

In the  
**Supreme Court of the United States**

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ANDREW M. SAUL,  
COMMISSIONER OF SOCIAL SECURITY,  
*Petitioner,*

v.

JOYCE RAMSEY, ET AL.,  
*Respondents.*

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**On Petition for a Writ of Certiorari  
to the United States Court of Appeals for the Sixth Circuit**

—◆—  
**RESPONDENTS' BRIEF IN OPPOSITION**  
—◆—

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April 26, 2021

## QUESTION PRESENTED

Whether a claimant seeking disability benefits or supplemental security income under the Social Security Act must exhaust an Appointments Clause challenge with the administrative law judge whose appointment the claimant is challenging in order to obtain judicial review of that challenge.

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## PARTIES TO THE PROCEEDING

The caption of this brief-in-opposition identifies all the parties to this proceeding, except as follows.

Besides Joyce Ramsey, the Respondents here include:

- Joseph Fortin;
- Michael Shoops;
- Anthony Hutchins;
- Vicky Harris; and
- Susan Flack.

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## STATEMENT

Respondents Joyce Ramsey, Joseph Fortin, Michael Shoops, Anthony Hutchins, Vicky Harris, and Susan Flack respectfully ask the Court to deny the Commissioner of Social Security's petition for a writ of certiorari—a disposition consistent with the Court's April 22, 2021 judgment and opinion in *Carr v. Saul*, No. 19-1442 (U.S.), *together with Davis v. Saul*, No. 20-105 (U.S.).

1. Respondents are Social Security claimants. Pet. App. 2a.
2. In each Respondent’s case, the Social Security Administration (SSA) denied benefits. Pet. App. 2a. An SSA administrative law judge (ALJ) then upheld this denial of benefits and the SSA Appeals Council denied review. *Id.*
3. Respondents sought judicial review in each of their cases under 42 U.S.C. § 405(g). Pet. App. 2a. During these proceedings, Respondents each “raise[d] an issue they had not raised during the [SSA] administrative hearing process—an Appointments Clause challenge to the [SSA] ALJs’ appointments.” *Id.*
4. The SSA Commissioner “did not contest the merits” of Respondents’ Appointments Clause challenges. Pet. App. 3a. The Commissioner instead argued that Respondents had “forfeited review of the issue because they failed to raise it during their [SSA] administrative hearings.” *Id.*
5. The district courts in each of Respondents’ cases “agreed with the [SSA] Commissioner that the Appointments Clause challenges were forfeited and affirmed the [SSA’s] denial of benefits on the merits.” Pet. App. 3a.
6. On September 1, 2020, the Sixth Circuit reversed. Pet. App. 19a.
7. The Sixth Circuit “agree[d]” with Respondents that the non-presentation of Appointments Clause challenges during their SSA proceedings did “not foreclose” Respondents’ ability “to seek judicial review” of such challenges. Pet. App. 17a. The Sixth Circuit reached this conclusion “[b]ecause both the characteristics of th[e] . . . [SSA] administrative scheme” and the “nature” of Appointments Clause challenges “weigh against implying an exhaustion requirement.” *Id.*

8. The Sixth Circuit “vacate[d]” the district courts’ judgments and “remand[ed]” Respondents’ cases “for new hearings before [SSA] ALJs other than the ALJs who presided over [Respondents’] original hearings.” Pet. App. 19a.

9. The SSA Commissioner sought—and was granted—a stay of the Sixth Circuit’s mandate to allow time to file a certiorari petition.

10. While Respondents’ cases were pending before the Sixth Circuit, two other cases presenting the same SSA issue-exhaustion issue as Respondents’ cases made their way to this Court: *Carr v. Saul*, No. 19-1442 (U.S.) and *Davis v. Saul*, No. 20-315 (U.S.). On November 9, 2020, the Court granted consolidated review in *Carr* and *Davis*, and then heard oral argument on March 3, 2021.

11. On January 29, 2021, the SSA Commissioner petitioned for a writ of certiorari in Respondents’ cases, seeking review of the SSA issue-exhaustion issue decided by the Sixth Circuit. *See* Pet. I. The Commissioner asked the Court to “hold [this] petition for a writ of certiorari . . . pending [the Court’s] decision in *Carr v. Saul*, No. 19-1442 . . . and *Davis v. Saul*, No. 20-105 . . . and then dispose of the petition as appropriate in light of its decision in those cases.” Pet. 7.

12. On March 25, 2021, the Court requested a response, due April 26, 2021.

13. On April 22, 2021, the Court decided *Carr* and *Davis*.

14. The Court unanimously held that it is “err[or]” to “impose[] an [SSA] issue-exhaustion requirement” on Social Security claimants’ “Appointments Clause claims.” *Carr v. Saul*, No. 19-1442, slip op. at 12 (U.S. Apr. 22, 2021), *with Davis v. Saul*, No. 20-105 (U.S.). The Court reached this holding because “the inquisitorial

features of SSA ALJ proceedings, the constitutional character of . . . [Appointments Clause] claims, and the unavailability of any remedy make clear that adversarial development of the Appointments Clause issue simply did not exist (and could not exist)” in SSA ALJ proceedings. *Id.* (citation and punctuation omitted).

15. The Court’s decision in *Carr* and *Davis* fully affirms the Sixth Circuit’s disposition of Respondents’ cases, thus requiring denial of the SSA Commissioner’s certiorari petition here. *Cf., e.g., SEC v. Bandimere*, 138 S. Ct. 2706 (June 28, 2018) (denying SEC certiorari petition after question raised by this petition was resolved against the SEC in *Lucia v. SEC*, 138 S. Ct. 2044 (June 21, 2018)).

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## CONCLUSION

The SSA Commissioner’s petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: April 26, 2021