No. 09-631

In the Supreme Court of the United States

ELISA ENCARNACION, ON BEHALF OF ARLENE GEORGE, ET AL., PETITIONERS

v.

MICHAEL J. ASTRUE, COMMISSIONER OF SOCIAL SECURITY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the procedures established by the Commissioner of Social Security (Commissioner) for determining whether an applicant for Supplemental Security Income disability benefits who is less than 18 years old "has a medically determinable physical or mental impairment, which results in marked and severe functional limitations," 42 U.S.C. 1382c(a)(3)(C)(i), represent a permissible construction of the Social Security Act, 42 U.S.C. 301 *et seq.*, and the Commissioner's own regulations.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-21a) is reported at 568 F.3d 72. The opinion of the district court (Pet. App. 22a-51a) is reported at 491 F. Supp. 2d 453.

JURISDICTION

The judgment of the court of appeals was entered on June 4, 2009. A petition for rehearing was denied on August 26, 2009 (Pet. App. 88a-89a). The petition for a writ of certiorari was filed on November 24, 2009. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. The Supplemental Security Income (SSI) program established by Title XVI of the Social Security Act (Act), 42 U.S.C. 1381 *et seq.*, provides for the payment of benefits to financially needy individuals who are aged, blind, or disabled. The SSI program was principally intended "[t]o assist those who cannot work because of age, blindness, or disability, by set[ting] a Federal guaranteed minimum income level for aged, blind, and disabled persons." *Schweiker* v. *Wilson*, 450 U.S. 221, 223 (1981) (internal quotation marks and citation omitted) (brackets in original). However, the SSI program also provides for the payment of benefits to financially needy individuals under age 18 who are considered to be disabled. 42 U.S.C. 1382, 1382c(a)(3)(C)(i). Congress has granted the Commissioner of Social Security (Commissioner) "full power and authority to make rules and regulations and to establish procedures" for carrying out the SSI program and to "adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence" associated with benefits determinations. 42 U.S.C. 405(a); see 42 U.S.C. 1383(d)(1) (making Section 405(a) applicable to the statutory Part that includes Section 1382c); *Sullivan* v. *Zebley*, 493 U.S. 521, 525 & n.2 (1990).

b. This case involves the standards utilized by the Commissioner for determining whether an "[a]n individual under the age of 18" (hereinafter, "child") is disabled for purposes of the SSI program. 42 U.S.C. 1382c(a)(3)(C)(i).[1] Since 1996, the Act has provided that

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[1] Congress has provided a specific definition of the term " child" for purposes of the SSI program, which excludes certain individuals under the age of 18. See 42 U.S.C. 1382c(c). For simplicity of reference, this

such a person "shall be considered disabled" for purposes of the SSI program "if that individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." *Ibid.*

The Commissioner's current regulations establish a three-step sequential evaluation process for determining whether a child is disabled under Section 1382c(a)(3)(C)(i). The inquiry at the first step is whether the child is "working" and whether any such work constitutes "substantial gainful activity." 20 C.F.R. 416.924(b). If so, the regulations provide that the child is "not disabled regardless of [his] medical condition or age, education, or work experience." *Ibid.*; see 42 U.S.C. 1382c(a)(3)(C)(ii). If the child is not engaged in substantial gainful activity, the inquiry at the second step is whether the child has "a medically determinable impairment" or impairments, and, if so, whether that "impairment or combination of impairments" is "severe," 20 C.F.R. 416.924(a). The regulations use the term "severe" impairment in a special sense to mean an impairment that causes "more than minimal functional limitations." 20 C.F.R. 416.924(c).

The third and final step of the sequential evaluation process for children is whether the child's impairment or combination of impairments "meets, medically equals, or functionally equals" the Listing of Impairments (the listings) contained in the Commissioner's regulations. 20 C.F.R. 416.924(a). With respect to adult claimants,

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brief uses the term "child" to refer to any person who is less than 18 years old.

the listings constitute "a list of impairments presumed severe enough to preclude any gainful work." *Zebley*, 493 U.S. at 525; see 20 C.F.R. 416.925(a), 416.926. With respect to disability claims by children—who are not generally expected to be working in the first place—the listings describe impairments that result in significant functional limitations that are deemed to be disabling in children. If a child's impairment or combination of impairments does not match the criteria in the listing for a particular impairment, the child may nonetheless be found to be disabled if his impairment is medically equivalent to that listed impairment, *i.e.*, is equal in severity and duration to the listed impairment. See 20 C.F.R. 416.926(a).

