

26-5661 ORIGINAL

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

LARRY CURLEE,
Petitioner,

v.

SOCIAL SECURITY ADMINISTRATION,
Respondent.

*On Petition for a Writ Of Certiorari
to the United States Court of Appeals
For the Ninth Circuit*

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether *Schweiker v. Chilicky*, 487 U.S. 412 (1988), bars a *Bivens* action when the Social Security Administration's administrative process collapsed entirely before any merits hearing was held and no court has ever reviewed the constitutional claims at issue, thereby eliminating the factual predicate on which *Schweiker's* holding depends.

2. Whether, under *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023), a district court retains federal question jurisdiction under 28 U.S.C. section 1331 over structural due process claims against the Social Security Administration when the agency's statutory review scheme has provided no meaningful opportunity for any court to consider those claims.

3. Whether a district court abuses its discretion by denying leave to amend when the plaintiff has expressly offered to relinquish all claims for monetary damages and to seek only declaratory relief, thereby eliminating the personal-liability rationale that is the sole stated basis for *Schweiker's* bar on *Bivens* recovery.

4. Whether 42 U.S.C. section 405(h) bars Federal Tort Claims Act claims that are wholly collateral to any benefits determination and that arose from tortious agency conduct for which no administrative hearing was ever held.

LIST OF PARTIES

Petitioner: Larry Curlee (pro se)

Respondent: Social Security Administration

Lower Courts:

- United States District Court for the Eastern District of California (Case No. 1:22-cv-01593-JLT-BAM)
- United States Court of Appeals for the Ninth Circuit (Case No. 24-4068)

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I. PETITION FOR WRIT OF CERTIORARI

Larry Curlee petitions the Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

II. OPINIONS BELOW

The Ninth Circuit's memorandum disposition, filed February 19, 2026, affirmed the district court's judgment dismissing Petitioner's *Bivens* and Federal Tort Claims Act (FTCA) claims. The panel held that *Schweiker v. Chilicky*, 487 U.S. 412 (1988), bars *Bivens* actions for due process violations arising in Social Security proceedings, and that 42 U.S.C. section 405(h) separately bars Petitioner's FTCA claims. *Curlee v. Social Security Administration*, No. 24-4068 (9th Cir. Feb. 19, 2026) (Docket Entry 17).

The Ninth Circuit's order denying panel rehearing, filed June 17, 2026, stated: "The petition (Docket Entry No. 14) for panel rehearing is denied. This court will not entertain any further filings in this closed case." (Docket Entry 15).

The District Court for the Eastern District of California's order adopting the Magistrate Judge's Findings and Recommendations, filed June 21, 2024, dismissed Petitioner's complaint without prejudice and without leave to amend. The court held that *Bivens* actions are unavailable for Social Security claims under *Schweiker*, and that FTCA claims are barred by section 405(h). *Curlee v. Social Security Administration*, No. 1:22-cv-01593-JLT-BAM (E.D. Cal. June 21, 2024) (Docket Entry 11).

III. JURISDICTION

The Ninth Circuit entered judgment on February 19, 2026. Petitioner filed a timely petition for panel rehearing under Federal Rule of Appellate Procedure 40, which was denied on June

17, 2026. This Petition is therefore filed within the 90-day period prescribed by Supreme Court Rule 13.1.

This Court has jurisdiction under 28 U.S.C. section 1254(1).

IV. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment Due Process Clause: "No person shall . . . be deprived of life, liberty, or property, without due process of law."

28 U.S.C. section 1331: Federal question jurisdiction.

42 U.S.C. section 402(x): Suspension of Social Security benefits for individuals confined to a prison or other penal institution, or confined by court order in connection with a finding of mental disease or defect.

42 U.S.C. section 405(h): Channeling provision for Social Security Act claims.

28 U.S.C. sections 1346(b), 2671-2680: Federal Tort Claims Act.

V. STATEMENT

A. Background and Petitioner's Status

Petitioner Larry Curlee is a 73-year-old United States citizen who contributed to the Federal Old Age and Survivors Insurance Trust Fund throughout his working life. That program is designed to "obviate, through a program of forced savings, the economic dislocations that may otherwise accompany old age." 42 U.S.C. section 401(a); *Califano v. Bales*, 443 U.S. 282, 283 (1979). In November 2017, the Social Security Administration (SSA) notified Petitioner that he was entitled to monthly retirement benefits beginning April 2017. (Exhibit A.)

