UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Daniel Patrick Moynihan U.S Courthouse
500 Pearl Street, New York, NY 10007
tel.: (212) 805-0136
https://www.nysd.uscourts.gov/

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SDNY PRO SE OFFICE
2024 DEC 16 P 1:27

Docket No. 24 Cv 9778 Jury trial requested

Appellant/Plaintiff

Dr. Richard Cordero, Esq.

-vs-

Respondents/defendants in their official and individual capacities (see identifying information on page SDNY:5§D below)

1A. The Secretary of Health and Human Services (HHS);
the respective directors/heads/top officers of:

2A. the HHS Departmental Appeals Board

3A. the HHS Medicare Operations Division

4A. the HHS Medicare Appeals Council

5A. the Office of Medicare Hearings and Appeals (OMHA) Headquarters

6A. the OMHA Centralized Docketing

7A. David Eng, Esq.; 8A. John Colter; 9A. Jon Dorman; 10A. Dr. Sherese Warren; 11A. Erin Brown; 12A. Andrenna Taylor Jones; 13A. James "Jim" Griepentrog;

14A. ALJ Dean Yanohira and 15A. Legal Assistant Deniese Elosh, both in OMHA Phoenix Field Office, AZ

16A. ALJ Loranzo Fleming, OMHA Atlanta Field Office, GA

1B. Health Insurance Plan of Greater New York (HIP);

2B. EmblemHealth;

3B. EmblemHealth President and CEO Karen Ignagni;

4B. the Director of EmblemHealth Grievance and Appeals Department

HIP and/or EmblemHealth officers:

5B. Sean Hillegass; 6B. Stephanie Macialek; 7B. Melissa Cipolla. 8B. Shelly Bergstrom; 9B. Dr. Sandra Rivera-Luciano,

10B. The Director of EmblemHealth Quality Risk Management Department

COMPLAINT
and
appeal
from the final decision
of
Medicare Appeals
Council
No. M-23-386;
M-23-2791,
M-23-3216, and
M-23-32151; and

OMHA Appeal No.
3-108 1720 5455

Medicare Id. #
8G24-KQ8-WV67

ECAPE Id. E1021112;

EmblemHealth Id. #
K405 191 5001

Health Insurance Plan of Greater Newy York (HIP) and EmblemHealth cases 1063 8576 et al.
and
motions for default judgment,
judgment on the pleadings,
and summary judgment

[1] The Council stated in its decision that it has consolidated these M-# cases under M-23-386.

11B. Maximus Federal Services

12B. The President of Maximus Federal Services

13B. The CEO of Maximus Federal Services

14B. The Director of the Medical Managed Care & PACE Reconsideration Project at Maximus Federal Services

15B. John Doe and Jane Doe, who are employees in the OMHA Phoenix and Atlanta Offices and/or in the HHS Departments and offices who participated in the coordinated disregard of Plaintiff's phone calls, voice mail, and over 11,000 emails for two years, and in filing a complaint with the Federal Protective Services against Plaintiff for alleged threatening behavior

16B. John Doe and Jane Doe, who are EmblemHealth officers who interacted or failed to interact with EmblemHealth employees in The Philippines and the U.S., to Plaintiff's detriment

Table of Contents

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A. The court's basis of jurisdiction

1. This court has jurisdiction under 28 U.S.C. §1331 to determine the federal questions of this case involving the Social Security Act, in general, and its Medicare provisions, in particular; as well as the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq.

2. This is an appeal from the decision of the Medicare Appeals Council [hereinafter the Council]. In its decision, the Council informs appellant Dr. Richard Cordero, Esq. (herein also plaintiff and referred to as Plaintiff) of his right under 42 U.S.C. §1395w-22(g)(5), which he is exercising in this action. It provides that : [See at SDNY:111 infra complaint as amended.]

DEPARTMENT OF HEALTH & HUMAN SERVICES Office of the Secretary

Departmental Appeals Board, MS 6127
Medicare Appeals Council
330 Independence Avenue
Cohen Building, Room G-644
Washington, DC 20201
(202)565-0100/Toll Free:1-866-365-8204

Docket Numbers: M-23-386, M-23-2791, M-23-3215
OMHA Appeal Number: 3-10817205455

Dr. Richard Cordero, Esq.
2165 Bruckner Blvd.
Bronx, NY 10472-6506

Health Insurance Plan of Greater New York; EmblemHealth Grievance and Appeal Dept.
Attn: Stefanie Macialek
P.O. Box 2807
New York, NY 10116

NOTICE OF DECISION OF MEDICARE APPEALS COUNCIL

What This Notice Means

Enclosed is a copy of the decision of the Medicare Appeals Council. If you have any questions, you may contact the Centers for Medicare & Medicaid Services regional office or the local Medicare contractor.

Your Right to Court Review

If you desire court review of the Council's decision and the amount in controversy is $1,840 or more, you may commence a civil action by filing a complaint in the United States District Court for the judicial district in which you reside or have your principal place of business. *See* § 1852(g)(5) of the Social Security Act, 42 U.S.C. § 1395w-22(g)(5). The complaint must be filed within sixty days after the date this letter is received. 42 C.F.R. § 405.1130. It will be presumed that this letter is received within five days after the date shown above unless a reasonable showing to the contrary is made. 42 C.F.R. § 405.1136(c)(2).

