeking additional evidence or clarifications when necessary. Prevents ALJs from dismissing essential evidence without substantial, clear, and convincing reasons, ensuring a fair evaluation process. Highlighted that ALJs must give full consideration to subjective symptom testimony supported by substantial evidence,

including opinions from treating physicians and lay witnesses. The court underscored the necessity of giving significant weight to opinions from treating and specialized physicians, rejecting ALJ's outright dismissal without clear, substantial reasoning. The decision emphasized that testimony from family members and other non-medical witnesses should not be dismissed solely based on perceived bias, especially when corroborating the claimant's subjective symptoms. The court pointed out that the ALJ failed to properly assess the combined effect of all impairments on Smolen's ability to perform basic work activities, which is crucial at both step two (severity determination) and step five (residual functional capacity) of the Social Security disability determination process.

Sorber v. Comm'r of Soc. Sec. 362 F. Supp. 3d 712* (2019) District Court D Arizona
The court found that the ALJ had a duty to first determine whether the claimant has presented objective evidence of an underlying impairment' which could reasonably be expected to produce the pain or other symptoms alleged. Stating that, "the claimant is not required to show objective medical evidence of the pain itself or of a causal relationship between impairment and the symptom." Then that, the ALJ, "... may not reject a claimant's subjective complaints based solely on a lack of medical evidence to "fully corroborate" the claimants allegations." Finding that an ALJ cannot substitute their opinions for that of the treating doctor by "cherry-picking" the facts. There must be "clear and convincing reasons supported by substantial evidence for rejecting it. The district court, under the ninth Circuit's "credit-as true standard, credited as true improperly rejected medical opinions and claimant testimony and remanded for an award of benefits. The ruling reinforced the requirement that an ALJ's decision must be based on solid reasoning and evidence.

IX. Statement of the Case

A. I, Jill Capobianco, as a Pro-Se petitioner, will be drafting this petition in "first-person" perspective in order to avoid awkwardness in the hopeful reading, and resolution of; because this case is very personal to me. I request the reversal of this erroneous decision based on the clear facts of my case.

I am 47 years old, well-educated, a mother of one, and a middle-aged survivor of the "troubled Teen Industry" from my adolescence with lasting effects. Over the last decade, I have been diagnosed with more than 40 conditions, including Major Depressive disorder, Major Anxiety Disorder, Complex PTSD, Chronic Migraines, Hashimotos Thyroiditis, Sleep Apnea, Insomnia, Circadian Rhythm Disorder, Degenerative Disc Disorder, Bi-Polar Disorder, etc..., some will be life-long conditions and many began for me in my youth. In my life, I have worked over 43 jobs and I have been unable to work since 2012. My case with the Social Security Administration has now lasted more than 10 years *without just resolution.*

B. Undisputed Facts of the Case:

▶ This case was heard on Pro-SE Remand to ALJ Sprague from the Appeals Council following misconduct from ALJ Parkhurst hearing in January 2016. (DE 1).

▶ This case was under the rules and regulations of governing the assessment of medical opinion evidence for claims filed before March 27, 2017.*Social Security Regulation: SSR 96-2p:* Titles II and XVI: Giving Controlling Weight to Treating

Source Medical Opinions for claims filed before March 27, 2017. (DE 31 at 7, DE 38 at 5 n.3).

►This case contained at least 1200 pages of claimant-supplied medical evidence at the time of the final hearing on June2, 2021. (Tr. 253) These documents contained evidence from more than 15 of my own doctors, at least 8 of which are specialists in their field.

► At multiple times throughout the proceedings, I have been both Pro-Se and represented by attorneys.

► ALJ afforded either "Great" or "Partial Weight" to SSA Agency Experts *ONLY.*

►That, I, the claimant/petitioner in this case earned enough work credits to be eligible for both SSDI/SSI at the time of this decision.

C. Procedural History

1. The U.S. Southern District Court of FL. Affirmed the Social Security Decision for Denial of Benefits. 22-cv-14405-McCabe

Upon Appeal filed by Bradley K. Boyd, Plaintiff's attorney at this level, posed to questions upon appeal. They were:

(1.) Whether the Administrative Law Judge ("ALJ") erred by improperly

evaluating medical opinions from Kathleen Jeannot, M.D., and Kathie Kowalczyk, M.D. and (2.) Whether the ALJ erred in failing to further develop the record by locating and including additional treatment notes from Dr. Kowalczyk.

