

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

PHILLIP WALTER SIMON,

Applicant,

v.

DEBORAH A. CUMBA,

Respondent.

APPLICATION TO THE HONORABLE ELENA KAGAN,

ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT,

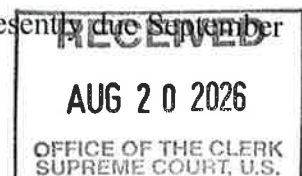
FOR A 60-DAY EXTENSION OF TIME WITHIN WHICH TO FILE

A PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME
COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

Pursuant to Supreme Court Rules 13.5, 22, and 30, Applicant Phillip Walter Simon respectfully requests a 60-day extension of time, to and including November 16, 2026, within which to file a petition for a writ of certiorari seeking review of the judgment of the United States Court of Appeals for the Ninth Circuit in Simon v. Cumba, No. 25-1727.

The Ninth Circuit denied Applicant's timely petition for panel rehearing and rehearing en banc on June 17, 2026. Under Supreme Court Rule 13.3, the petition is presently due September



15, 2026. Sixty days from that date is November 14, 2026, a Saturday; Rule 30.1 therefore extends the requested deadline through Monday, November 16, 2026. This application is filed more than ten days before the present deadline.

JUDGMENT SOUGHT TO BE REVIEWED

Applicant seeks review of the Ninth Circuit's judgment in *Simon v. Cumba*, No. 25-1727, affirming dismissal of his federal civil-rights action against California Superior Court Commissioner Deborah A. Cumba. The court entered its memorandum disposition on February 20, 2026. Applicant timely petitioned for panel rehearing and rehearing en banc. The Ninth Circuit denied rehearing on June 17, 2026. The memorandum disposition and rehearing order are attached as Appendices A and B.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). Because Applicant timely sought rehearing, Supreme Court Rule 13.3 measures the certiorari period from the June 17, 2026, denial of rehearing, rather than from issuance of the mandate. Rule 13.5 authorizes a Circuit Justice, for good cause, to extend that period by not more than 60 days.

SPECIFIC REASONS JUSTIFYING THE EXTENSION

I. A pending D.C. Circuit merits proceeding is addressing the jurisdictional consequence of the same alleged absence of stipulated adjudicative authority.

Good cause exists because *Simon v. Social Security Administration*, No. 25-5397 (D.C. Cir.), is presently before the D.C. Circuit on the merits and addresses the legal significance of Applicant's asserted absence of stipulation to adjudication by the same California commissioner.

On February 20, 2026, the D.C. Circuit denied the federal appellees' motion for summary affirmance because "[t]he merits of the parties' positions are not so clear as to warrant summary action." Order at 1, *Simon v. Social Security Administration*, No. 25-5397 (D.C. Cir. Feb. 20, 2026) (citing *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam)). The court then, on its own motion, appointed Brent T.F. Murphy of Latham & Watkins LLP as amicus curiae to present arguments in support of Applicant's position that amicus determined were potentially meritorious, and directed that the appeal be calendared for presentation to a merits panel.

The D.C. Circuit specifically directed briefing on Applicant's argument that he did not stipulate in the underlying state-court proceedings to adjudication by a court commissioner; that the absence of stipulation is a jurisdictional defect; and that 42 U.S.C. § 659(f)(1) therefore does not apply. The court cited *United States v. Morton*, 467 U.S. 822, 836 (1984), which conditioned the Government's protection for honoring facially regular garnishment process on issuance by a court possessing subject-matter jurisdiction. The February 20 order is attached as Appendix C.

II. The court-appointed amicus has independently developed the jurisdictional issue as a ground for reversal.

On April 24, 2026, the court-appointed amicus filed a merits brief supporting Applicant. Its principal argument is that the Social Security Administration lacks sovereign immunity because the garnishment order was not issued by a court with subject-matter jurisdiction. The

brief separately argues that the commissioner lacked subject-matter jurisdiction to issue the garnishment order and requests reversal and remand for consideration of Applicant's Administrative Procedure Act challenge on the merits. The cover, statement of issues, relevant argument headings and conclusion are attached as Appendix D.