Petitioner resides at Coalinga State Hospital as a pretrial civil detainee. He is not confined due to a conviction of a criminal offense. No court has ever made a finding that he suffers from a mental disease, defect, or incompetence. He is not, in any legally cognizable sense, a prisoner.

B. The SSA's Erroneous Suspension of Benefits

In March 2018, the SSA suspended Petitioner's retirement benefits on the ground that he was "confined to an institution as a result of a court order in connection with a criminal case." (Exhibits B through D.) That characterization was factually and legally incorrect.

The only statutory authority for suspending Social Security retirement benefits is 42 U.S.C. section 402(x), which permits suspension only for persons:

- (1) confined in a jail, prison, or other penal institution following conviction of a criminal offense; or
- (2) confined by court order in connection with a verdict or finding of mental disease, mental defect, mental incompetence, or other similar verdict or finding.

Petitioner satisfies neither criterion. He is not confined due to the conviction of a crime. No court has issued an order confining him in connection with any verdict or finding of mental disease or defect. The SSA's invocation of section 402(x) was therefore without statutory foundation.

C. The SSA's Administrative Process Failed to Correct the Error

Petitioner immediately challenged the suspension. He submitted a Request for Reconsideration (Exhibit E) and a letter explaining that he is a civil detainee rather than a prisoner. (Exhibit F.) The SSA's internal memoranda acknowledged his challenge but affirmed the suspension without investigating his actual legal status. (Exhibit G.) The SSA's Notice of Reconsideration, dated May 21, 2018, compounded the error by misrepresenting that Petitioner had been "convicted and confined to Coalinga State Mental Hospital," a characterization flatly inconsistent with his civil detainee status. (Exhibit H.)

Petitioner then requested a hearing before an Administrative Law Judge (ALJ). (Exhibit I.) The SSA acknowledged that hearings could be conducted by "Video Teleconferencing." (Exhibit J.) Despite scheduling an in-person hearing for March 1, 2019, in Stockton, California, the SSA made no arrangements for Petitioner to appear by telephone or video, notwithstanding its knowledge that he was civilly detained and could not travel to Stockton. (Exhibit L.)

Petitioner requested a postponement, explaining that he could not attend in person, had not obtained counsel, and needed additional time to research the "complicated legal/constitutional considerations" in his case. (Exhibit M.) The SSA denied the postponement without explanation. (Exhibits N through O.) The hearing proceeded in Petitioner's absence on March 1, 2019.

The SSA thereafter issued a Notice to Show Cause that Petitioner never received. (Exhibit N.) When he did not respond to a notice he had not seen, the ALJ dismissed his hearing request. (Exhibit O.) The Appeals Council affirmed the dismissal on December 4, 2019. At no point in this process did any SSA adjudicator reach the substance of Petitioner's constitutional arguments.

D. Prior Judicial Proceedings: No Review of Constitutional Claims

Petitioner sought judicial review in the Eastern District of California. *Curlee v. Comm'r of Soc. Sec.*, No. 1:20-cv-00145-SAB (E.D. Cal.) ("D.C. Case No. 1"). The district court confined its review to whether Petitioner had "good cause" for missing the ALJ hearing and declined to address his constitutional claims. (D.C. Case No. 1, Docs. 40, 43, 45.) On appeal, the Ninth Circuit affirmed and expressly stated: "We decline to address Curlee's argument that the agency improperly suspended his retirement benefits." *Curlee v. O'Malley*, No. 22-15655, Docket Entry 25, at 2 (9th Cir. 2022).

No court has ever addressed the merits of Petitioner's constitutional claims: that the SSA misapplied 42 U.S.C. section 402(x) to a civil detainee, and that the SSA's failure to provide any meaningful hearing violated the Fifth Amendment Due Process Clause.

E. The Instant Action: All Judicial Review Foreclosed

With no available avenue for review of his constitutional claims, Petitioner filed a pro se *Bivens* and FTCA complaint in the Eastern District of California seeking monetary damages for the due process violations he had suffered. *Curlee v. Social Security Administration*, No. 1:22-cv-01593-JLT-BAM ("D.C. Case No. 2") (Docket Entry 1).