A. Magistrate Judge, McCabe found that the ALJ had "Good Cause" to not give Capobianco's Neurologist, Kathie Kowalczyk, M.D. "controlling weight." And to disregard Dr. Jeannot's opinion due to inconsistencies, namely, because the Functional capacity form the Neurologist filled out had two boxes check for "frequency" of weekly headaches, the treating relationship at the time of its production was four months, the neurologist did not maintain supporting notes for her opinions, the last few appointments that Capobianco had with this doctor were through tele-health due to the Covid Pandemic, and the MRI scans that Capobianco had ordered did not show abnormalities due to her chronic migraines. The court found this non-adherence to the treating physician rule to be "without harm." [Appx at pg 28-31]

B. Further, the court here found that the ALJ did not err in "failing to develop a sufficient record, because the ALJ noted that there was already a "significant record" with "over "1,200 medical pages." (R.253). The court found that this was ample evidence in which for the ALJ to make an informed decision. Citing Bischoff v Astrue, No. 07-60969, 2008 WL 4541118, at *18 n.9 (S.D. Fla Oct. 9, 2008), the court went on to say

that "Claimants counsel represented that the record was complete.' [Appx at 31-33]

At this point, my attorney, Bradley K. Boyd, ceased work on this case stating that he did not practice in Appellate Court and I preceded, Pro Se in the United States Court of Appeals for the Eleventh Circuit.

2. The U.S. Court of Appeals for the Eleventh Circuit. Affirmed the Social Security Decision for Denial of Benefits. 24-10344-Rosenbaum, Jill Pryor, and Abudu.

Upon Appeal filed by Jill Capobianco, Pro Se, posed to questions upon appeal. They were whether the ALJ had:

(1.) abused his authority by making assumptions about Capobianco's physical impairments and disregarding her concerns that her Constitutional Rights had been violated; (2.) Engaged in judicial misconduct by limiting Capobianco's testimony, ignoring her correspondence, and commenting that her cardiologist needed money; (3.) Misapplied the treating physician rule by relying on the opinions of non-treating physicians and a consulting psychiatrist over treating physicians;

(4.) Violated Capobianco's constitutional rights as well as her rights under international law; (5.) failed to develop and consider a complete record by asking a vague question about Capobianco's pain level, discussing only parts of the record that supported denying benefits, refusing to allow Capobianco to submit additional evidence after she fired her attorney, and disregarding Kowalczyk's opinions; (6.) abused his discretion by limiting Capobianco's testimony, not requiring a physician to answer her questions, ignoring medical evidence that was favorable to her, and questioning her credibility; (7.) mischaracterized the record by cherry picking facts and ignoring evidence that showed Capobianco's impairments were more severe; and (8.) erred by failing to ask the vocational expert about a hypothetical person with all of Capobianco's limitations and relying on the vocational expert's testimony about the availability of certain jobs in the national economy.

A. Judges Rosenbaum, Jill Pryor, and Abudu of the 11th Circuit found that Capobianco ***"forfeited all of these issues"*** except whether the ALJ failed to give controlling weight to Kowalczyk's opinions. Citing Raper v Comm'r of Soc. Sec., 89 F.4th 1261, 1274 (11th Cir. 2024). And Timson v. Sampson, 518 F 3d 870, 874 (11th Cir. 2008) stating that, "Although we "read briefs filed by *pro se* litigants liberally," the principles of forfeiture still apply."[Appx at pg. 9-10]

B. And stating that, "In this case, we are concerned with the ALJ's assessment of Capobianco's residual functional capacity." [Appx. At pg. 11].

C. The court discussed that the ALJ noted that Capobianco had been treating with Kowalcyzk for only four months; the record did not include other medical evidence from Kowalczyk, such as progress notes, that corroborated her opinions; and Capobianco's MRI scans were generally unremarkable. Concluding that substantial evidence supported the ALJ's decision to give little weight to Kowalcyzk's opinions. [Appx. At pg 12-13].