Thus, the related appeal is not invoked merely because it concerns similar events. The D.C. Circuit itself identified the non-stipulation/jurisdiction issue for merits briefing, rejected summary disposition, appointed amicus to develop potentially meritorious arguments supporting Applicant, and has received an amicus merits presentation advocating reversal on that ground.

III. The pending disposition may materially affect the questions presented and the Rule 10 basis for certiorari.

In No. 25-1727, Applicant preserved the corresponding issue from the state-official side: whether immunity may be applied without resolving the asserted absence of adjudicative authority. Applicant's rehearing petition invoked California Constitution Article VI, § 21, which provides for trial by a temporary judge "[o]n stipulation of the parties litigant," and *Franceschi v. Schwartz*, 57 F.3d 828, 830–31 (9th Cir. 1995), addressing judicial immunity and the clear-absence-of-jurisdiction exception.

Applicant does not represent that an inter-circuit conflict presently exists. The D.C. Circuit has not entered its merits judgment. That unresolved posture is precisely why additional time is material. A disposition during the requested extension may determine whether the contemplated petition should identify only inter-circuit tension, an actual conflict relevant to Supreme Court Rule 10, a narrower question, or no need to seek certiorari at all.

The requested extension therefore permits Applicant to present the Court with an accurate and focused petition based on completed appellate developments rather than speculate about an actively pending federal appellate proceeding addressing the jurisdictional significance of the same alleged non-stipulation defect.

IV. The request is made in good faith and will not prejudice Respondent.

Applicant is self-represented and anticipates seeking leave to proceed in forma pauperis. The extension is not sought merely for convenience or delay. It is sought to permit a Rule-compliant and focused certiorari presentation while the D.C. Circuit considers the closely related jurisdictional issue described above. The limited extension may narrow the contemplated petition, sharpen its questions presented, or conserve the resources of the Court and the parties if subsequent developments materially alter the need for review. Respondent will suffer no cognizable prejudice from the requested extension.

CONCLUSION

For these reasons, Applicant respectfully requests a 60-day extension of time, from September 15, 2026, to and including November 16, 2026, within which to file a petition for a writ of certiorari seeking review of the judgment of the United States Court of Appeals for the Ninth Circuit in *Simon v. Cumba*, No. 25-1727.

Respectfully submitted,


PHILLIP WALTER SIMON

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17 August 2026

Dated: 17 August, 2026

APPENDIX INDEX

Appendix A — Memorandum Disposition, United States Court of Appeals for the Ninth Circuit, *Simon v. Cumba*, No. 25-1727 (Feb. 20, 2026).

Appendix B — Order Denying Petition for Panel Rehearing and Petition for Rehearing En Banc, United States Court of Appeals for the Ninth Circuit, *Simon v. Cumba*, No. 25-1727 (June 17, 2026).

Appendix C — Order, United States Court of Appeals for the District of Columbia Circuit, *Simon v. Social Security Administration*, No. 25-5397 (Feb. 20, 2026).

Appendix D — Selected portions of Opening Brief for Court-Appointed Amicus Curiae in Support of Appellant, *Simon v. Social Security Administration*, No. 25-5397 (D.C. Cir. Apr. 24, 2026): cover; Statement of Issues; relevant argument headings; conclusion.

Appendix A — Memorandum
Disposition, United States Court
of Appeals for the Ninth Circuit,
Simon v. Cumba, No. 25-1727
(Feb. 20, 2026)

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 20 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PHILLIP WALTER SIMON,

Plaintiff - Appellant,

v.

DEBORAH A. CUMBA,

Defendant - Appellee.

No. 25-1727

D.C. No. 3:25-cv-00107-CAB-MSB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Cathy Ann Bencivengo, District Judge, Presiding

Submitted February 18, 2026**

Before: CALLAHAN, FRIEDLAND, and BRESS, Circuit Judges.

Phillip Walter Simon appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging constitutional claims arising from a child support case in state court. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Federal Rule of Civil Procedure 12(b)(6) on

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

the basis of judicial immunity. *Sadoski v. Mosley*, 435 F.3d 1076, 1077 n.1 (9th Cir. 2006). We affirm.

