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REBECCA A. WOMELDORF

REPORTER OF DECISIONS



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## Syllabus

## CARR ET AL. v. SAUL, COMMISSIONER OF SOCIAL SECURITY

## CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 19–1442. Argued March 3, 2021—Decided April 22, 2021\*

Petitioners are six individuals whose applications for disability benefits were denied by the Social Security Administration (SSA). They each unsuccessfully challenged their respective adverse benefit determination in a hearing before an SSA administrative law judge (ALJ). The SSA Appeals Council denied discretionary review in each case. Thereafter, this Court decided *Lucia v. SEC*, 585 U. S. —, which held that the appointment of Securities and Exchange Commission ALJs by lower level staff violated the Constitution’s Appointments Clause. Because the SSA ALJs who denied petitioners’ claims were also appointed by lower level staff, petitioners argued in federal court that they were entitled to a fresh administrative review by constitutionally appointed ALJs. In each case, the Court of Appeals held that petitioners could not obtain judicial review of their Appointments Clause claims because they failed to raise those challenges in their administrative proceedings.

*Held:* The Courts of Appeals erred in imposing an issue-exhaustion requirement on petitioners’ Appointments Clause claims. Pp. 88–96.

(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, 108–109. “[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.” *Id.*, at 109. 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 proceed-

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\*Together with No. 20–105, *Davis et al. v. Saul, Commissioner of Social Security*, on certiorari to the United States Court of Appeals for the Eighth Circuit.

## Syllabus

ing,” 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. 88–91.

(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. 91–96.

(1) In the specific context of petitioners’ Appointments Clause challenges, two considerations tip the scales decidedly against imposing an issue-exhaustion requirement. First, agency adjudications are generally ill suited to address structural constitutional challenges, which usually fall outside the adjudicators’ areas of technical expertise. See, e. g., *Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 561 U. S. 477, 491. Second, this Court has consistently recognized a futility exception to exhaustion requirements. See, e. g., *Bethesda Hospital Assn. v. Bowen*, 485 U. S. 399, 405–406. Both considerations apply fully here: Petitioners assert purely constitutional claims about which SSA ALJs have no special expertise and for which they can provide no relief. *United States v. L. A. Tucker Truck Lines, Inc.*, 344 U. S. 33, distinguished. Pp. 92–95.

(2) The Commissioner’s contention that petitioners cannot obtain new hearings because they did not “timely challenge” their adjudicators’ appointments presumes what the Commissioner has failed to prove: that petitioners’ challenges are, in fact, untimely. The Commissioner’s reliance on *Ryder v. United States*, 515 U. S. 177, and *Lucia*, 585 U. S. —, is misplaced, as neither decision had occasion to opine on what would constitute a “timely” objection in an administrative review scheme like the SSA’s. Pp. 95–96.

961 F. 3d 1267 and 963 F. 3d 790, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and ALITO, KAGAN, and KAVANAUGH, JJ., joined, in which THOMAS, GORSUCH, and BARRETT, JJ., joined as to Parts I, II–A, and II–B–2, and in which BREYER, J., joined as to Parts I, II–B–1, and II–B–2. THOMAS, J., filed an opinion concurring in part and concurring in the judgment, in which GORSUCH and BARRETT, JJ., joined, *post*, p. 96. BREYER, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 97.

*Sarah M. Harris* argued the cause for petitioners in No. 19–1442. With her on the briefs were *Lisa S. Blatt* and *Charles L. McCloud*. *Kannon K. Shanmugam* filed a brief

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for petitioners in No. 20–105. With him on the briefs were *William T. Marks*, *Joel S. Johnson*, and *Mahesha P. Subbaraman*.

*Austin L. Raynor* argued the cause for respondent in both cases. With him on the brief were *Acting Solicitor General Prelogar*, *Acting Assistant Attorney General Boynton*, *Deputy Solicitor General Kneeder*, *Vivek Suri*, *Mark B. Stern*, *Joshua M. Salzman*, and *Daniel Aguilar*.†

JUSTICE SOTOMAYOR delivered the opinion of the Court.