X. REASONS FOR GRANTING THE WRIT

I. The lower courts have erred in their opinions of this case with respect to Federal Guidelines and SSA Regulation: *SSR 96-2p:* Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions for claims filed before March 27, 2017 and 20 § C.F.R. §§ 404.1527(c)(2) and 20 C.F.R. § 404.1529 (c); SSR 16-3p, 2016 WL 1119029. the Commissioner's requirements under the law when applying the "stringent" legal standards when assessing claimant's credibility and testimony regarding subjective symptoms such as pain, fatigue, and weakness, especially when using the "good cause" or "harmless" standards for not relying a treating physician's opinion.

A. In this case, I complied with all Agency regulations required. I submitted all evidence, attended all exams, and even hired an attorney when told to by the Agency. In the remand hearing, *ALJ Sprague did not only disregard my neurologist, Kathie Kowalczyk*, when making his determination, but he disregarded ***all of my treating physician evidence***. This was ***more than fifteen doctor's opinions, some of whom I treated with for many years, and most of whom are specialists in their respected fields***.

B. Not one of these experts was given any weight in deciding my case, directly conflicting with SSA *Regulation: SSR 96-2p:* Titles II and XVI: Giving Controlling Weight to Treating Source Medical Opinions for claims filed before March 27, 2017 and 20 § C.F.R. §§ 404.1527(c)(2) and 20 C.F.R. § 404.1529 (c); SSR 16-3p, 2016 WL 1119029. The lower courts cite "good cause" and "harmlessness" when reviewing the ALJ decision, but do not adequately rectify reasoning to discount the opinions of ***all treating physicians***.

C. What is clear here is that the ALJ, by his and the defense's own admission, had a 'significant record' with 'over 1,200 medical pages' (R.253) [see appx. Pg. 31] and while they use that to bolster their claim of developing the record, they fail to highlight the fact that in those 1,200 pages where the records of my treating Neurologist, Psychiatrist, Therapist, Pulmonologist, Endocrinologist, Cardiologist, Gynecologist, Sleep Specialist, Sleep Studies, ER summaries, Dermatologist, Pain Specialist, Radiologist, General Practitioners, Background information, Family letters, migraine logs, etc... and ***none of this evidence was used***

to develop my decision by the ALJ conflicting with Agency regulation for developing a full and fair record which is properly evaluated.

Under 42 U.S.C. 20 C.F.R. § 404.1529 (c); SSR 16-3p, 2016 WL 1119029_In determining whether there is an underlying medically determinable impairment that could reasonably be expected to produce an individual's symptoms, we do not consider whether the severity of an individual's alleged symptoms is supported by the objective medical evidence.

Citing: (Bunnell v. Sullivan at 947 F. 2d 341, 344(9th Cir. 1991) (en banc)). The claimant is not required to show objective medical evidence of the pain itself or of a causal relationship between the impairment and the symptom. Instead the claimant must only show that an objectively verifiable impairment "can reasonably produce the degree of symptom alleged." Lingenfelter, 504 F.3d 1155, 1160-61 (9th Cir. 2008) ("requiring that the medical impairment 'could reasonably be expected to produce' pain or another symptom....requires only that the causal relationship be a reasonable inference, not a medically proven phenomenon.") Second, if a claimant shows that she suffers from an underlying medical impairment that could be expected to produce her other symptoms, the ALJ must "evaluate the intensity and persistence of [the symptom' to determine how the symptoms limit the claimant's ability to work.
See 42 U.S.C. 20 C.F.R. § 404.1529 (c)(1). At this second evaluative step, the ALJ may reject a claimant's testimony regarding the severity of her symptoms only if the ALJ "makes a finding of malingering based on affirmative evidence,' "Lingenfelter, 504 F.3d at 1036 (quoting Robbins v Soc. Sec. Admin., 466F. 3d 880, 883 (9th Cir. 2006)), or if the ALJ offers "clear and convincing reasons for discounting the symptom testimony. Carmickle, 533F.3d at 1160 (quoting Lingenfelter, 504 F 3d at 1036.