The district court properly dismissed Simon’s action because defendant Cumba is immune from liability. *See Moore v. Urquhart*, 899 F.3d 1094, 1104 (9th Cir. 2018) (“Section 1983 . . . provides judicial officers immunity from injunctive relief even when the common law would not.”); *Duvall v. County of Kitsap*, 260 F.3d 1124, 1133 (9th Cir. 2001) (describing factors relevant to whether an act is judicial in nature and subject to absolute judicial immunity); *Franceschi v. Schwartz*, 57 F.3d 828, 830 (9th Cir. 1995) (per curiam) (applying judicial immunity from damage liability to a state court commissioner for acts taken in a judicial capacity and not in a clear absence of jurisdiction); *see also Munoz v. Superior Ct. of L.A. County*, 91 F.4th 977, 980-81 (9th Cir. 2024) (affirming dismissal of § 1983 claims seeking declaratory and injunctive relief because “state court judges cannot be sued in federal court in their judicial capacity under the Eleventh Amendment,” including for prospective injunctive relief); *Lund v. Cowan*, 5 F.4th 964, 969 (9th Cir. 2021) (“The Eleventh Amendment does not permit retrospective declaratory relief.”).

We reject as unsupported by the record Simon’s contentions about judicial bias, misconduct, and conspiracy.

We do not consider matters not specifically and distinctly raised and argued

in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

All pending motions and requests are denied.

AFFIRMED.

Appendix B — Order Denying
Petition for Panel Rehearing
and Petition for Rehearing En
Banc, United States Court of
Appeals for the Ninth Circuit,
Simon v. Cumba, No. 25-1727
(June 17, 2026).

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUN 17 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PHILLIP WALTER SIMON,

Plaintiff - Appellant,

v.

DEBORAH A. CUMBA,

Defendant - Appellee.

No. 25-1727

D.C. No. 3:25-cv-00107-CAB-MSB

Southern District of California,
San Diego

ORDER

Before: CALLAHAN, FRIEDLAND, and BRESS, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 40.

The petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 60) are denied.

This court will not entertain further filings in this closed case.

Appendix C — Order, United
States Court of Appeals for the
District of Columbia Circuit,
Simon v. Social Security
Administration, No. 25-5397
(Feb. 20, 2026).

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 25-5397**September Term, 2025****1:25-cv-03452-LLA****Filed On: February 20, 2026**

Phillip Walter Simon,

Appellant

v.

Social Security Administration, et al.,

Appellees

BEFORE: Henderson, Pillard, and Pan, Circuit Judges

ORDER

Upon consideration of the motion for summary affirmance and the opposition thereto; the emergency motion for injunctive relief, the opposition thereto, and the reply; the summary of district court errors, which the court construes as a supplement to the motion for injunctive relief, and the motion for leave to file the summary; the motion for sanctions, the motion to strike, the motion to compel correct legal action, and the motions for leave to file those motions; the motion to certify controlling constitutional questions; the petition for a writ of mandamus; and the notices filed by appellant; it is

ORDERED that the motion for summary affirmance be denied. The merits of the parties' positions are not so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). It is

FURTHER ORDERED that the motions for leave to file be granted. It is

FURTHER ORDERED that the motion for injunctive relief, the motion to compel correct legal action, and the mandamus petition be denied. Appellant has not satisfied the stringent requirements for an injunction pending appeal. See Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008); D.C. Circuit Handbook of Practice and Internal Procedures 33 (2025). Appellant also has not demonstrated a "clear and indisputable" right to his requested relief. In re Flynn, 973 F.3d 74, 78 (D.C. Cir. 2020) (en banc) (per curiam) (quoting Cheney v. U.S. Dist. Ct. for D.C., 542 U.S. 367, 381 (2004)). It is

FURTHER ORDERED that the motion for sanctions, the motion to strike, and the motion to certify controlling constitutional questions be denied. Appellant has not shown that the requested relief is warranted. It is

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 25-5397**September Term, 2025**

FURTHER ORDERED, on the court's own motion, that

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a member of the Bar of this court, be appointed as amicus curiae to present arguments in support of appellant's position that amicus determinations are potentially meritorious. The court has concluded that it is in the court's interest to appoint amicus. See D.C. Circuit Handbook of Practice and Internal Procedures 26 (2025).