When the Social Security Administration (SSA) denies a claim for disability benefits, a claimant who wishes to contest that decision in federal court must first seek a hearing before an administrative law judge (ALJ). The petitioners here did just that: They each unsuccessfully challenged an adverse benefits determination in ALJ proceedings, and they now ask for judicial review. Specifically, petitioners argue that they are entitled to new hearings before different ALJs because the ALJs who originally heard their cases were not properly appointed under the Appointments Clause of the U. S. Constitution. The question for the Court is whether petitioners forfeited their Appointments Clause challenges by failing to make them first to their respective ALJs. The Court holds that petitioners did not forfeit their claims.

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†Briefs of *amici curiae* urging reversal in both cases were filed for the Institute for Justice by *Robert E. Johnson* and *Anthony Sanders*; for the National Association of Disability Representatives by *Chanakya A. Sethi* and *Rakesh N. Kilaru*; for the National Organization of Social Security Claimants Representatives et al. by *Carolyn A. Kubitschek*, *Barbara R. Silverstone*, *Barbara Jones*, *Thomas D. Sutton*, and *Robert E. Rains*; for the New Civil Liberties Alliance et al. by *Jared McClain*, *Richard Samp*, and *Ilya Shapiro*; for the Pacific Legal Foundation by *Brian T. Hodges* and *Oliver J. Dunford*; and for Social Security Scholars et al. by *Jon C. Dubin*.

*Alan B. Morrison* and *Richard J. Pierce, Jr.*, filed a brief in both cases for the Collective of Social Security Administration Administrative Law Judges.

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## I

The six petitioners in these consolidated cases each applied for disability benefits between 2013 and 2015.<sup>1</sup> After their applications were denied, petitioners followed the prescribed steps for seeking administrative review. They sought reconsideration of the agency’s initial determination, received a hearing before an ALJ, and requested review by the SSA’s Appeals Council. See 20 CFR § 404.900(a). Petitioners were unsuccessful at every stage, concluding with the Appeals Council, which denied discretionary review.

This Court then held in *Lucia v. SEC*, 585 U. S. — (2018), that ALJs within the Securities and Exchange Commission (SEC) had been unconstitutionally appointed. Under the Appointments Clause, only the President, “Courts of Law,” or “Heads of Departments” may appoint “Officers of the United States.” Art. II, §2, cl. 2; see *Lucia*, 585 U. S., at —. The *Lucia* Court determined that SEC ALJs were “Officers” rather than mere employees because they held “a continuing office established by law,” exercised “‘significant discretion’ when carrying out . . . ‘important functions,’” and often had the last word in SEC proceedings. *Id.*, at — — —. Consequently, the appointment of SEC ALJs by SEC staff violated the Constitution. *Id.*, at —, —.

Like the SEC ALJs at issue in *Lucia*, SSA ALJs had been selected by lower level staff rather than appointed by the head of the agency. On July 16, 2018, a few weeks after *Lucia* was decided, the SSA’s Acting Commissioner preemptively “address[ed] any Appointments Clause questions involving Social Security claims” by “ratif[ying] the appointments” of all SSA ALJs and “approv[ing] those appointments

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<sup>1</sup>The Social Security Act provides disability benefits under two programs, Title II and Title XVI. Some petitioners sought benefits under Title II only, some under Title XVI only, and some under both. The distinctions between the two programs are irrelevant for present purposes. For ease of reference, this opinion cites only to the regulations governing Title II, found at 20 CFR pt. 404 (2020).

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as her own.” 84 Fed. Reg. 9583 (2019). The following year, the SSA issued a ruling stating that the Appeals Council should, in response to timely requests for Appeals Council review, vacate preratification ALJ decisions and provide fresh review by a properly appointed adjudicator. *Ibid.* That remedy was only available, however, to claimants who had raised an Appointments Clause challenge in either their ALJ or Appeals Council proceedings. *Ibid.* Claimants who had not objected to the ALJs’ appointments in their administrative proceedings would receive no relief. See *ibid.*

Petitioners fell into this latter category. By the time the SSA issued its ruling, their administrative proceedings had concluded, and they were seeking review of the SSA’s decisions in federal court. Following *Lucia*, each petitioner asked the Federal District Court (or, in some cases, the Federal Magistrate Judge) for a new hearing before a constitutionally appointed ALJ. The Commissioner did not dispute that the ALJs who decided petitioners’ cases were unconstitutionally appointed, but contended instead that petitioners had forfeited their Appointments Clause challenges by failing to raise them before the agency.