The Magistrate Judge screened the complaint under 28 U.S.C. section 1915(e)(2) and recommended dismissal on three grounds: that *Bivens* claims are barred by *Schweiker v. Chilicky*; that FTCA claims are barred by 42 U.S.C. section 405(h); and that the action duplicates D.C. Case No. 1. (Docket Entry 8.)

Petitioner objected, arguing that the Magistrate Judge lacked jurisdiction because Petitioner had not consented to magistrate jurisdiction; that Petitioner is not a "prisoner" subject to screening under section 1915(e)(2); that the action presents a new and collateral constitutional challenge rather than a duplicate; and that *Schweiker* does not apply where no hearing was held and no court reviewed his constitutional claims. (Docket Entry 9.)

The District Court adopted the Findings and Recommendations and dismissed the complaint without leave to amend. (Docket Entry 11.) Critically, the District Court did not address Petitioner's express offer to amend to seek only declaratory relief.

On appeal, the Ninth Circuit affirmed by memorandum disposition, relying on *Schweiker* and section 405(h). (Docket Entry 17.) Petitioner then filed a Petition for Panel Rehearing, raising four arguments: that *Schweiker's* predicate was absent; that *Axon Enterprise* requires

district court jurisdiction over structural constitutional claims that cannot receive meaningful review through the agency's process; that the denial of leave to amend to seek declaratory relief was an abuse of discretion; and that section 405(h) does not bar FTCA claims that are collateral to any benefits determination and arose in the absence of any administrative hearing. (Docket Entry 14.) The Ninth Circuit denied rehearing without addressing any of these arguments.

(Docket Entry 15.)

VI. REASONS FOR GRANTING THE PETITION

The Ninth Circuit's decision rests on four compounding errors, each of which independently warrants this Court's review. Taken together, they eliminate every avenue for judicial review of constitutional violations that have gone unaddressed for eight years and raise substantial questions about the due process protections available to persons subjected to federal administrative proceedings.

A. The Ninth Circuit's Decision Conflicts with *Axon Enterprise* and This Court's Precedent Requiring District Court Jurisdiction Over Structural Constitutional Claims

In *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023), this Court unanimously reaffirmed that a statutory review scheme does not displace district court federal question jurisdiction under 28 U.S.C. section 1331 over constitutional claims unless three conditions are satisfied: (1) precluding district court jurisdiction would not foreclose all meaningful judicial review; (2) the constitutional claim is not wholly collateral to the statute's review provisions; and (3) the claim is not outside the agency's expertise. *Id.* at 190 (citing *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 212-13 (1994)). All three conditions, properly applied, favor district court jurisdiction here.

1. Preclusion Would Foreclose All Meaningful Judicial Review

No court has ever reviewed Petitioner's claims that the SSA misapplied 42 U.S.C. section 402(x) to a civil detainee and denied him a constitutionally adequate hearing. The administrative process collapsed through the SSA's own failures: its refusal to accommodate Petitioner's civil detention by arranging telephonic or video appearance; its denial of his request for additional preparation time; its failure to ensure he received the Notice to Show Cause; and the ALJ's dismissal of his hearing request without reaching the merits. When Petitioner sought judicial review in D.C. Case No. 1, the Ninth Circuit expressly declined to address those claims. *Curlee v. O'Malley*, No. 22-15655, Docket Entry 25, at 2 (9th Cir. 2022).

The Ninth Circuit's ruling in this case now bars any Bivens action and any FTCA claim. Petitioner has no forum in which to vindicate his constitutional rights. That outcome is precisely what *Axon* and *Thunder Basin* prohibit. *Thunder Basin*, 510 U.S. at 212-13; *Axon*, 598 U.S. at 190.

2. The Claim Is Wholly Collateral to the Benefits Determination

Petitioner does not seek recalculation of his benefits, reversal of an eligibility ruling, or review of the SSA's substantive application of section 402(x) to facts never adjudicated. His claims challenge the process itself: the SSA's failure to accommodate his civil detention; its denial of reasonable time to prepare; its failure to ensure he received the Notice to Show Cause; and the structural failure of an administrative scheme that, as applied to him, provided no hearing and no judicial review of any kind. These are procedural and structural claims that arose independently of, and antecedent to, any substantive benefits determination.

This Court recognized in *Free Enterprise Fund v. PCAOB*, 561 U.S. 477, 491 (2010), that agencies are "ill suited to address structural constitutional challenges" because such claims

"usually fall outside the adjudicators' areas of technical expertise." Petitioner's claims are precisely of that character and are therefore wholly collateral to the SSA's benefits determination.