Because the court has determined that summary disposition is not in order, the Clerk is instructed to calendar this case for presentation to a merits panel. While not otherwise limited, the parties and amicus are directed to address in their briefs appellant's argument that he did not stipulate in the underlying state court proceedings to adjudication by a court commissioner, that the absence of such stipulation is a jurisdictional defect, and that therefore 42 U.S.C. § 659(f)(1) does not apply to his claims. Cf. United States v. Morton, 467 U.S. 822, 836 (1984) (holding that the "Government cannot be held liable for honoring a writ of garnishment which is 'regular on its face' and has been issued by a court with subject-matter jurisdiction to issue such orders").

Per Curiam

FOR THE COURT:

Clifton B. Cislak, Clerk

BY: /s/

Selena R. Gancasz
Deputy Clerk

Appendix D - Selected portions
of Opening Brief for Court-
Appointed Amicus Curiae in
Support of Appellant, Simon v.
Social Security Administration,
No. 25-5397 (D.C. Cir. Apr. 24,
2026), ECF pp. 1, 4-6, 15, 26-
29, and 38-44 of 55.

[ORAL ARGUMENT NOT YET SCHEDULED]
No. 25-5397

**United States Court of Appeals
for the District of Columbia Circuit**

PHILLIP WALTER SIMON,

Plaintiff-Appellant,

v.

SOCIAL SECURITY ADMINISTRATION; UNITED STATES DEPARTMENT OF
JUSTICE; UNITED STATES DEPARTMENT OF HEALTH & HUMAN SERVICES;
OFFICE OF CHILD SUPPORT ENFORCEMENT,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Columbia

No. 1:25-cv-03452-LLA (Hon. Loren L. AliKhan)

**OPENING BRIEF FOR COURT-APPOINTED AMICUS CURIAE
IN SUPPORT OF APPELLANT**

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*Court-Appointed Amicus Curiae
for Plaintiff-Appellant
Phillip Simon*

April 24, 2026

STATEMENT REGARDING ORAL ARGUMENT

Oral argument would materially assist the Court's disposition of this appeal. This case presents an important question about the scope of the Social Security Administration's sovereign immunity.

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STATEMENT OF ISSUES

Whether a child support order entered by a California state court commissioner in the absence of subject matter jurisdiction is an order “issued by . . . a court or an administrative agency of competent jurisdiction” such that the Social Security Administration is entitled to sovereign immunity for garnishment of disability payments premised on that order pursuant to 42 U.S.C. § 659(f)(1).

STATUTES AND RULES

Pertinent statutory provisions and court rules are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Legal Background

1. In general, “[t]he United States enjoys sovereign immunity and cannot be sued without its consent.” *U.S. Postal Serv. v. Konan*, 146 S. Ct. 736, 740 (2026). This immunity also extends to federal agencies. *F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994). “At the same time, Congress may choose to waive that immunity” by statute. *Dep’t of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 144 S. Ct. 457, 465 (2024). Two provisions bearing on the government’s sovereign immunity are relevant here.

APA challenge to SSA's withholding of his disability benefits pursuant to the California garnishment order. JA70-73. Along with its opinion, the district court entered final judgment of dismissal of Simon's APA claim. JA78.

The same day, Simon filed a notice of appeal, JA79-81, as well as a post-judgment motion under Federal Rule of Civil Procedure 60, Dkt. No. 32. On December 5, 2025, the district court denied Simon's Rule 60 motion. Dkt. No. 42.

SUMMARY OF ARGUMENT

Congress broadly waived the government's sovereign immunity to facilitate withholding of government benefits for the payment of child support and alimony pursuant to state court garnishment orders in 42 U.S.C. § 659. At the same time, it created an exception to that waiver in § 659(f)(1) for (1) any withholding done pursuant to a garnishment order that was "regular on its face," and (2) that was issued by a "court of competent jurisdiction." *See* 42 U.S.C. § 659(f)(1), (i)(5). If the government meets both these elements, it is entitled to sovereign immunity from suit related to its withholding.