c. This case involves the procedures under which a child can be found to be disabled in a third way, *i.e.*, for determining whether the child's impairment or combination of impairments "functionally equals" the listings. 20 C.F.R. 416.926a(d). In making that determination, the agency assesses the child's functioning in six "broad areas," called "domains," that together are "intended to capture all of what a child can or cannot do." 20 C.F.R. 416.926a(b)(1).[2] The Commissioner's regulations provide that a child's impairment or combination of impairments will be considered to be of "listing-level severity if [the child has] 'marked' limitations in two * * * do-

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[2] The six domains are: "(i) Acquiring and using information; (ii) Attending and completing tasks; (iii) Interacting and relating with others; (iv) Moving about and manipulating objects; (v) Caring for yourself; and, (vi) Health and physical well-being." 20 C.F.R. 416.926a(b)(1). In February 2009, the Commissioner published nine Social Security Rulings that explain in detail how adjudicators evaluate childhood disability in the six domains. See 74 Fed. Reg. 7511, 7515, 7518, 7521, 7524, 7527 7625, 7630 (2009).

mains * * * or an 'extreme' limitation in one domain." 20 C.F.R. 416.926a(d); see 20 C.F.R. 416.926a(e)(2) and (3) (definitions of "marked" and "extreme" limitations, respectively).

In determining whether a child has at least two "marked" limitations or one "extreme" limitation, the agency "look[s] first" at the child's "activities and [his or her] limitations and restrictions." 20 C.F.R. 416.926a(c). Because "[a]ny given activity may involve the integrated use of many abilities and skills," the regulations recognize that "any single limitation may be the result of the interactive and cumulative effects of one or more impairments." *Ibid.*; see 20 C.F.R. 416.924a(b)(4). Further, because "any given impairment may have effects in more than one domain," the regulations provide that the agency "will evaluate the limitations from [each child's] impairment(s) in any affected domain(s)." 20 C.F.R. 416.926a(c); see 20 C.F.R. 416.924a(b)(4). However, agency policy—reflected in an agency training manual and commentary in a notice of final rulemaking published in 2000, see Pet. App. 8a-9a—provides that "multiple limitations, each of which are less severe than 'marked,' cannot be added together across domains to serve as the equivalent of a single 'marked' or 'extreme' limitation." *Id.* at 55a.

2. Petitioners are people who either were denied benefits under the child disability program or are parents of children who were denied benefits under that program. Pet. App. 54a. In 2000, one of the current petitioners and others filed a putative class action challenging the Commissioner's policy against "adding 'moderate' limitations across domains to equal a 'marked' or 'extreme' limitation." *Id.* at 67a, 69a. This policy, the plaintiffs alleged, was inconsistent with a provision of

the Act that states that, "[i]n determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity" to trigger eligibility for benefits, the Commissioner "shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity" and shall do so "throughout the disability determination process." 42 U.S.C. 1382c(a)(3)(G); see Pet. App. 69a.

The district court dismissed the 2000 complaint and denied the plaintiffs' motion for class certification. 191 F. Supp. 2d 46. The court of appeals affirmed. Pet. App. 52a-87a. The court determined that the Commissioner's policy was "not contrary to law" because "the regulations and the Commissioner's accompanying interpretation" left open "other reasonable methods of giving effect to the 'combined impact' mandate other than by adding limitations across domains," and because the complaint did "not allege that these alternatives [were] ineffective either on their face or as applied." *Id.* at 69a-70a.

3. In 2003, petitioners filed a new putative class action complaint in which they now alleged "that the Commissioner in fact prevents disability adjudicators from 'look[ing] comprehensively at the claimant, and account-[ing] for the interactive and cumulative effects of limitations in other domains.'" Pet. App. 27a (quoting complaint). The district court denied petitioners' motion for class certification, granted summary judgment in favor of the Commissioner, and denied petitioners' motion for leave to file an amended complaint. *Id.* at 51a. The district court determined that petitioners' challenges to the facial validity of the Commissioner's policy were foreclosed by the court of appeals' decision in the earlier

case and that petitioners had failed to raise any genuine issue of material fact with respect to the agency's actual practice. *Id.* at 38a-39a. In particular, the district court concluded that the declaration of petitioners' single fact witness, a school psychologist, "lack[ed] a competent factual basis in the record," *id.* at 39a, and was based on a "misinterpret[ation of] the manner in which the [Commissioner's] regulations operate in connection with childhood disability determinations," *id.* at 40a.