D. In this case, the ALJ did not have any "affirmative evidence" in which to reject the symptom testimony, yet he rejected it anyway against regulations and the lower courts affirmed his decision.

E. Furthermore, he rejected the medical assessments and opinions of the treating physicians where diagnostic testing is not available. For instance, there exists no diagnostic testing available to prove migraines as they do not show on MRI scans, or mental disorders like PTSD as they're symptom based disorders left to the expertise of diagnostic criteria and longitudinal study.

F. The ALJ was supplied with Plaintiff's physician-supplied testing (PQ-9 and Global Functioning Testing) that was misrepresented as being "mild", when it was in fact, in the "moderate" range and represented bipolar symptoms. The ALJ was supplied with four sleep studies showing sleep latency and R.E.M. function issues., proof of cortisol injections for un unhealed annular tear after two years and degenerative disc disease. The ALJ received diagnostic criteria preformed by the Cardiologist who preformed an angioplasty after a stress-test revealed the need for one, the Pulmonologist's report for shortness of breath, ER presentations throughout the years mostly concerning pain, and the results of testing performed, progress notes pertaining to the onset of the PTSD, Major Anxiety and Depression that was being treated by the Psychiatrist and therapist for over 8 years, along with multiple other reports. The ALJ disregarded all of this evidence.

> ALJs must give "controlling weight" to the opinion of a treating source, provided the opinion is "well supported and not inconsistent with other substantial evidence in the case record." ALJs cannot discount a treating source opinion absent good cause. See 20 § C.F.R. §§ 404.1527(c)(2).

II. The lower courts have expressed conflicting views and are divided on the decision making in Social Security claim Appeals, even when clear Precedent has been set on this issue by the U.S. Supreme Court. Federal Agency decisions and Agency law should be universally fair and equitable. Particularly with respect to the "Issue Exhaustion Requirement" concerning Administrative law and non-adversarial litigation.

A. In this case, the lower courts found that I, the petitioner was both bound by what my former attorney, Joy Greyer, had stated to the judge, however right or wrong even though I had fired her promptly after my hearing and proceeded Pro-se before hiring, my new attorney, Mr. Boyd.

B. When Mr. Boyd took my case to the next stage of Appeal before the District court with his questions and I subsequently filed in the Appellate Court with the same issues that had been present since the hearing, the court found *that I had exhausted my issues because they felt they had not been raised properly* in the lower courts before reaching the Appellate level. This is wrong for a few reasons.

C. First, when I fired my attorney after the ALJ hearing due to improper representation, I promptly notified the ALJ and alerted him to my concerns in a

series of four letters which he discredited [Ex. *35E, 70E, 74E, and 74B],* I objected to the medical expert Dr. Biles review of my file [Ex. 74E] in such a short time and based on his having his license revoked. I also questioned the Psychiatric expert Dr. Lace, due to his extensive involvement in the "Troubled Teen Industry" present in his Background and that being determined as the cause for my Complex PTSD for the last 30 years, I explained that I had fired my attorney and the other concerns I had, as well as notifying the Commissioner at the time with the same letter, Andrew Saul, and the Office of Hearing Operations (OHO). *All of these concerns were ignored by the ALJ.*

D. Secondly, following the ALJ's determination of denial, I promptly appealed pro-se with the Appeals Council raising the same issues as in the 11th Circuit court. Third, I then hired a new and current attorney, Bradley K. Boyd who raised the appeal in the Southern District Court appeal. because Mr. Boyd does not work in Appellate courts, I filed pro-se in the Eleventh District court the same issues that were originally raised with the ALJ after firing attorney, Joy Greyer and when I appealed to the Appeals council the second time. *These issues were not new.* They were expressed to the ALJ, the Appeals Council, to the Commissioner at the time, Andrew Saul, and then, to the Eleventh Circuit Court of Appeals.