In three separate decisions (covering all six petitioners), the U. S. Courts of Appeals for the Eighth and Tenth Circuits adopted the Commissioner’s forfeiture argument. In those Circuits’ view, petitioners could not obtain judicial review of their Appointments Clause claims because they had not pressed those challenges in their administrative proceedings. 963 F. 3d 790, 793 (CA8 2020); 964 F. 3d 759, 763 (CA8 2020); *Carr v. Commissioner, SSA*, 961 F. 3d 1267, 1268 (CA10 2020). The Third, Fourth, and Sixth Circuits have all held the opposite. In those Circuits, claimants may challenge the constitutionality of an SSA ALJ’s appointment for the first time in federal court. See *Cirko v. Commissioner of Social Security*, 948 F. 3d 148, 152 (CA3 2020); *Probst v. Saul*, 980 F. 3d 1015, 1020 (CA4 2020); *Ramsey v. Commissioner of Social Security*, 973 F. 3d 537, 546 (CA6 2020).

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The Court granted certiorari to resolve this conflict. 592 U. S. — (2020).

## II

Administrative review schemes commonly require parties to give the agency an opportunity to address an issue before seeking judicial review of that question. The source of this requirement (known as issue exhaustion) varies by agency.<sup>2</sup> Typically, issue-exhaustion rules are creatures of statute or regulation. *Sims v. Apfel*, 530 U. S. 103, 107–108 (2000); see *United States v. L. A. Tucker Truck Lines, Inc.*, 344 U. S. 33, 36, n. 6 (1952) (collecting statutes). Where statutes and regulations are silent, however, 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*, 530 U. S., at 108–109. The Commissioner concedes that no statute or regulation obligated petitioners to raise their Appointments Clause challenges in administrative proceedings. See Brief for Respondent 12, 35, n. 2; Tr. of Oral Arg. 39. Instead, the Commissioner asks this Court to impose a judicially created issue-exhaustion requirement in these cases.

## A

“[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.” *Sims*, 530 U. S., at 109. In conducting this inquiry, courts must take care not to “reflexively ‘assimilat[e] the relation of . . . administrative bodies and the courts to the relationship between lower and upper courts.’” *Id.*, at 110 (quoting *FCC v. Pottsville Broadcasting Co.*, 309

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<sup>2</sup> Issue exhaustion should not be confused with exhaustion of administrative remedies. There is no dispute in these cases that petitioners exhausted their administrative remedies, meaning that they proceeded through each step of the SSA’s administrative review scheme and received a “final decision” before seeking judicial review. See 42 U. S. C. § 405(g).

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U. S. 134, 144 (1940)). Instead, “[t]he inquiry requires careful examination of ‘the characteristics of the particular administrative procedure provided.’” 530 U. S., at 113 (O’Connor, J., concurring in part and concurring in judgment) (quoting *McCarthy v. Madigan*, 503 U. S. 140, 146 (1992)). The critical feature that distinguishes adversarial proceedings from inquisitorial ones is whether claimants bear the responsibility to develop issues for adjudicators’ consideration.<sup>3</sup>

With respect to the nature of the SSA proceedings at issue here, our inquiry starts from the baseline set by *Sims v. Apfel*. There, this Court held that issues not raised before the Appeals Council (the final stage of administrative review within the SSA) are nonetheless preserved for judicial review. In so holding, 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 “the reasons for a court to require issue exhaustion are much weaker” when “an administrative proceeding is not adversarial.” 530 U. S., at 110.