4. A unanimous panel of the court of appeals affirmed. Pet. App. 1a-21a. The court first rejected petitioners' contention that its decision in the previous litigation required a result in petitioners' favor. *Id.* at 11a-14a. The court explained that that decision "did not resolve the precise issue before us," and it stated that, to the extent it contained language that could be read "to suggest that the Act required the agency to make cross-domain adjustments, any such comments [were] dicta." *Id.* at 13a & n.1.

The court of appeals next concluded that it was unnecessary to decide whether the Commissioner's policy against aggregating the effects of limitations across domains was entitled to deference under *Chevron U.S.A., Inc.* v. *NRDC*, 467 U.S. 837 (1984), or *Auer* v. *Robbins*, 519 U.S. 452 (1997). See Pet. App. 15a. Instead, the court concluded that "the Policy must be upheld" "even applying the less deferential" standard associated with *Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944). Pet. App. 15a.

The court of appeals explained that it was "undisputed that the 'disability determination process'" that Congress referred to in Section 1382c(a)(3)(G) "is the sequential process that the Commissioner has established under his broad statutory authority" to adminis-

ter the Act. Pet. App. 16a. Accordingly, "[t]he requirement that the combination of impairments be considered throughout the process must * * * be measured with reference to the 'process' the Commissioner has created." *Ibid.* The court of appeals determined that the Commissioner's policy ensured that "each of a claimant's impairments [will] be given at least some effect during each step of the disability determination process," because the agency "considers all impairments within each domain, the final step of the process as the Commissioner has defined it." *Id.* at 16a-17a (citation omitted). The court of appeals thus rejected petitioners' contention that "the Commissioner's interpretation * * * assign[s] 'zero weight' to any impairment or combination of impairments." *Id.* at 17a.

The court of appeals determined that "[t]his case is unlike" this Court's decision in *Zebley*, which "concluded that the [then-in-effect] childhood-disability regulations did not allow for consideration of all impairments throughout the process." Pet. App. 17a n.3. The court noted that *Zebley* stated "that if children were given the same level of individualized consideration as adults, the regulations would comply with the statute," *ibid.* (citing *Zebley*, 493 U.S. at 535 n.16), and it concluded that the current childhood disability regulations are consistent with that standard. The court of appeals explained that the adult disability regulations discussed by this Court in *Zebley* "did not merely focus on the *type* of impairments, but evaluated the *effect* of all impairments on a claimant's functioning." *Ibid.* (emphasis added) (citing *Zebley*, 493 U.S. at 535-536 & n.15). Likewise, the court of appeals stated that, "[w]ithin the domain system, the [agency now] provides an individualized assessment of the combined impact of a child's impairments" and "ana-

lyzes the effect of the impairments on the specific child claimant." *Ibid.*

The court of appeals also stated that the Commissioner's policy was consistent with changes that Congress made to the SSI program in 1996. The court noted that, as part of "its efforts to tighten eligibility, Congress" both indicated its intent "to ensure that only those children with at least two marked limitations within particular domains qualified for SSI Benefits," Pet. App. 18a; see *id.* at 6a (citing H.R. Conf. Rep. No. 725, 104th Cong., 2d Sess. 328 (1996)), and specifically barred the Commissioner from applying a step under the agency's prior regulations called the "individualized functional assessment" (IFA), "which had allowed the [agency] greater flexibility to award benefits to children with fewer than two marked limitations," *id.* at 18a; see *id.* at 6a (citing Pub. L. No. 104-193, § 211(b)(2), 110 Stat. 2189). The court of appeals found "persuasive the Commissioner's view that adjusting limitations in one domain based on limitations in another domain would result in benefits to children who did not satisfy the more restrictive standard Congress sought to impose, and would be too close to the IFA process Congress eliminated." *Ibid.*