E. Moreover, even if the issues were new, due to the non-adversarial nature of the Administrative processes involved with Social Security claims and that there is no statute of issue-exhaustion in the Social Security claims process I was under, as reasoned by the Supreme Court in Carr v. Saul *Carr v. Saul,* 593 U.S. ___ (2021),

based on *Sims* v. *Apfel,* 530 U.S. 103, 109., showing that, even if, I had not already raised the issues with the ALJ and the Appeals council, no issue-exhaustion requirement should have been imposed anyway. Unfortunately, at the Eleventh Circuit appeal and through an En Banc Petition I attempted to show the court these exact facts, however, the court was unmoved, choosing to disregard Supreme Court precedent and other lower court decisions that follow this precedent, such as in the 3rd, 4th, and 6th circircuits who adopted the Supreme Court's Precedent set by the Carr ruling after this court had decisively settled the issue. Clearly the Eleventh circuit is still adopting the Commissioner's forfeiture argument against the precedent leading to non-uniformity amongst the circuits and unfairness to the claimants residing in certain areas under the Federal Agency's regulations.

> Citing: Carr v. Saul, 593 U.S. ___ (2021), Supreme Court held that; The Courts of Appeals erred in imposing an issue-exhaustion requirement on petitioners' Appointments Clause claims. Administrative review schemes commonly require parties to give the agency an opportunity to address an issue before seeking judicial review of that question. If no statute or regulation imposes an issue-exhaustion requirement, courts decide whether to require issue exhaustion based on "an analogy to the rule that appellate courts will not consider arguments not raised before trial courts." agency adjudications are generally ill-suited to address structural constitutional challenges, which usually fall outside the adjudicators' areas of technical expertise, and the Supreme Court has consistently recognized a futility exception to exhaustion requirements. Petitioners assert purely constitutional claims about which SSA ALJs have no special expertise and for which they can provide no relief.
> (a) Administrative review schemes commonly require parties to give the agency an opportunity to address an issue before seeking judicial review of that question. Such administrative issue-

exhaustion requirements are typically creatures of statute or regulation. But where, as here, no statute or regulation imposes an issue-exhaustion requirement, courts decide whether to require issue exhaustion based on "an analogy to the rule that appellate courts will not consider arguments not raised before trial courts." *Sims* v. *Apfel,* 530 U.S. 103, 109. "[T]he desirability of a court imposing a requirement of issue exhaustion depends on the degree to which the analogy to normal adversarial litigation applies in a particular administrative proceeding." *Ibid.* In *Sims*, which declined to apply an issue-exhaustion requirement to SSA Appeals Council proceedings, the Court explained that "the rationale for requiring issue exhaustion is at its greatest" when "the parties are expected to develop the issues in an adversarial administrative proceeding," but is "much weaker" when "an administrative proceeding is not adversarial." *Id.*, at 110. Although *Sims* dealt with administrative review before the SSA Appeals Council, much of the opinion's rationale applies equally to SSA ALJ proceedings. Pp. 4–8.(b) Even assuming that ALJ proceedings are comparatively more adversarial than Appeals Council proceedings, the question remains whether the ALJ proceedings here were adversarial enough to support the "analogy to judicial proceedings" that undergirds judicially created issue-exhaustion requirements. *Sims*, 530 U. S., at 112 (plurality opinion). Pp. 8–12. The Supreme Court reversed.

III. This issue is of great national importance with this Federal Agency being responsible for the welfare of most of the American public at some point in their lives and a literal lifeline for disabled Americans nationwide.

A. Federal Regulations are detailed rules created by U.S. Federal agencies to enforce laws passed by Congress providing the "how-to" for carrying out public policy and establishment of necessary requirements and standards in the "rulemaking" process. These regulations govern everyone living in the United States and must be followed. They are meant to set standards for safety, protection, financial stability, and more affecting many aspects of daily life. These laws fill in

the details and nuances of a law that Congress may not have been able to specify in the legislation itself.

B. When Agency failures occur in respect to these Federal regulations; the grievance process in place should be followed according to these regulations. Following internal process, it is incumbent upon an individual whose been deprived of fair and equitable treatment under Congressional Mandate to escalate their grievance beyond the Agency. This is the crux of this case.

C. In this case, I, the petitioner, followed these regulations when I applied and appealed for these constitutionally appropriate benefits. I even had my Senator at the time, Marco Rubio write the Agency on my behalf, to no avail. I am qualified to receive them, yet the administration still worked to deny me them through extraordinary means with the judge drafting a 36 page denial and the Agency employing multiple attorneys to "fight" me (a pro-se petitioner) in Court.