3. The Claim Is Outside the SSA's Expertise

Determining whether the SSA denied Petitioner a constitutionally meaningful hearing is not a task within the agency's particular competence. The SSA has expertise in adjudicating benefits eligibility. It has no comparative advantage in evaluating whether its own procedures satisfied the Fifth Amendment Due Process Clause. This Court has consistently recognized that structural constitutional questions of this kind must be resolved by Article III courts. *Free Enterprise Fund*, 561 U.S. at 491; *Thunder Basin*, 510 U.S. at 212-13.

Because all three *Thunder Basin* and *Axon* factors favor district court jurisdiction, the Ninth Circuit's failure to apply that framework constitutes reversible error requiring this Court's review.

B. The Ninth Circuit Misapplied *Schweiker* by Ignoring Its Essential Factual Predicate

In *Schweiker v. Chilicky*, 487 U.S. 412 (1988), this Court declined to extend a Bivens remedy for due process violations in Social Security proceedings because Congress had provided an "elaborate remedial scheme" that included administrative review and, critically, judicial review of constitutional claims. *Schweiker*, 487 U.S. at 424 (citing 42 U.S.C. sections 405(g), 421(d)). The Court's holding rested explicitly on the availability of that review: "Once these elaborate administrative remedies have been exhausted, a claimant is entitled to seek judicial review, including review of constitutional claims." *Id.* (emphasis added).

That factual predicate was entirely absent here, and the Ninth Circuit's failure to account for it is clear legal error.

1. No Administrative Hearing Was Ever Held

The "elaborate administrative remedy" that *Schweiker* presupposed never materialized. The SSA failed to arrange for Petitioner to appear by telephone or video at the scheduled hearing, despite knowing he was civilly detained and despite its own written acknowledgment that "Video Teleconferencing" was available. (Exhibits J, L.) When Petitioner sought additional time, the SSA denied the request without explanation. The ALJ dismissed his hearing request without reaching the merits, and the Appeals Council affirmed. At no stage did any SSA official consider the substance of Petitioner's constitutional arguments.

2. No Judicial Review of Constitutional Claims Was Available or Provided

The judicial review that *Schweiker* treated as the critical safeguard likewise never occurred. In D.C. Case No. 1, both the district court and the Ninth Circuit expressly declined to reach Petitioner's constitutional claims, limiting their inquiry to the threshold "good cause" question. *Curlee v. O'Malley*, No. 22-15655, Docket Entry 25, at 2 (9th Cir. 2022). Petitioner's constitutional claims have been pending since 2018 without a single court addressing them on the merits.

3. *Schweiker* Cannot Bar *Bivens* Relief When Its Predicate Is Absent

Schweiker rests on the premise that Congress, by creating a comprehensive remedial scheme including judicial review of constitutional claims, has impliedly displaced a separate *Bivens* remedy. That premise fails when the scheme, as applied to a particular claimant, provides neither hearing nor review. This Court recognized the analogous principle in *Bowen v. Michigan Academy of Family Physicians*, 476 U.S. 667, 679 n.8 (1986), noting that exhaustion requirements do not apply "where there is no hearing, and thus no administrative remedy, to exhaust." This Court has similarly recognized in *Carr v. Saul*, 141 S. Ct. 1352 (2021), that issue

exhaustion requirements do not apply where the agency's process rendered exhaustion futile or unavailable. The same reasoning applies with full force here. Where the administrative scheme has failed entirely to provide the review that *Schweiker* treated as the justification for barring a Bivens remedy, the bar does not apply.

To apply *Schweiker* in these circumstances would transform a holding premised on the adequacy of alternative remedies into an absolute bar operating even where those remedies are wholly absent. That result conflicts with the premises of *Schweiker* itself. This Court's review is warranted.

C. The Ninth Circuit Abused Its Discretion by Denying Leave to Amend to Seek Declaratory Relief

The Ninth Circuit affirmed the denial of leave to amend on the ground that amendment would be futile under *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034 (9th Cir. 2011). Dismissal without leave to amend is appropriate only if no amended pleading could survive a motion to dismiss. *Cervantes*, 656 F.3d at 1041.