In addition, the court of appeals "ha[d] difficulty understanding how [petitioners'] interpretation of the statute would function in practice." Pet. App. 18a. The court stated that because petitioners "do not challenge the Commissioner's use of the domains to determine functional equivalence, any interpretation they offer must account for the domains." *Ibid.* But although petitioners' briefs and the declaration of their expert witness were "replete with condemnations of the Policy, they offer nothing in the way of an alternative system

that would satisfy the statute and be efficiently administered, using the domains." *Id.* at 19a. The court of appeals observed that neither the declaration submitted by petitioners nor petitioners' briefs had attempted to explain "*[h]ow* the [agency] would consider impairments as a 'relevant variable' outside the domains[] in a system overseen by administrative law judges, not clinicians." *Ibid.*

The court of appeals stated that it "lack[ed] the authority and [was] ill-equipped, in contrast to the Commissioner, to decide the best method to determine childhood disability." Pet. App. 20a. The court observed that the Commissioner has "substantial expertise and is charged with administering a complex statute," *id.* at 19a, and that the Commissioner's interpretation of the Act and his regulations "has been consistent," *id.* at 20a. The court also concluded that petitioners placed "inordinate[] rel[iance]" on their single declaration, which was "unaccompanied by any evidence as to actual children who are adversely affected by the Policy." *Ibid.*; see *ibid.* ("We will not reject the agency's otherwise persuasive interpretation on the say-so of a single expert armed only with hypotheticals.").

ARGUMENT

Petitioners renew their contention (Pet. 16-23) that the Commissioner's policy against recombining multiple limitations across domains for purposes of determining whether a child has the functional equivalent of "marked" limitations in at least two domains or an "extreme" limitation in at least one domain is contrary to the Act and the Commissioner's own regulations. For three reasons, that claim does not warrant further review.

First, as petitioners acknowledge (Pet. 22), the decision of the court of appeals in this case does not conflict with any decision of another court of appeals. Petitioners suggest repeatedly that the Second Circuit's own two decisions "point in markedly different directions." Pet. 22; see Pet. 18-19. But the court of appeals' second decision specifically rejected petitioners' claim that its earlier decision "dictate[d] a result in [petitioners'] favor," Pet. App. 11a, and the full court denied a petition for rehearing en banc without recorded dissent, *id.* at 88a-89a. In any event, even a true intracircuit conflict would not warrant this Court's review. See *Wisniewski* v. *United States*, 353 U.S. 901, 902 (1957) (per curiam).

Second, as the court of appeals explained (Pet. App. 17a n.3), there is no conflict between its decision in this case and this Court's decision in *Sullivan* v. *Zebley*, 493 U.S. 521 (1990). As an initial matter, *Zebley* involved an earlier—and quite different—version of the statutory definition of "disability." At the time of *Zebley*, the Act defined the standard for disability in children by reference to the standard for disability in adults, providing that a child would be considered disabled "if he suffers from any medically determinable physical or mental impairment *of comparable severity*" to one that would be considered disabling in an adult. 42 U.S.C. 1382c(a)(3) (1988) (emphasis added). Indeed, the *Zebley* Court specifically relied on the "comparable severity" language in reaching its conclusion in that case that the Commissioner was required to go beyond the listings to determine whether a child is disabled and conduct an individualized assessment of the child's ability to function that would be parallel to the individualized assessment that is made of an adult disability claimant to determine whether he can work. See 493 U.S. at 536 ("The child-

disability regulations are simply inconsistent with the statutory standard of 'comparable severity.'"); accord *id.* at 536, 539, 541. In contrast, the 1996 amendment revised the statutory text so that it no longer contains that language. Instead, the current version of the Act directs the Commissioner to consider the functional limitations of the child claimant. See 42 U.S.C. 1382c(a)(3)(C)(i) (child may be found disabled based upon "a medically determinable physical or mental impairment, which results in marked and severe functional limitations"). The 1996 amendment also bared the Commission from applying the regulations providing for an individualized functional assessment of the child in order to comply with the decision in *Zebley*. See p. 9, *supra*.