D. The facts remain the same. I have been made homeless, lost medical coverage, and have become far more ill since the time *(over ten years now)* that I have started this arduous process for what should have been a simple application for the meager benefits that I had earned through my work, yet the Agency thought it made more sense to skew the facts, exacerbate my situations, and cost the Country much, much more for some unknown reason.

E. This case is a prime example of Government inefficiency and oversight for which the general public is facing in these Federal programs that need massive overhaul and accountability. It should be clear that no citizen chooses disability,

especially one whom could earn much more after earning an advanced degree; however, unfortunately sometimes, our bodies dictate otherwise.

F. The Social Security Agency will invariably impact every living American citizen at one point or another within their lifetime, whether through retirement or disability insurance. If, as in this case, the Agency and the lower courts are allowed to continue to erroneously interpret and adjust the regulations to suit themselves by which the Administration operates, the citizenry is not protected by Congress at all.

G. This Federal Agency is also unique in that, it is likely one of the only Agencies that every single citizen will come in contact with at some point in time. This will affect the entire population. Yet, it is wrought extreme failure and considerable inequity. When the lower courts, choose not to protect our Constitutional rights, many individuals are without recourse. In fact, this is the only Federal Agency where it is customary to expect a claimant to have an attorney's representation, yet when that attorney makes mistakes, the courts hold the claimant responsible. This is not protection.

> Contrary to popular opinion, "Pro-Se litigants are not those without a solid case. The caveat that when represents himself as his own attorney has a fool for a client is an acrid admonition to those without alternative. In this society, there are those who must contest without the benefit of counsel not just contractual disputes in small claims court, but also alleged violations of their civil rights and liberties as provided for in the Constitution....These are *pro se* litigants" (Vol.41: 769. 1975) Ira P. Robbins, *The Misunderstood Pro Se Litigant: More Than a Pawn in the Game*, 41 Brooklyn Law Review (1975).

H. Social Security claims are designed to be a non-adversarial process of fact-finding to retrieve insurance benefits for which they are entitled. It is true that they must prove disability to collect before retirement age; however the Agency and some Circuits, as is the case here, are treating claimants as adversarial defendants and drafting decisions that do not represent the true picture of the claimant or of the case, rather they meet the objectives of the fact-finder only. This is not supporting the objective of Federal Insurance programs, arguably the largest being our Social Security System.

I. These lower courts are not providing uniformity when deciding individual cases based on Regulatory standards or Supreme Court precedent, as discussed above, leaving litigation to be costly, haphazard, and highly differentiated amongst the circuits and litigants. And as such, this court is the only one that can rectify that.

J. Furthermore, All Social Security claimants will have diverse backgrounds. As discussed above, I, the petitioner in this case, am both representative of the entire population and extremely unique in my background at the same time, I am highly educated, have worked over 43 jobs since the age of 16, I suffer every day as my conditions that get worse with age, I am also a survivor of what has been called "The biggest violator of human rights and civil liberties that this country has ever seen.", "Reminiscent of Nazi concentration camps..." (whistleblower.org), "techniques compared to Korean brainwashing techniques on American teenagers." (The Senate 1974), and "-its crimes of child abuse rose to the

level of RICO." (United Nations) among others.

K. Now, I must fight again for what should have been a clear case and I have multiple high-level attorneys fighting against me, a single middle-aged, disabled mother who simply could not work anymore as a result of what I have suffered and my body's limitations. I cannot fathom how the Government finds this a better use of taxpayer funds. When a claimant, as in this case has complied with every Agency regulation and expectation, is clearly under disability, has paid into the system, and has now suffered for an extraordinarily long time due to erroneous judicial reach, this Court is needed to enact oversight protection.

XI. CONCLUSION

For the foregoing reasons, I, Jill Capobianco very respectfully r5equest that this court issue a this Court grant writ of certiorari to review the judgment of the Commissioners decision and that of the lower courts.

DATED this 18th day of September, 2025.

Respectfully Submitted,

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