If you cannot file your complaint within sixty days, you may ask the Council to extend the time in which you may begin a civil action. However, the Council will only extend the time if you provide a good reason for not meeting the deadline. Your reason must be set forth clearly in your request. 42 C.F.R. § 405.1134.

If a civil action is commenced, the complaint should name the Secretary of Health and Human Services as the defendant and should include the Council's docket number and ALJ appeal number shown at the top of this notice. 42 C.F.R. § 405.1136(d). The Secretary must be served by sending a copy of the summons and complaint by registered or certified mail to the General Counsel, Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, D.C. 20201. In addition, you must serve the United States Attorney for the district in which you file your complaint and the Attorney General of the United States. *See* rules 4(c) and (i) of the Federal Rules of Civil Procedure and 45 C.F.R. § 4.1. You must also notify the other party of your appeal pursuant to section 1852(g)(5) of the Social Security Act.

This notice and enclosed order were mailed on October 17, 2024.

Enclosure

cc: MAXIMUS

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DEPARTMENTAL APPEALS BOARD
Medicare Appeals Council
Docket Nos. M-23-386 & M-23-2791 & M-23-3216

R.C., Appellant
OMHA Appeal No. 3-10817205455

DECISION

The Administrative Law Judge (ALJ) issued a decision dated August 24, 2022, concerning the appellant-enrollee's (appellant's) request for pre-authorization to the Medicare Advantage (MA) plan (Plan) to cover dental services, specifically: a guided tissue regeneration compression (D4267), surgical placement of implant body: endosteal implant (D6010), custom fabricated abutment (D6057), abutment supported case metal crown (D6202), implant supported porcelain/ceramic crown (D6065), and an implant supported crown (D6066). The ALJ determined the Plan did not have to preauthorize coverage because the services were not covered under original Medicare or the Plan's supplemental benefits.

The appellant has filed a request for review, seeking Medicare Appeals Council (Council) review of the ALJ's decision. The Council notes that the appellant filed a supplemental brief three times, and each was docketed separately under M-23-386, M-23-2791, and M-23-3216. We admit the request for review, filed on a DAB-101 form, the initial memorandum and filings (including exhibits), and the additional submissions (including exhibits) filed under each docket number collectively into the record as Exhibit (Exh.) MAC-1. We also enter the Council's interim correspondence and the appellant's supplemental brief (including exhibits) into the record as Exh. MAC-2 and Exh. MAC-3, respectively. Additionally, the appellant's memorandum in support of the request for review and supplemental brief include new evidence including procedural documents, emails, and Plan grievance correspondence. We accept and consider the documents submitted by the appellant because Part C cases do not require a determination of good cause for the introduction of new evidence. *See* 42 C.F.R. § 422.562(d)(2)(vi). Lastly, we administratively close M-23-2791 and M-23-3216 as duplicative appeals and address the appellant's request for review in the instant action under M-23-386.

The Medicare Part C regulation at 42 C.F.R. § 422.608 provides that the procedural regulations in 42 C.F.R. Part 405, subpart I, apply to Medicare Part C appeals to the extent that they are appropriate, except as provided in § 422.562(d)(2). The Council reviews the ALJ's action *de novo*. 42 C.F.R. §§ 405.1100, 405.1108.

For the reasons set forth below, the Council adopts the ALJ's decision.

DISCUSSION

We conclude that the Plan is not required to cover the dental services because the services are not covered under original Medicare or the Plan's supplemental dental benefits as outlined in its Evidence of Coverage (EOC). *See* File 2 at 56–125 (2021 EOC, Chapter 4, Benefits Chart); *see also* File 2 at 575–611 (Plan Office Reference Manual, Exh. E, Chart of covered dental codes).

In this case, the appellant submitted a request to their Plan for pre-authorization for coverage of the dental services at issue, and on December 12, 2021, the appellant was informed that the Plan would not cover the requested services. File 1 at 12–15. At all levels of appeal, the appellant's request for coverage has remained denied because the services are not covered under original Medicare or the Plan's supplemental benefits. *Id.* at 19–20; File 5 at 4–5; Decision (Dec.) at 8–9.

Before the Counsel, the appellant makes numerous arguments. Exhs. MAC-1, MAC-3. Notably, the appellant presents no argument that the dental services requested are covered by Medicare or the Plan. *See id.* Rather, the appellant asserts that the ALJ was bias against him resulting in an abuse of power, obstruction of justice, and violation of the appellant's right to due process. Exh. MAC-1. The appellant also asserts that the Plan improperly addressed their claim and failed to address their multiple grievances regarding the claim. *Id.* Further, the appellant contends that the Plan and Independent Review Entity (IRE) worked together to deny the appellant the information they needed to appeal the denial of the claim to the Office of Medicare Hearings and Appeals (OMHA). *Id.* The appellant also contends that the ALJ initially assigned to the appeal engaged in an abuse of power and violated the appellant's right to due process when denying the appellant's motion to recuse. *Id.* The appellant further contends that OMHA staff hindered the appellant's ability to receive a copy of the record and to file a motion to recuse/disqualify the second ALJ assigned to the matter. *Id.* The appellant contends that the Council must consider the "totality of the circumstances," enter judgment against the Plan and the IRE, provide equitable relief, and award compensatory and punitive damages. *Id.* In the supplemental brief, the appellant further alleges that all levels of review delayed the appellant from receiving several records, ignored the correspondence between the appellant and all entities, and worked together to deny the claim. Exh. MAC-3. The appellant also seeks the production of withheld evidentiary material and for the Council to defer action until the appellant receives the withheld evidentiary materials and can submit additional briefing. *Id.*

The Council, like the ALJ, is bound by Medicare statutes and regulations. *See* 42 C.F.R. §§ 405.1063(a), 422.111. We emphasize that many of the issues raised, and remedies sought, fall outside the scope of our review and the Medicare claims appeals process.