The plurality went on to explain that “[t]he differences between courts and agencies are nowhere more pronounced

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<sup>3</sup>The Commissioner invokes the “general rule,” recognized in cases such as *L. A. Tucker Truck Lines*, that “orderly procedure and good administration require that objections to the proceedings of an administrative agency be made while it has opportunity for correction in order to raise issues reviewable by the courts.” *United States v. L. A. Tucker Truck Lines, Inc.*, 344 U. S. 33, 37 (1952); see also *Hormel v. Helvering*, 312 U. S. 552, 557 (1941); *Unemployment Compensation Comm’n of Alaska v. Aragon*, 329 U. S. 143, 154–155 (1946). That general rule, however, originated in cases that “each involved an adversarial proceeding.” *Sims v. Apfel*, 530 U. S. 103, 110 (2000). Where claimants are not expected to develop certain issues in ALJ proceedings, it is generally inappropriate to treat those issues as forfeited. See *id.*, at 109 (“[C]ourts require administrative issue exhaustion ‘as a general rule’ because it is usually ‘appropriate under [an agency’s] practice’ for ‘contestants in an adversary proceeding’ before it to develop fully all issues there” (quoting *L. A. Tucker Truck Lines*, 344 U. S., at 36–37)).



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than in Social Security proceedings,” where administrative “proceedings are inquisitorial rather than adversarial.” *Id.*, at 110–111. Regulations governing SSA proceedings “expressly provide that the SSA ‘conduct[s] the administrative review process in an informal, nonadversary manner’” and assures claimants that the SSA “‘will consider at each step of the review process any information you present as well as all the information in our records.’” *Id.*, at 111 (quoting 20 CFR § 404.900(b) (1999)). At the Appeals Council level, “the Council’s review is plenary unless it states otherwise.” *Sims*, 530 U. S., at 111 (plurality opinion). Rather than appear “as a litigant opposing the claimant,” the Commissioner serves “just as an adviser to the Council.” *Ibid.* Claimants are not required to file a brief; indeed, the SSA’s standard form “provides only three lines for [a claimant’s] request for review.” *Id.*, at 112. A notice “accompanying the form estimates that it will take only 10 minutes to ‘read the instructions, gather the necessary facts and fill out the form.’” *Ibid.* Thus, in the context of Appeals Council review, the plurality observed that the “adversarial development of issues by the parties . . . on which [the judicial-proceedings] analogy depends simply does not exist.” *Ibid.*

Justice O’Connor concurred in the judgment. In her view, “the agency’s failure to notify claimants of an issue exhaustion requirement” provided a “sufficient basis” for refusing to impose one by judicial decree. *Id.*, at 113. “Requiring issue exhaustion is particularly inappropriate,” she explained, “where the regulations and procedures of the [SSA] affirmatively suggest that specific issues need not be raised before the Appeals Council.” *Ibid.*

Much of what the *Sims* opinions said about Appeals Council review applies equally to ALJ proceedings. The *Sims* plurality itself noted that “[i]t is the ALJ’s duty to investigate the facts and develop the arguments both for and against granting benefits” and that “[t]he Commissioner has no representative before the ALJ to oppose the claim for

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benefits.” *Id.*, at 111. The SSA regulations that ensure informal, nonadversarial proceedings and plenary review apply as much to ALJs as to the Appeals Council. See 20 CFR § 404.900(b). Regulations also provide that ALJs will “loo[k] fully into the issues” themselves, § 404.944, and may “raise a new issue” at “any time . . . before mailing notice of the hearing decision,” § 404.946(b)(1). Like the form supplied by the SSA to request Appeals Council review, the form to request an ALJ hearing provides roughly three lines for claimants to explain their disagreement with the agency’s determination, and the SSA “estimate[s]” that it will take just “10 minutes to read the instructions, gather the facts, and answer the questions” on that form. SSA, Request for Hearing by Administrative Law Judge, Form HA-501-U5. Last, as with the Appeals Council, SSA “regulations provide no notice that claimants must . . . raise specific issues before” the ALJ “to preserve them for review in federal court.” *Sims*, 530 U. S., at 113 (opinion of O’Connor, J).