Longstanding Supreme Court precedent makes clear that a “court of competent jurisdiction” is one with subject matter jurisdiction. Thus, although § 659(f)(1) excludes from the otherwise applicable waiver of the government’s sovereign immunity from suit even if there are other defects in the state court process that resulted in a garnishment order (for example, a lack of personal jurisdiction over a party), an order issued in the absence of subject matter jurisdiction fails to satisfy § 659(f)(1)’s requirements. If the issuing state court lacked subject matter jurisdiction, then the federal government is not entitled to sovereign immunity, and a federal court has jurisdiction to review the merits of a litigant’s claim.

That treatment of subject matter jurisdiction makes sense. Subject matter jurisdiction is fundamental to courts’ authority. It defines the boundaries of the court’s power to adjudicate a case. And unlike personal jurisdiction, for example, subject matter jurisdiction cannot be waived or forfeited. It is therefore unsurprising that Congress chose to treat subject matter jurisdiction differently when crafting the immunity provided by § 659(f)(1).

Here, the record demonstrates that the garnishment order against Simon was issued by a California commissioner who lacked subject matter jurisdiction to enter that order. Consistent with the requirements of California procedure, Simon repeatedly objected to final adjudication of his proceedings by a commissioner, and sought de novo review of the commissioner's order by a superior court judge. But he never received that de novo review, and the final order was entered by the commissioner. In those circumstances, the commissioner lacked subject matter jurisdiction to enter that final order as a matter of California law. As a result, SSA is not entitled to sovereign immunity under § 659(f)(1) for withholding Simon's disability benefits in response to that order. And the district court's contrary holding does not withstand scrutiny, and should be reversed.

This Court should follow its usual practice and remand the case for the district court to analyze the merits of Simon's APA claim in the first instance. The district court should assess whether Simon adequately pleaded an APA claim on remand.

STANDARD OF REVIEW

An order granting a motion to dismiss for lack of subject matter jurisdiction or for failure to state a claim is reviewed de novo. *Musgrave v. Warner*, 104 F.4th 355, 360 (D.C. Cir. 2024) (subject matter jurisdiction); *Pileggi v. Wash. Newspaper Publ'g Co.*, 146 F.4th 1219, 1226 (D.C. Cir. 2025) (failure to state a claim), *petition for cert. docketed*, No. 25-1040 (Mar. 4, 2026)..

ARGUMENT

I. SSA DOES NOT HAVE SOVEREIGN IMMUNITY BECAUSE THE GARNISHMENT ORDER WAS NOT ISSUED BY A COURT WITH SUBJECT MATTER JURISDICTION

Under 42 U.S.C. § 659(f)(1), sovereign immunity only applies if (1) SSA withheld Simon's disability benefits in response to a garnishment order that was "regular on its face," and (2) the garnishment order was issued by a court with subject matter jurisdiction. Here, Simon has met his burden to demonstrate that the garnishment order was issued by a court without subject matter jurisdiction because he submitted evidence that he objected to proceeding before a commissioner and did not receive de novo review from a superior court judge. SSA therefore is not entitled to sovereign immunity from Simon's APA challenge, and the district court had jurisdiction to hear that claim.

B. The Commissioner Lacked Subject Matter Jurisdiction To Issue The Garnishment Order In This Case

1. The district court agreed that the APA provides a general waiver of the government's sovereign immunity to hear challenges like Simon's. *See* JA70-71; *see also Med. Imaging & Tech. All. v. Library of Congress*, 103 F.4th 830, 836 (D.C. Cir. 2024). But it held that the APA's waiver did not apply to Simon's suit under the principle that "if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought by the plaintiff," then "[t]he waiver does not apply." JA70 (quoting *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 657 U.S. 209, 215 (2012)).

The question here is therefore whether (1) SSA withheld Simon's disability benefits in response to a garnishment order that was "regular on its face," and (2) that garnishment order was issued by a court with subject matter jurisdiction. Here, even assuming the garnishment order was "regular on its face," SSA is not entitled to sovereign immunity from Simon's suit because the superior court commissioner that issued that order lacked subject matter jurisdiction.