Preliminary Matters

As a preliminary matter, the Council clarifies that the sole issue before us, in reviewing the ALJ's decision, is whether the Plan is required to cover the claim for the requested dental services. *See* 42 C.F.R. § 405.1032(a) (issues before the ALJ include all the issues "brought out in the initial determination, redetermination, or reconsideration that were not decided entirely in a party's favor"). We acknowledge the appellant's many contentions regarding the frustrations the appellant experienced when corresponding with the Plan, trying to obtain answers to their questions, misinformation, and poor customer service. Exh. MAC-1. However, these issues relate to "Disrespect, poor customer service, or other negative behaviors," "[i]nformation you get from us [the Plan]" and "[t]imeliness" and are addressed through the Plan's "complaint" or grievance process. *See* File 2 at 236–241 (EOC Ch. 9, § 11). A plan's grievance process handles any claim or dispute, other than one that constitutes an organization determination, expressing dissatisfaction with any aspect of the operations, activities, or behavior of a MA plan or provider. 42 C.F.R. § 422.561. As a result, grievance procedures are separate from appeals and must be filed with the Plan and not an ALJ or the Council. *See* 42 C.F.R. § 422.564. Because grievances do not provide a basis on which the Council can grant relief, the Council can only address whether the dental services at issue are covered.

Relatedly, the appellant asserts that the IRE, OMHA, and the Council either frustrated or failed to send the appellant the record when requested (often referred by the appellant as spoilation of evidence). Exhs. MAC-1, MAC-3. However, a review of the record demonstrates that the appellant did receive the record prior to the ALJ hearing and prior to their filings with the Counsel. *See* File 38 (appellant's response to the ALJ notice of hearing); Hearing CD (appellant acknowledging they received the documents on the exhibit list); Exh MAC-3 (supplemental brief of appellant that includes screen shot of files received on CD from the Council that correspond to the complete record before the Counsel).[1]

Further, the appellant seeks production of alleged withheld evidentiary material. Exh. MAC-3. The appellant argues that the record is missing correspondence (emails and phone recordings) between the appellant and staff from multiple entities, including the IRE, OMHA, and the Council related to receiving answers to his questions, receiving

[1] The Counsel acknowledges that the CD of the record provided to the appellant by the Council included two files ("MAC Access to Business Data" a "DMG File" and "dverm" an "EPM File") that the appellant was unable to open. *See* Exh. MAC-2. It appears those two files were inadvertently included on the CD and are not part of the record before the Council. The supplemental brief also indicates that the appellant does have the complete record on review. *Id.*

copies of the record, and frustration with the process. *Id.* The appellant also hypothesizes that there may be more than one version of the ALJ hearing. *Id.* As indicated above, the record demonstrates that the appellant did receive the complete record prior to the ALJ hearing and prior to their filings with the Counsel and all appeals were timely submitted. We also note that the appellant includes several correspondences not previously in the record with their initial memorandum and supplemental brief. *See* Exhs. MAC-1, MAC-3. More importantly, the appellant does not contend that these correspondences are material to whether the dental services at issue are covered by the Plan, the only issue before the ALJ and the Council. *See* 42 C.F.R. § 405.924 (identifying the specific issues that are adjudicated through the Medicare claims appeal process). We also note that there is no indication that more than one version of the ALJ hearing exists or that the ALJ hearing in the record is incomplete or altered. For this reason, we find no need to delay action by the Council to allow for possible additional immaterial correspondence to be added to the record.

Coverage of the Dental Services

An MA plan must provide all items and services that Medicare Part A and Part B cover ("original Medicare"). 42 C.F.R. § 422.101(a). Section 1862(a)(12) of the Social Security Act (Act) explicitly excludes coverage of services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth. Act § 1862(a)(12); *see also* 42 C.F.R. § 411.15(i). The only exception to the dental exclusion recognized by the Act is for hospital-related costs when a beneficiary is undergoing a dental procedure and is admitted to the hospital as an inpatient due to the complexity of the procedure or the beneficiary's underlying condition. *See* Act § 1862(a)(12); 42 C.F.R. § 411.5(i). In such circumstances, only the hospital-related costs are covered and not the dental services. Here, there is no indication the appellant was hospitalized as an inpatient when receiving the dental services, so this exception does not apply.

The Centers for Medicare & Medicaid Services (CMS) guidelines provide three additional exceptions. The Medicare Benefit Policy Manual (MBPM) issued by CMS details the first two exceptions. First, if an otherwise non-covered service is performed by a dentist as incident to and as an integral part of a covered procedure performed by the dentist, the total service is covered if both the dental service and covered procedure were performed at the same time. *See* MBPM, CMS Pub. 100-02, Ch. 15, § 150 (Rev.1, Effective Oct. 1, 2003). Second, Medicare will cover the extraction of teeth to prepare the jaw for radiation treatment of neoplastic disease. *See* MBPM, Ch. 16, § 140. A National Coverage Determination (NCD) details the third exception, which provides for coverage of an oral or dental examination performed on an inpatient basis as part of a comprehensive workup before renal transplant surgery. *See* Medicare NCD Manual, CMS Pub. 100-03, Ch. 1, § 260.6. In this case, the appellant does not contend, nor do we find, that the dental services at issue fall within the scope of one of these three

exceptions. Therefore, none of Medicare's limited exceptions apply in this case, and the appellant's requested dental services are not covered under original Medicare.