Moreover, this Court stated in *Zebley* that the child disability regulations would have complied with even the pre-1996 statute so long as "children were given the same level of individualized consideration as adults." Pet. App. 17a n.3 (citing *Zebley*, 493 U.S. at 535 n.16). As the court of appeals explained, the Commissioner's current regulations satisfy that standard. Under the current regulations, a child disability claimant whose impairment does not "meet[] or medically equal[] the severity of a set of criteria for an impairment in the listings" may still obtain disability benefits by establishing that his level of impairment "functionally equals the listings." 20 C.F.R. 416.924(d). By "analyz[ing] the effect of the impairments on the specific child claimant," Pet. App. 17a n.3, the Commissioner provides the "individualized, functional approach" that this Court described in

Zebley, 493 U.S. at 539, albeit in a different way after the 1996 amendments.[3]

Third, the decision of the court of appeals is correct. As the court of appeals explained, Congress's instruction that the Commissioner shall consider "the combined impact of" multiple impairments "throughout the disability determination process" (42 U.S.C. 1382c(a)(3)(G)), "must * * * be measured with reference to the 'process' the Commissioner has created." Pet. App. 16a. "[T]he final step of the process as the Commissioner has defined it" involves assessing the extent of a child claimant's impairment or combination of impairments in six functional "domains" for purposes of determining whether the child has a "marked" limitation in at least two domains or an "extreme" limitation in at least one domain. *Id.* at 17a; see 20 C.F.R. 416.924a(b)(4) 416.926(d). The current regulations expressly recognize that a given impairment "may have effects in more than one domain" and require consideration of "[t]he interactive and cumulative effects of * * * multiple impairments" within a single domain. 20 C.F.R. 416.926a(c) (emphasis deleted). The Commissioner's process thus "complies with the statutory language by mandating consideration of

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[3] Petitioners also note (Pet. 18) that the *Zebley* Court gave an example of "a child claimant with Down's syndrome * * *, skeletal deformity, and cardiovascular and digestive problems." 493 U.S. at 531 n.10. But as the Court made clear, the purpose of that example was to illustrate that, under the then-existing regulations, a child claimant with multiple impairments "would have to fulfill the criteria for whichever *single* listing his condition most resembled." *Ibid*. (emphasis added). That is not the case under the Commissioner's current regulations. See 20 C.F.R. 416.926a(d) ("We will not compare your functioning to the requirements of any specific listing.").

the combined impact of all impairments within each domain that the impairments affect." Pet. App. 17a.[4]

The challenged policy also is consistent with "congressional purpose[] and practical considerations." Pet. App. 19a. As the court of appeals explained, the Commissioner has reasonably concluded that "adjust[ing] limitations in one domain based on limitations in another domain" would be inconsistent with the legislative history of the 1996 amendments, which indicates that Congress intended to limit benefits to children who had at least two "marked limitations within particular domains," and "would be too close to the [prior Individualized Functional Assessment] process" that Congress specifically barred the Commissioner from using. *Id.* at 18a.

Petitioners and their amici insist that children who have limitations in multiple domains that do not rise to the level of "marked" or "extreme" limitations "may be as disabled, or even more disabled, than others who have been found eligible for SSI benefits under the [Commissioner's] policies." Children's Defense Fund (CDF) Amicus Br. 6; see Pet. 20; Empire Justice Center Amicus Br. 5. But that is a factual assertion, and, as the court of appeals noted, the declaration that petitioners submitted at the summary judgment stage failed to identify any "actual children who [were] adversely af-

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[4] The same is true of the various regulations that petitioners cite that refer to considering "the combined impact of the impairments * * * throughout the disability determination process." 20 C.F.R. 416.923; see Pet. 12 (also citing 20 C.F.R. 416.924(a), 416.924a(a) and (b)(4)). As with the Act itself, petitioners identify no regulation suggesting that "the disability determination process" extends past the point at which the agency has determined whether a claimant has at least one "extreme" limitation or two or more "marked" limitations.

fected by" the challenged policy. Pet. App. 20a; see *id.* at 27a (district court describing evidence that was submitted at the summary judgment stage). Although petitioners and their amici attempt to rectify that problem by offering particular examples, see Pet. 20-21; Empire Justice Center Amicus Br. 15-18, the petition for a writ of certiorari stage is not the appropriate forum for raising such issues.