## B

The parallels between ALJ and Appeals Council proceedings are many, but the Commissioner correctly notes several differences that may make ALJ hearings relatively more adversarial. For one, ALJ hearings are typically available as a matter of right, while Appeals Council review is discretionary. Compare 20 CFR § 404.957 with § 404.967. Most claimants thus submit no more than a one-page request for review to the Appeals Council before having their request denied. Mandatory ALJ proceedings, by contrast, present far more opportunities for claimants to press issues, and the SSA consequently relies more heavily on those proceedings to “conduc[t the agency’s] principal and most thorough investigation of . . . disability claim[s].” Brief for Respondent 35–36. Additionally, before every hearing, the SSA mails claimants a “notice of hearing” that includes logistical information and lists the “[t]he specific issues to be decided in [the] case.”

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§ 404.938(b)(1). Claimants must notify the ALJ in writing if they “object to the issues to be decided at the hearing.”<sup>4</sup> § 404.939. Similarly, SSA conflict-of-interest regulations instruct claimants to “notify the [ALJ] at [the] earliest opportunity” if they “object to the [ALJ] who will conduct [their] hearing.” § 404.940.

Even accepting that ALJ proceedings may be comparatively more adversarial than Appeals Council proceedings, the question nonetheless remains whether the ALJ proceedings at issue 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). In the specific context of petitioners’ Appointments Clause challenges, two additional considerations tip the scales decidedly against imposing an issue-exhaustion requirement.<sup>5</sup>

1

First, this Court has often observed that agency adjudications are generally ill suited to address structural constitutional challenges, which usually fall outside the adjudicators’ areas of technical expertise. See, e.g., *Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 561 U. S. 477, 491 (2010); *Califano v. Sanders*, 430 U. S. 99, 109 (1977); *Weinberger v. Salfi*, 422 U. S. 749, 765 (1975). As such, it is sometimes appropriate for courts to entertain constitutional challenges to statutes or other agency-wide policies even when those challenges were not raised in administrative proceedings.<sup>6</sup> See, e.g., *Mathews v. Diaz*, 426 U. S.

<sup>4</sup>As discussed above, see *supra*, at 88, the Commissioner “do[es] not argue that these regulations themselves impose a forfeiture rule that applies here.” Brief for Respondent 35, n. 2.

<sup>5</sup>Outside the context of Appointments Clause challenges, such as in the sphere of routine objections to individual benefits determinations, the scales might tip differently.

<sup>6</sup>Contrary to the Commissioner’s assertion, *Richardson v. Perales*, 402 U. S. 389 (1971), has no bearing on whether an issue-exhaustion requirement is appropriate in these cases. In *Perales*, the Court rejected a

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67, 76–77 (1976). Thus, this Court observed in *Mathews v. Eldridge*, 424 U.S. 319 (1976), that, so long as a Social Security claimant “had exhausted the full set of available administrative review procedures” (as petitioners did here), “failure to have raised his constitutional claim would not bar him from asserting it later in a district court.” *Id.*, at 329, n. 10.

Second, this Court has consistently recognized a futility exception to exhaustion requirements. See, e.g., *Bethesda Hospital Assn. v. Bowen*, 485 U.S. 399, 405–406 (1988); *Montana Nat. Bank of Billings v. Yellowstone County*, 276 U.S. 499, 505 (1928). It makes little sense to require litigants to present claims to adjudicators who are powerless to grant the relief requested. Such a vain exercise will rarely “protect administrative agency authority” or “promote judicial efficiency.” *McCarthy*, 503 U.S., at 145.