Nevertheless, a Plan may offer supplemental benefits beyond those covered by original Medicare. 42 C.F.R. § 422.102. In this case, the Plan offers a benefit that exceeds the benefit provided by Medicare. For the appellant's plan, the 2021 Evidence of Coverage (EOC) provides supplemental dental services. File 2 at 68-70 (2021 EOC, Chapter 4, Medical Benefits Chart for Dental Services), File 2 at 575–611 (Plan Office Reference Manual, Exh. E, Chart of covered dental codes). The Plan, as outlined in its 2021 EOC, provides coverage for certain dental services beyond what is covered by original Medicare, and lists those covered services. *See* File 2 at 68-70. The EOC further provides that:

> We cover the following services when medically necessary and based on the benefit limitations and clinical criteria described in the DentaQuest Office Manager Reference manual (ORM) found online at http:www.dentaquest.com/state-plans/regions/newyork/dentist-page/.

Id. at 68. The ORM includes exhibits that identify the specific codes that may be covered by the Plan, and the codes for the requested services (D4267), (D6010), (D6057), (D6202), (D6065), and D6066) are not on the list. *Id.* at 575–611. Therefore, as the codes are not listed as a covered dental service in the Plan's 2021 EOC and ORM, the Plan is not required to cover the requested service under its supplemental benefits.

We recognize the appellant's additional arguments in the memorandum in support of their request for review and supplemental brief, but they do not form a basis upon which we can order the Plan to cover the services. Exhs. MAC-1, MAC-3. The appellant contends that the ALJ and lower levels of review worked together to deny coverage and the ALJ was biased. *Id.* The ALJ, as did the lower levels of review, identified the proper issue on review - were the requested services covered by the Plan? *See* File 1 at 20; File 5 at 5; Dec. at 9. The appellant concedes the same issue was addressed by each level of review but argues reliance on Medicare rules and regulations were only "conjured up" when it became apparent that the appellant was not going to be worn down, constituted an "unfair surprise," and are used as "props" to hide illegal and abusive refusals to pay claims. Exh. MAC-1. Contrary to appellant's assertion, the ALJ, like the Council, is bound by Medicare statutes and regulations. *See* 42 C.F.R. §§ 405.1063(a), 422.111.

Nor do we find any indication of bias, lack of due process or abuse of process. We acknowledge that the ALJ failed to address the appellant's motion to recuse or disqualify the ALJ that was submitted by the appellant after the hearing was conducted. *See* File 48 at 1 (motion to recuse or disqualify); Dec. However, that motion was untimely. *See* 42 C.F.R. § 405.1026(b) (requiring the party objecting to the ALJ notify the ALJ within 10 calendar days of the date of the notice of hearing). Further, at the ALJ hearing, the ALJ

clearly set forth the issue on appeal and allowed the appellant ample time to present their arguments. In the decision, the ALJ accurately set forth the facts and issue, and addressed the appellant's arguments in determining that the Plan was not required to cover the services. *See* Dec.; *see also* 42 C.F.R. § 405.1046 (requiring the ALJ issue a written decision that gives the findings of fact, conclusions of law, and the specific reasons for the determination). Moreover, in reaching our decision, the Council has conducted a *de novo* review of the entire administrative record. 42 C.F.R. §§ 405.1100, 405.1108.

We also acknowledge the appellant's argument that the ALJ failed to provide a requested copy of the record. Exh. MAC-1. An ALJ is required to provide a party with a copy of the record when requested. *See* 42 C.F.R. § 405.1042. We find the ALJ's error to be harmless, however, because the Council provided the appellant with a copy of the record and an opportunity to present additional argument. *See* Exh. MAC-3.

Further, as to bias and abuse of process, the appellant contends that the ALJ originally assigned to the matter "rubberstamped" the initial denial of the appellant's motion to recuse that ALJ. Exh. MAC-1. The appellant filed a motion to recuse the ALJ first assigned to this matter. File 13 at 2. That motion was initially denied. File 26 at 1. However, due to "recent events" following the denial of the motion, the ALJ withdrew from the appeal. File 37 at 1.[2] The original ALJ had no further activity in the case and was not involved the denial of the appeal. *See* Dec. Thus, the Counsel finds no bias or abuse of process based on the initial ALJ's denial of the appellant's first motion to recuse.

Lastly, the appellant seeks equitable relief as well as compensatory and punitive damages based on 'the totality of the circumstances.' Exhs. MAC-1, MAC-3. However, neither the Council nor other decision makers in the claims appeal process have jurisdiction to award compensatory or punitive damages or to award any other type of equitable relief. *See* 42 C.F.R. §§ 405.1063(a), 405.1128; 405 C.F.R. §§ 422.578, 422.592.