In any event, even if petitioners had properly identified actual instances that supported their contentions concerning an imperfect regulatory fit, that still would provide no warrant for invalidating the Commissioner's approach. "Virtually *every* legal (or other) rule has imperfect applications in particular circumstances," because "[t]o generalize is to be imprecise." *Barnhart* v. *Thomas*, 540 U.S. 20, 29 (2003). This Court has recognized the "staggering" nature of the task the Commissioner faces "in applying the disability benefits provisions of the Social Security Act," *ibid.* (citation omitted), and that the resulting system both "must be fair—*and* it must work." *Richardson* v. *Perales*, 402 U.S. 389, 399 (1971) (citation omitted; emphasis added). As the court of appeals explained, although petitioners "do not challenge the Commissioner's use of the domains to determine functional equivalence"—and indeed the text and legislative history expressly contemplate the use of the domains which incorporate the concept of "marked" impairments, see 42 U.S.C. 1382c(a)(3)(C)(i); H.R. Conf. Rep. No. 725, *supra*, at 328—they have "offer[ed] nothing in the way of an alternative system that would satisfy the statute and be efficiently administered, using the domains." Pet. App. 18a-19a; see *Federal Express Corp.* v. *Holowecki*, 552 U.S. 389, 401-402 (2008) (deferring to an agency's preferred approach where the only

alternative proposed by the parties "f[ell] short" in accomplishing the goals of establishing a workable system and where "[n]o clearer alternatives [were] within [the Court's] authority or expertise to adopt").[5]

The record also refutes the contentions of petitioners and their amici that the Commissioner's regulations fail to reflect good medical practice. See Pet. 19 n.5; CDF Am. Br. 14-16. The Commissioner developed both the child disability regulations in which the policy of functional equivalence was first adopted and the current regulations only after consulting with pediatricians, psychologists, and other pediatric specialists, as well as with individual advocates for children with disabilities with expertise in the SSI program. See 56 Fed. Reg. 5535 (1991), 65 Fed. Reg. 54,747 (2000). Accordingly, even assuming—as the court of appeals did—that the challenged policy need not be evaluated under the standards set forth in *Chevron U.S.A., Inc.* v. *NRDC*, 467 U.S. 837 (1984), or *Auer* v. *Robbins*, 519 U.S. 452 (1997),

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[5] Amicus Empire Justice Center notes (at 19) that the Commissioner's pre-1996 regulations granted adjudicators "flexibility to consider two moderate limitations as the equivalent of one marked [limitation], and more generally to consider all impairments—including mild or nonsevere limitations—in reaching a final determination." Empire Justice Center Amicus Br. 19 (citing 20 C.F.R. 416.924e(a) (1994)). That regulation on which *amicus* relies, however, was one that Congress specifically directed the Commissioner to "discontinue" in its 1996 amendments to the SSI program. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 211(b)(2), 110 Stat. 2189 ("The Commissioner * * * shall discontinue the individualized functional assessment for children set forth in sections 416.924d and *416.924e* of title 20, Code of Federal Regulations.") (emphasis added). Unlike the regulations that governed the IFA process, the pre-1996 functional equivalence regulations provided adjudicators with no similar leeway. 20 C.F.R. 416.926a (1993).

the court of appeals correctly held that it is entitled to deference under *Skidmore* v. *Swift & Co.*, 323 U.S. 134 (1944).[6]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[6] The Commissioner's interpretation of the child disability provisions is entitled to deference under both *Chevron* and *Auer*. Congress has given the Commissioner "exceptionally broad authority to prescribe standards for applying certain sections of" the Social Security Act, *Schweiker* v. *Gray Panthers*, 453 U.S. 34, 43 (1981), including those at issue in this case. See p. 2, *supra*. Whether the Commissioner should consider limitations that manifest in one domain in evaluating the extent of a claimant's impairment in another domain squarely implicates the Commissioner's considerable expertise, and involves precisely the sort of "interstitial * * * legal question" for which deference is appropriate. *Barnhart* v. *Walton*, 535 U.S. 212, 222 (2002). Petitioners also "do not contend that the Commissioner has waffled in his interpretation of the statute or regulations; rather, his interpretation has been consistent since the agency implemented the 1996 amendments." Pet. App. 20a; see *Walton*, 535 U.S. at 222 (citing "the careful consideration the Agency has given the question over a long period of time" as a factor counting in favor of deference).

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