Whether the superior court had the necessary subject matter jurisdiction is a question of California state law. *See Gulf Offshore Co. v.*

Mobil Oil Corp., 453 U.S. 473, 478 (1981) (“Federal law confers rights binding on state courts, the subject-matter jurisdiction of which is governed in the first instance by state laws.”); *All. San Diego v. Cal. Taxpayers Action Network*, 337 Cal. Rptr. 3d 589, 598 (Ct. App. 2025) (“Subject matter jurisdiction is conferred by law (i.e., by the California Constitution or statute).”).

As noted, California generally refers child support proceedings to nonjudicial “commissioners.” Cal. Family Code § 4251(a). Commissioners only have subject matter jurisdiction to act as final decisionmakers if the litigants consent. *Id.* § 4251(b); *see also* Cal. Civ. Proc. Code § 259(d). In child support proceedings, failure to object constitutes consent to final adjudication of a case by the commissioner. Cal. Family Code § 4251(b). But if a litigant *does* object to proceeding before a commissioner for final adjudication, then the commissioner is only permitted to make preliminary findings and recommendations, which are subject to de novo review by a superior court judge. *Id.* § 4251(c). Any final order issued by a commissioner without consent of the parties is void. *See, e.g., In re Marriage of Djulus*, 217 Cal. Rptr. 3d 39, 41 (Ct. App. 2017); *In re Marriage of Galis*, 196 Cal. Rptr. 659, 663

(Ct. App. 1983) (observing it would be unlawful to “force an unwilling litigant to try his or her case before someone other than a judge”).

Here, Simon repeatedly objected to having his case adjudicated by a commissioner, and repeatedly requested final review by a superior court judge. *See supra* 9-10 & n.4. Because he objected, he was entitled to de novo review of the commissioner’s garnishment order by a superior court judge. *See* Cal. Family Code § 4251(c). But he never received de novo review of that order in compliance with the statute. *See supra* 11 & n.5. Instead, the commissioner made the final determination as to Simon’s garnishment order. Under California law, that order was made without subject matter jurisdiction. And that is the order that SSA relied on in withholding Simon’s disability benefits. *See* JA15-22.

Under a straightforward application of § 659(f)(1) and *Morton*, SSA is not entitled to sovereign immunity from suit related to its withholding of Simon’s benefits because the garnishment order was not entered by a court with subject matter jurisdiction. The district court therefore had jurisdiction to consider Simon’s APA claim.

2. The district court's reasons for rejecting that conclusion do not hold up to scrutiny.⁸ *First*, the district court found that "Mr. Simon provides no evidence that the Superior Court of California lacked subject-matter jurisdiction." JA73. But that finding is contradicted by the record. As noted, Simon provided evidence that he repeatedly objected to proceeding before a commissioner and to the commissioner's findings and proposed order. *See supra* at 9-10 & n.4. And likewise submitted evidence that he never received de novo review from the superior court of the commissioner's decisions. *See supra* at 11 & n.5. Under California law, the commissioner lacked subject matter jurisdiction to enter the garnishment order on which SSA's withholding was based. *See supra* at 5-8, 26-28.

Second, the district court reasoned that "SSA was not required to further 'inquire into the issuing court's jurisdiction over' Mr. Simon," "given that the support order was regular on its face." JA73 (quoting *Morton*, 467 U.S. at 829). The district court read *Morton* to support the

⁸ As noted above, the Court can assume for purposes of the argument here that the garnishment order was "regular on its face." *See supra* at 26. The district court's holding regarding that element of the analysis is therefore not at issue. *See* JA71-72.

proposition that “such an inquiry [into subject matter jurisdiction] would be inconsistent with Section 659, ‘which requires the recipient of the writ to act on the basis of the “face” of the process.’” *Id.* (quoting *Morton*, 467 U.S. at 829). But this is an overreading of *Morton*, which only held that an inquiry into *personal jurisdiction* beyond the face of a garnishment order was inconsistent with § 659. *See* 467 U.S. at 828-29. *Morton*, however, explicitly *distinguished* personal jurisdiction from subject matter jurisdiction. *Id.* And the district court’s reasoning conflates the requirement that a garnishment order be “regular on its face” with the separate requirement that it be issued by a court with subject matter jurisdiction. *See id.* at 836.