It is clear that the appellant is frustrated with the process they have gone through in attempting to have the Plan cover the dental services at issue. *See* Exh. MAC-1, MAC-3; Hearing CD. However, as set forth in all lower levels of review, at the ALJ hearing, and above, the sole issue before us is whether the Plan is required to cover the claims for the requested dental services. As discussed above, we find that there is no legal or factual basis upon which we can order the Plan to cover the dental services at issue.

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[2] The record demonstrates that the Legal Assistant to the initial ALJ filed a complaint against the appellant with Federal Protective Services following multiple conversations with the appellant and their belief that the appellant was harassing them. File 13 at 3. In initially denying the motion to recuse, the ALJ noted that they did not have any communication, interaction or dealing with the appellant that would cause bias or prejudice against them, thus, the motion was denied. File 26 at 1. When later withdrawing from the matter, the ALJ did not specify what "recent events" led the ALJ to withdraw. File 37 at 1.

DECISION

The Council administratively closes M-23-2791 and M-23-3216 because they are duplicative of M-23-386. In M-23-386, the Council adopts the ALJ decision. For the reasons discussed above, the Council finds that there is no legal basis under original Medicare or in the EOC to require the Plan to authorize coverage for the requested dental services. Therefore, the Council adopts the ALJ's decision.

MEDICARE APPEALS COUNCIL

Vanessa M. Hunte

Vanessa M. Hunte
Administrative Appeals Judge

Date: October 17, 2024

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RECEIVED
SDNY PRO SE OFFICE
2024 DEC 16 PM 4:30

Dr. Richard Cordero, Esq.

(full name of the plaintiff or petitioner applying (each person must submit a separate application))

-against-

_____ CV _____ ( ) ( )

(Provide docket number, if available; if filing this with your complaint, you will not yet have a docket number.)

The Secretary of Health & Human Services; Health Insurance Plan of Greater NY EmblemHealth, its Grievance &Appeals Dept, its Supervisor Sean Hillegass; Maximus Federal Services; Legal Assistant Denise Elosh and ALJ Dean Yanohira, OMHA Phoenix Field Office, AZ; ALJ Loranzo Fleming, OMHA Atlanta Field Office, GA; John Doe and Jane Doe, who are employees in the OMHA Phoenix and Atlanta Offices and the HHS who participated in the coordinated disregard of plaintiff's phone calls, voice mail, and over 11,000 emails, and in filing a complaint against plaintiff with the Federal Protective Services; John Doe and Jane Doe, who are Emblem officers who interacted or failed to interact with Emblem employees in The Philippines and in the U.S. to plaintiff's detriment.

APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS

I am a plaintiff/petitioner in this case and declare that I am unable to pay the costs of these proceedings and I believe that I am entitled to the relief requested in this action. In support of this application to proceed *in forma pauperis* (IFP) (without prepaying fees or costs), I declare that the responses below are true: who are EmblemHealth officers who interacted or failed to interact with EmblemHealth employees in The Philippines and

1. *Are you incarcerated?* ☐ Yes ☒ No (If "No," go to Question 2.)
   I am being held at: _____

   Do you receive any payment from this institution? ☐ Yes ☒ No

   Monthly amount: _____

   If I am a prisoner, *see* 28 U.S.C. § 1915(h), I have attached to this document a "Prisoner Authorization" directing the facility where I am incarcerated to deduct the filing fee from my account in installments and to send to the Court certified copies of my account statements for the past six months. *See* 28 U.S.C. § 1915(a)(2), (b). I understand that this means that I will be required to pay the full filing fee.

2. Are you presently employed? ☐ Yes ☒ No

   If "yes," my employer's name and address are:

   Gross monthly pay or wages: _____

   If "no," what was your last date of employment? _____

   Gross monthly wages at the time: _____

3. In addition to your income stated above (which you should not repeat here), have you or anyone else living at the same residence as you received more than $200 in the past 12 months from any of the following sources? Check all that apply.

   (a) Business, profession, or other self-employment ☒ Yes ☐ No
   (b) Rent payments, interest, or dividends ☐ Yes ☒ No

(c) Pension, annuity, or life insurance payments	☐ Yes	☒ No
(d) Disability or worker's compensation payments	☐ Yes	☒ No
(e) Gifts or inheritances	☐ Yes	☒ No
(f) Any other public benefits (unemployment, social security, food stamps, veteran's, etc.)	☒ Yes	☐ No
(g) Any other sources	☒ Yes	☐ No

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

EBT $292 per month; and HealthFirst Medicare Advantage Health Insurance Plan for Dual Medicare and Medicaid beneficiary allowance of $575 every three months.

If you answered "No" to all of the questions above, explain how you are paying your expenses:

4. How much money do you have in cash or in a checking, savings, or inmate account?

In cash $41; checking account $7,629; savings account $15,996.

5. Do you own any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value, including any item of value held in someone else's name? If so, describe the property and its approximate value:

I do not have anything of the above, except that I share with my siblings ownership of a home in Puerto Rico, which is occupied by my sister and her family. We do not know the value of this home, built over 65 years ago.

6. Do you have any housing, transportation, utilities, or loan payments, or other regular monthly expenses? If so, describe and provide the amount of the monthly expense:

My monthly rent is $500; groceries and household products $215; electricity $65; telephone and Internet services $47; transportation $41= $868 per month

7. List all people who are dependent on you for support, your relationship with each person, and how much you contribute to their support (only provide initials for minors under 18):

None

8. Do you have any debts or financial obligations not described above? If so, describe the amounts owed and to whom they are payable:

$19,000 Educational loan owed to Mohela.