Both considerations apply fully here: Petitioners assert purely constitutional claims about which SSA ALJs have no special expertise and for which they can provide no relief. Relying on *L. A. Tucker Truck Lines*, the Commissioner argues that it nevertheless would have been fruitful for petitioners to raise Appointments Clause challenges in their ALJ hearings because “[r]epetition of the objection’ in multiple cases could have led ‘to a change of policy.’” Brief for Respondent 45 (quoting *L. A. Tucker Truck Lines*, 344 U.S., at 37). But the Commissioner misses a key distinction: In *L. A. Tucker Truck Lines*, the aggrieved litigant had the opportunity to object to the relevant method of appointment before the full Interstate Commerce Commission itself. *Id.*, at 34. Repetition of such an objection in cases before the

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claimant’s procedural due process challenge to the admissibility of an adverse medical report, explaining (among other reasons) that “[a]lthough the claimant complain[ed] of the lack of opportunity to cross-examine the reporting physicians, he did not take advantage of the opportunity” to subpoena the physicians. *Id.*, at 404. *Perales* thus stands for the uncontroversial (and irrelevant) proposition that a claimant is not denied due process if he declines to take advantage of the adequate procedures available to him.

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full Commission might have persuaded it to change its “pre-determined policy on th[e] subject.” *Id.*, at 37. Here, by contrast, the SSA’s administrative review scheme at no point afforded petitioners access to the Commissioner, the one person who could remedy their Appointments Clause challenges. Nor were the ALJs capable of remedying any defects in their own appointments. After all, there were no Commissioner-appointed ALJs to whom objecting claimants’ cases could be transferred, and the ALJs could not very well have reappointed themselves.

Internal SSA guidance confirms as much. On January 30, 2018, soon after this Court granted certiorari in *Lucia*, the agency issued an “emergency message” to ALJs advising them that “adjudicators may see challenges . . . related to the constitutionality of the appointment of SSA’s ALJs.” SSA, EM-18003: Important Information Regarding Possible Challenges to the Appointment of Administrative Law Judges in SSA’s Administrative Process, p. 2. The agency warned ALJs that, because the “SSA lacks the authority to finally decide constitutional issues such as these,” they should “not discuss or make any findings related to the Appointments Clause issue on the record.” *Ibid.* Instead, ALJs were directed to acknowledge any Appointments Clause objections with standardized language explaining that they “‘d[id] not have the authority to rule on that challenge.’” *Ibid.* The SSA reiterated these instructions in a second emergency message issued shortly after *Lucia* was decided.<sup>7</sup> See SSA, EM-18003 REV: Important

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<sup>7</sup> Although the agency issued its internal guidance several months after petitioners’ ALJ hearings concluded, there is no indication that the ALJs would or could have adjudicated an Appointments Clause challenge at any time. Moreover, as a practical matter, the agency’s emergency messages belie the Commissioner’s suggestion that the SSA would have changed course if only it had been “‘put on notice of the accumulating risk of wholesale reversals.’” Brief for Respondent 45 (quoting *L. A. Tucker Truck Lines*, 344 U. S., at 37).

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Information Regarding Possible Challenges to the Appointment of Administrative Law Judges in SSA’s Administrative Process—UPDATE, pp. 1–2 (June 25, 2018). It was not until March 2019 that the Acting Commissioner finally instructed the Appeals Council on how to handle preratification Appointments Clause challenges. See 84 Fed. Reg. 9582; *supra*, at 87.

## 2

Taking a somewhat different tack, the Commissioner contends that petitioners are not entitled to new hearings before constitutionally appointed ALJs because they failed to make “timely challenge[s]” to their adjudicators’ appointments. *Ryder v. United States*, 515 U. S. 177, 182 (1995); *Lucia*, 585 U. S., at — (quoting *Ryder*). That argument, however, presumes what the Commissioner has failed to prove: that petitioners’ challenges are, in fact, untimely. The Commissioner relies on *Ryder* and *Lucia*, but neither of those decisions had occasion to opine on what would constitute a “timely” objection in an administrative review scheme like the SSA’s. *Ryder* involved an appeal from a Coast Guard court-martial, 515 U. S., at 179, an adversarial proceeding in which traditional forfeiture rules apply, see *United States v. Gladue*, 67 M. J. 311, 313 (C. A. Armed Forces 2009). *Lucia*, meanwhile, arose from proceedings before the Securities and Exchange Commission, 585 U. S., at — — —, in which a statutory issue-exhaustion requirement applies, see 15 U. S. C. § 78y(c)(1). Where, as here, claimants are not required to exhaust certain issues in administrative proceedings to preserve them for judicial review, claimants who raise those issues for the first time in federal court are not untimely in doing so.