In his Opening Brief to the Ninth Circuit, Petitioner expressly offered to amend his complaint to seek only declaratory relief rather than monetary damages. (Opening Brief at 13.) The Ninth Circuit did not address this offer at all, and that silence was itself error.

The sole rationale for *Schweiker*'s bar on Bivens recovery is the concern about personal monetary liability for individual administrators. The Court in *Schweiker* emphasized that the prospect of "personal liability for official acts" would impede recruiting and burden individual SSA employees. *Schweiker*, 487 U.S. at 425. That concern has no application to a claim for declaratory relief. A declaration that the SSA's administrative process was constitutionally

deficient would impose no monetary liability on any individual official. The personal-liability rationale underlying *Schweiker* would thus be absent entirely.

An amended complaint seeking only a declaration that the SSA misapplied 42 U.S.C. section 402(x) and denied Petitioner a constitutionally adequate hearing would not be barred by *Schweiker*. Such an amendment is plainly not futile. The denial of leave to amend was therefore an abuse of discretion that foreclosed a materially narrower, viable alternative remedy without explanation. See Fed. R. App. P. 40(a)(2); Fed. R. Civ. P. 15(a)(2).

D. Section 405(h) Does Not Bar FTCA Claims That Are Collateral to the Benefits Determination and Arose in the Absence of Any Available Administrative Remedy

The Ninth Circuit held that 42 U.S.C. section 405(h) bars Petitioner's FTCA claims. Section 405(h) precludes only claims that "arise under" the Social Security Act, meaning claims challenging the substance of a benefits determination. *Heckler v. Ringer*, 466 U.S. 602, 614-15 (1984); *Weinberger v. Salfi*, 422 U.S. 749, 760-61 (1975). Section 405(h) does not sweep in every claim bearing some relationship to Social Security benefits.

Petitioner's FTCA claims do not challenge the merits of his benefits eligibility. They challenge independent tortious acts by SSA employees: (1) the negligent misidentification of Petitioner as a "prisoner" subject to section 402(x), despite plain evidence of his civil detainee status; (2) the failure to arrange telephonic or video appearance for a detained claimant, despite the SSA's written acknowledgment that such accommodation was available; and (3) the failure to ensure that Petitioner received the Notice to Show Cause before dismissing his hearing request on the basis of his non-response.

These tortious acts are antecedent to and independent of any benefits determination. No amount of successful SSA adjudication would have provided Petitioner with compensation for

the agency's negligent mischaracterization of his legal status. A claim for damages arising from the SSA's tortious conduct in administering its own process is collateral to, and does not arise under, the Social Security Act.

Even if section 405(h) would otherwise apply, exhaustion requirements do not operate "where there is no hearing, and thus no administrative remedy, to exhaust." *Bowen*, 476 U.S. at 679 n.8. Because the SSA's process collapsed without any hearing on the merits, no administrative remedy was available for Petitioner to exhaust, and section 405(h) provides no basis for dismissal.

The Ninth Circuit's cursory treatment of section 405(h) engaged with neither of these distinctions. Its failure to do so compounds the broader constitutional injury of leaving Petitioner without any judicial remedy for violations that have gone unaddressed for eight years.

VII. CONCLUSION

The Ninth Circuit's decision forecloses every avenue for judicial review of constitutional violations that no court has ever addressed on the merits. The decision conflicts with *Axon Enterprise, Inc. v. FTC*, 598 U.S. 175 (2023), and this Court's precedents requiring district court jurisdiction over structural constitutional claims that cannot receive meaningful review through an agency's administrative process. It misapplies *Schweiker v. Chilicky* by extending that decision's holding far beyond the factual predicate on which it rests. It abuses the discretion accorded on leave to amend by refusing to consider a materially narrower remedy that would have mooted *Schweiker*'s concerns entirely. And it incorrectly applies 42 U.S.C. section 405(h) to bar FTCA claims that are collateral to any benefits determination and arose in the complete absence of administrative adjudication.

Together, these errors leave a 73-year-old United States citizen without a single forum in which to challenge the SSA's erroneous suspension of retirement benefits he earned through decades of contributions, or to obtain any judicial determination of whether the agency's conduct violated the Fifth Amendment Due Process Clause.

The Petition for a Writ of Certiorari should be granted.

Dated: June 24, 2026

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Larry Curlee".

Larry Curlee
Petitioner, Pro Se