Declaration: I declare under penalty of perjury that the above information is true. I understand that a false statement may result in a dismissal of my claims.

16 December 2024	Dr. Richard Cordero, Esq.
Dated	Signature
Cordero, Richard	
Name (Last, First, MI)	Prison Identification # (if incarcerated)
2165 Bruckner Blvd	Bronx, NY City NY 10472-6506
Address	City State Zip Code
(718)827-9521	Dr.Richard.Cordero_Esq@verizon.net
Telephone Number	E-mail Address (if available)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO, ESQ.,

Plaintiff,

-against-

THE SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.,

Defendants.

24-CV-9778 (UA)

ORDER GRANTING IFP APPLICATION

LAURA TAYLOR SWAIN, Chief United States District Judge:

Leave to proceed in this Court without prepayment of fees is authorized. *See* 28 U.S.C. § 1915.

SO ORDERED.

Dated: January 28, 2025
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge

		(2) (other than through the ECF system) and file proof of service for each document so served. Please see Rule 9.2 of the courts ECF Rules & Instructions for further information.. (anc) (Entered: 12/26/2024)
01/13/2025	10	LETTER from Richard Cordero dated 1/12/2025 re: Request to remove mistaken filing of certificate from complaint and docket.. Document filed by Richard Cordero. (ar) (Entered: 01/15/2025)
01/28/2025	12	ORDER GRANTING IFP APPLICATION: Leave to proceed in this Court without prepayment of fees is authorized. 28 U.S.C. § 1915. SO ORDERED. (Signed by Judge Laura Taylor Swain on 1/28/2025) (ar) (Entered: 01/29/2025)
01/29/2025		NOTICE OF CASE REASSIGNMENT to Judge Jeannette A. Vargas. Judge Unassigned is no longer assigned to the case..(kgo) (Entered: 01/29/2025)
01/31/2025	13	ORDER OF SERVICE: The Court dismisses Plaintiff's claims against ALJs Yanohira and Fleming because they seek monetary relief against a defendant who is immune from such relief, 28 U.S.C. § 1915(e)(2)(B)(iii), and, consequently, as frivolous, 28 U.S.C. § 1915(e)(2)(B)(i). The Court dismisses Plaintiff's claims against the "directors/heads/top officers" of the HHS Department Appeals Board, the HHS Medicare Operations Division, the HHS Medicare Appeals Council, the Office of Medicare Hearings and Appeals ("OMHA") Headquarters, the OMHA Centralized Docketing, as well as HHS and OMHA employees David Eng, John Colter, Jon Dorman, Sherese Warren, Erin Brown, Andrenna Taylor Jones, James Griepentrog, and Denise Elosh, under the doctrine of sovereign immunity, see 28 U.S.C. § 1915(e)(2)(iii), and consequently, for lack of subject matter jurisdiction, see Fed. R. Civ. P. 12(h)(3).The Court dismisses Plaintiff's claims against the Health Insurance Plan of Greater New York, Karen Ignagni, the "Director of EmblemHealth Grievance and Appeals Department," Sean Hillegass, Stefanie Macialek, Melissa Cipolla, Shelly Bergstrom, Dr. Sandra Rivera-Luciano, the "Director of Quality Risk Management" at EmblemHealth, the President of Maximus Federal Services, the CEO of Maximus, and the Director of Medicare Managed Care & PACE Reconsideration Project at Maximus, for failure to state a claim on which relief may be granted. See 28 U.S.C. § 1915(e)(2)(B)(ii). The Court grants Plaintiff 30 days' leave to replead his claims against these defendants in an amended complaint. The Court grants Plaintiff's motion for permission to file documents electronically (ECF 6).The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).The Clerk of Court is directed to mail an information package to Plaintiff.SO ORDERED. Melissa Cipolla (Senior Specialist, Grievance and Appeals Department), John Colter (Supervisor of Legal Administrative Specialists), ALJ Dean Yanohira, Jon Dorman (Director), Denise Elosh (Legal Assisant), David Eng, Esq. (Lead Attorney Advisor), ALJ Loranzo Fleming, James "Jim" Griepentrog (Legal Administrative Specialist), HHS Department of Appeals Board, MS 6127 (The Director), Health Insurance Plan of Greater New York, Sean Hillegrass (Supervisor, Grievance and Appeals Department), Karen Ignagni (President and CEO), Stefanie Macialek (Specialist, Grievance and Appeals Department), Medicare Appeals Council (MAC), Medicare Operations Division - Departmental Appeals Board (The Director), OMHA Centralized Docketing (The Director), Office of Medicare Hearings and Appeals (OMHA) Headquarters (The Director), Sandra Rivera-Luciano (Medical Director), Andrenna Taylor Jones (Senior Attorney Advisor), The CEO, The Director, The Director, Quality Risk Management, The President, Sherese Warren (Director, Central Operations), Shelly Bergstrom (Quality Risk Management) and Erin Brown (Senior Legal Supervisor) terminated. Motions terminated: 6 MOTION for Permission for Richard Cordero to participate in electronic case filing in this case. filed by Richard Cordero. (Signed by Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Daniel Patrick Moynihan U.S Courthouse
500 Pearl Street, New York, NY 10007
tel.: (212) 805-0136
https://www.nysd.uscourts.gov/