\* \* \*

Taken together, the inquisitorial features of SSA ALJ proceedings, the constitutional character of petitioners’ claims, and the unavailability of any remedy make clear that “adver-

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sarial development” of the Appointments Clause issue “simply [did] not exist” (and could not exist) in petitioners’ ALJ proceedings. *Sims*, 530 U. S., at 112 (plurality opinion). The Courts of Appeals therefore erred in imposing an issue-exhaustion requirement on petitioners’ Appointments Clause claims. The judgments of the Eighth and Tenth Circuits are reversed, and the cases are remanded for further proceedings consistent with this opinion.

*It is so ordered.*

JUSTICE THOMAS, with whom JUSTICE GORSUCH and JUSTICE BARRETT join, concurring in part and concurring in the judgment.

I join Parts I, II–A, and II–B–2 of the opinion of the Court, which correctly explain that the nonadversarial nature of an agency proceeding generally gives good reason to refrain from creating an issue-exhaustion requirement. See *Sims v. Apfel*, 530 U. S. 103, 109–110 (2000). Proceedings before an administrative law judge (ALJ) of the Social Security Administration are plainly nonadversarial: The regulations assure claimants that the agency will “conduct the administrative review process in an informal, non-adversarial manner.” 20 CFR § 404.900(b) (2020). ALJs can raise new issues *sua sponte*. §§ 404.944, 404.946. Hearings are so informal that lawyers, briefs, and even attendance are often optional. §§ 404.948–404.950. And should an ALJ err, the Appeals Council may review cases to correct anything from “error[s] of law” to “broad policy or procedural issue[s] that may affect the general public interest.” § 404.970(a). This decidedly pro-claimant, inquisitorial process is quite unlike an adversarial suit in which parties are expected to identify, argue, and preserve all issues.

To be sure, a few regulatory provisions direct claimants to advocate on their own behalf by objecting to problems, including if the agency misidentifies issues before the hearing or if the ALJ is “prejudiced or partial.” §§ 404.938–404.940.



## Opinion of BREYER, J.

But these unsurprising reminders that a claimant should not sit idly on the sidelines hardly demand that the penalty for overlooking an argument is forfeiture. On the contrary, such a permanent consequence would be surprising in light of the flexible, “informal” mechanisms that undergird the entire agency review process. § 404.900(b); see also *Sims*, 530 U. S., at 110 (plurality opinion) (“The differences between courts and agencies are nowhere more pronounced than in Social Security proceedings”).

Because these proceedings bear little resemblance to adversarial litigation, I agree with the Court that there is no need for an exhaustion rule. I would end the analysis there.

JUSTICE BREYER, concurring in part and concurring in the judgment.

I continue to believe that, “[u]nder ordinary principles of administrative law a reviewing court will not consider arguments that a party failed to raise in timely fashion before an administrative agency.” *Sims v. Apfel*, 530 U. S. 103, 114 (2000) (BREYER, J., dissenting). I also adhere to my prior view that, in the particular context of the Social Security Administration, a claimant “ordinarily must raise all relevant issues before the ALJ” and that the “nonadversarial nature” of the agency’s procedures is generally irrelevant to whether the ordinary rule requiring issue exhaustion ought to apply. *Id.*, at 117. Here, however, I agree with the Court that the Appointments Clause challenges at issue fall into the well-established exceptions for constitutional and futile claims. See *ante*, at 92–95; see also *Sims*, 530 U. S., at 115 (BREYER, J., dissenting); *Woodford v. Ngo*, 548 U. S. 81, 103 (2006) (BREYER, J., concurring in judgment); *Ross v. Blake*, 578 U. S. 632, 649 (2016) (BREYER, J., concurring in part) (recognizing these traditional exceptions). I therefore join Parts I, II–B–1, and II–B–2 of the Court’s opinion and concur in the Court’s judgment.