Third, none of the cases relied on by the district court addressed the question presented here: whether a garnishment order must be issued by a court with subject matter jurisdiction for sovereign immunity under § 659(f)(1) to apply. JA71-73; *see Trimble v. SSA*, 369 F. App’x 27 (11th Cir. 2010) (per curiam) (challenge to personal jurisdiction, among other things); *El-Amin v. Commissioner*, No. 23-2209, 2023 WL 7123775 (3d Cir. Oct. 30, 2023) (per curiam) (challenge to merits of garnishment); *Muhammad v. Commissioner*, No. 23-2128, 2024 WL 3272267 (D.N.J.

July 2, 2024); *Dockery v. Commissioner*, No. 15-cv-2650, 2016 WL 3087453 (D. Md. June 1, 2016); *Edwards v. Colvin*, No. 13-cv-1655, 2014 WL 5493473 (W.D. Pa. Oct. 30, 2014). The district court's reliance on these cases was therefore misplaced.

The district court was incorrect when it held it lacked jurisdiction over Simon's claim, and its judgment should be reversed.

II. ON REMAND, THE DISTRICT COURT SHOULD ADDRESS SIMON'S APA CHALLENGE ON THE MERITS

The district court did not address the merits of Simon's APA claim because it held it lacked jurisdiction over that claim. *See* JA70-73, JA77. That holding was incorrect. As explained, SSA is not entitled to sovereign immunity from Simon's APA challenge.

This Court should "follow [its] usual practice and remand" this case so that the merits of Simon's APA challenge can be addressed by the district court "in the first instance." *Mingo Logan Coal Co. v. U.S. E.P.A.*, 714 F.3d 608, 616 (D.C. Cir. 2013); *accord Med. Imaging & Tech. All. v. Library of Congress*, 103 F.4th 830, 841 (D.C. Cir. 2024) (reversing district court's holding that it lacked jurisdiction to hear APA claims and remanding for district court to consider APA challenge on the merits in the first instance); *DeBrew v. Atwood*, 792 F.3d 118, 129 (D.C. Cir. 2015)

(reversing holding that agency had sovereign immunity and remanding merits consideration to district court); *Tanner-Brown v. Haaland*, 105 F.4th 437, 447-48 (D.C. Cir. 2024) (reversing holding that plaintiff lacked standing and declining to reach merits in first instance); *Almaqrami v. Pompeo*, 933 F.3d 774, 776, 784 & n.3 (D.C. Cir. 2019) (reversing finding of mootness and remanding merits). After all, this is “a court of review, not of first view.” *New LifeCare Hosps. of N.C., LLC v. Becerra*, 7 F.4th 1215, 1225 (D.C. Cir. 2021) (citation omitted). Simon should be permitted an opportunity to plead his APA claim on the merits.

DECLARATION OF SERVICE

I, Phillip Walter Simon, declare under penalty of perjury that on 17 August, 2026, I served one true and correct copy of the foregoing Application to the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit, for a 60-Day Extension of Time Within Which to File a Petition for a Writ of Certiorari, together with its accompanying appendix, upon counsel of record for Respondent by depositing the same in the United States mail, with first-class postage prepaid, addressed as follows:

Matthew L. Green

BEST BEST & KRIEGER LLP

655 West Broadway, Suite 1500

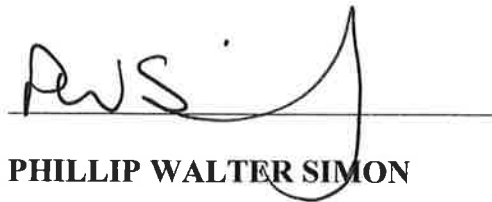
San Diego, California 92101

Telephone: (619) 525-1300

Counsel for Respondent Deborah A. Cumba

I further declare that all parties required to be served have been served. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 17 August, 2026, at San Marcos, California.

A handwritten signature in black ink, appearing to read 'PWS', is written over a horizontal line. The signature is stylized with a large, sweeping flourish extending from the end of the line.

PHILLIP WALTER SIMON

Applicant, Pro Se