Docket No. 24-cv-9778-JAV Jury trial requested

Dr. Richard Cordero, Esq. Appellant/Plaintiff -vs- The Secretary of Health and Human Services (HHS), Medicare; EmblemHealth; Maximus Federal Services; et al. Respondents/Defendants	**Motion for reconsideration of the order of service of 31 January 2025** **and** **other relief**

NOTICE OF MOTION

1. Plaintiff Dr. Richard Cordero, Esq., respectfully proceeds under **Local Civil Rule 6.3** to give notice of his motion for reconsideration of the order of service of the Honorable Judge Jeannette A. Vargas of the U.S. District Court, SDNY, of January 31, 2025. The motion will be entertained at the address stated in the letterhead above.

2. Plaintiff requests a hearing on this motion at a date and time that the Court may deem appropriate given that Defendants have not yet been served and the dismissal from this case of most of them on the initiative of the Court and their reinstatement are issues of this motion.

3. Plaintiff supports this motion upon the hereunder memorandum of law and his

complaint filed in this Court on 16 December 2024[1] together with the files incorporated in it by reference(SDNY:13§4).

4. The **relief requested** is the following:

   a. to have the order of service vacated;

   b. to reinstate the dismissed Defendants, have them served under 28 U.S.C. §1915, and, if not found that due to their failure to defend below they forfeited their right to defend here, let them plead their own case;

   c. to grant Plaintiff's motion for judgment by default or on the pleadings accompanying his complaint; otherwise, to let him have his day in court so that a jury may decide the issues at stake, e.g., whether it is 'malicious, in bad faith, or frivolous' for Plaintiff to expose and demand relief for the injury in fact caused him by Defendants' evasion of his healthcare coverage claims through their tactics of "delay, deny, defend" implemented to defraud millions of insureds who cannot defend themselves because they are old, sick, disabled, and lacking in legal knowledge; whether Defendants have coordinated such evasion, thus engaging in a pattern of fraudulent activity;

   d. to recognize that Plaintiff is proceeding in his own interest as an abusee and in the public interest by prosecuting a test case, thus validated by the public outrage at the abuse by healthcare insurers repeatedly expressed after the killing of UnitedHealthcare CEO Brian Thompson by Luigi Mangione in NYC

[1] References to that brief and to this motion follow this format: SDNY:page#section§alphanumericID or paragraph¶# or **fn**(footnote)#.

on 5 December 2024;- whereby Plaintiff deserves the Court's "solicitude" in the interest of the public and Justice;

e. to hold judicial and sovereign immunity unconstitutional or inapplicable and do so en banc; see *District Court en bancs* [2];

f. to remove the prejudicial deterrence to Plaintiff's appeal to the Court of Appeals by denying the IFP status already granted to him by Chief Judge Laura Taylor Swain;

g. to allow several supervisors of Defendant EmblemHealth listed on SDNY:12§3, namely, Susan S., Tamika Simpson, Thomas Gray, and the supervisor of their NY State Health Insurance Program (NY SHIP) to be included among the defendants and served under §1915; and

h. to be granted all other relief that the Court may deem proper and just.

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TABLE OF CONTENTS

[2] *District Court en bancs*, Professor Maggie Gardner, 90 Fordham Law Review 1541 (2022); https://fordhamlawreview.org/wp-content/uploads/2022/03/Gardner_March.pdf

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TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

STATUTES

RULES

CASES

ARTICLE

NEWS PUBLICATIONS

OTHER AUTHORITIES

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MEMORANDUM OF LAW

A. FRCP 11 authorizes Plaintiff to make the representations in his complaint

5. Federal Rule of Civil Procedure 11 authorizes Plaintiff to certify, as he does certify hereby, that:

> (b)to the best of the person's [my] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:…
>
> > (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
> >
> > (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

6. The fact that Plaintiff Dr. Cordero has charged as defendants administrative law judges and employees of the institutional defendants in their official and individual capacities does not justify their dismissal by the Court without their even been served, much less their answering, never mind having discovery. In fact, they failed to provide discovery in the administrative levels, as stated in the complaint. That should have raised concerns with the Court: They were hiding something; showing contempt for procedural requirements; and proceeding in bad faith.

7. There is no basis in law or practice for the implication flowing from those dismissals that under no circumstances can those people be charged civilly. For proof to the contrary there is *Caryn Strickland v. U.S; the Judicial Conference and*

the chair of its Committee on Judicial Resources; the Administrative Office of the U.S. Courts, its director, and its general counsel; the Court of Appeals for the 4th Circuit (CA4) and its chief judge; the Circuit Executive; et al., et al. (U.S. Court of Appeals for the Fourth Circuit (CA4) No. 21-1346). CA4 did not dismiss any of these entities or the defendants sued in their official and individual capacities. Far from it, the unheard of occurred: the whole bench of CA4 recused themselves! Thereupon, three circuit judges from other circuits were impaneled by designation.

8. In a unanimous decision, CA4 held, inter alia, that:

> Strickland's Fifth Amendment due process claim, to the extent it alleges a deprivation of Strickland's property rights, and to the extent it is asserted against the Official Capacity Defendants, is sufficient to survive the motions to dismiss;
>
> Strickland's Fifth Amendment equal protection claim, to the extent it is asserted against the Official Capacity Defendants, is sufficient to survive the motions to dismiss.
>
> Strickland's potential recovery on those claims against the Official Capacity Defendants is limited to prospective equitable relief.

9. FRCP 4(i) "Serving the United States and its Agencies, Corporations, Officers, or Employees" provides for such officers to be sued both in their official and individual capacities without requiring that any issue of sovereign or judicial immunity be first settled. There is no basis in law or in the rules for dismissal on the Court's own motion of all charges against any individual, whether a public or private officer, in both their individual and official capacities.

10. If this case is not disposed of by granting the motions for default judgment or

judgment on the pleadings in favor of Dr. Cordero, each defendant has to timely raise the issue of sovereign or judicial immunity, if entitled to it; otherwise, the defendant will be deemed to have waived any objection on that basis and consented to be sued.

11. If any issue of sovereign or judicial immunity is raised by any defendant, Dr. Cordero should be given the opportunity to respond, whether under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), to establish the suability of the defendant in his/her individual capacity; or to argue against any immunity at all, as outlined below.

12. By dismissing all individual and even some institutional defendants on its own motion even before they had been served, the Court acted biasedly as attorney for the defendants; deprived Dr. Cordero of access to judicial process; and denied him his Fifth Amendment due process and equal protection rights.

B. The complaint informed the defendants of the charges against them

13. FRCP 8 required Dr. Cordero to provide only "a short and plain statement of his claim" against the Defendants. He did. He also provided such statement in his repeated communications with them since he first stated his health insurance claim on September 8, 2021.

14. Almost all the Defendants have communicated with Dr. Cordero in recorded phone conversations, emails, and/or letters. Copies of them were collected by him in digital files and incorporated by reference in his complaint with their links(SDNY:13§4). The others are subject to respondeat superior accountability,

for the evidence shows that they acted in coordination from the top. This is a genuine issue of material fact for the jury to decide.

15. Those communications were created during Defendants' coordinated implementation of their claim evasive "delay" tactic and their subsequent "deny" tactic through the four levels of administrative appeal. Thereby Dr. Cordero exhausted his administrative remedies, hence this appeal for judicial review. Those communications informed each of the Defendants of his claims against them.

16. Additionally, whenever Dr. Cordero wrote an email to any officer, he placed it on top of the thread of emails that had led up to it. He included in the To: box of the email the email addresses of the officers whose addresses he had at the time. The number of those officers progressively grew to more than 30 (SDNY:17ft6).

17. As for the Medicare Appeals Board, it was required by law to decide Dr. Cordero's appeal from the ALJ decision in 90 days. It failed to do so. Dr. Cordero kept reminding it and the individual Defendants for two years of such failure and demanding a decision. By the time the Board issued a decision, he was emailing more than 30 officers daily and had sent them more than 11,500 emails!

18. They did not reply to any although duty-bound to as part of their service to an insured. The consistent failure to reply of so many officers for years could not have resulted from their coincidental handling of Plaintiff's daily emails asking for discovery and a decision, and charging them with abuse of power. It resulted from coordination by the top officers. FRCP 18-20 on joinder of parties and issues require that all be named as defendants. They can be found liable to monetary, equitable, declaratory, and other relief "deemed proper and just by the Court".

19. A tort principle provides that "People are deemed to intend the foreseeable consequences of their actions". Defendants intended the foreseeable consequences of their coordinated implementation of their "delay, delay, deny" tactics: to wear down Dr. Cordero and force him to abandon his claim.

20. Defendants deprived Dr. Cordero of his due process and equal protection rights, causing him permanent physical injury in fact. They proceeded maliciously and in bad faith.

21. That is how any Defendant would proceed who pretended that she did not know why she had been charged in the complaint. But if she did so, her remedy would be to raise a motion for a more definite statement under FRCP 12(e).

22. The complaint is the pleading where legal arguments are supposed **not** to be made. It is not the pleading for discussing a new action under the Federal Tort Claims Act. There is no justification for dismissing all the individual defendants and even some institutional ones because sovereign and judicial immunity, or *Bivens*, or other legal matters were not discussed. They were not supposed to.

C. A defender of the public interest deserves the Court's "solicitude"

23. Just as the courts help pro ses because they can hardly help themselves, this Court should help Dr. Cordero because he is helping them and millions of helpless insureds. That is why he deserves the "solicitude" of the Court.

24. If it is only the institutional private Defendants who have to bear the brunt of this lawsuit, why would the individual and public Defendants care to cease and desist from their 'frivolous, malicious, and in bad faith' "delay, deny, defend" claim

evasive tactics that are so profitable to them?

D. The denial of IFP status to appeal to the Court of Appeals

25. Chief Judge Laura Taylor Swain granted Plaintiff his IFP application after he had filed his complaint and, thus, after she had the opportunity to review his claims. There is no justification for this Court to strip him of IFP status to make the same claims to the Court of Appeals for the Second Circuit (CA2). The Court should not use its power to protect its own opinion from CA2 review by rendering an appeal financially too burdensome for Plaintiff to bear.

E. District court en bancs to strengthen judges and this case's public interest

26. Ever more frequently a solitary district judge is called upon to decide a challenge to yet another disregard by the Trump administration to, not only the rule of law and even the Constitution itself, but also a court order. This Court can take the lead in showing to the rest of the district courts and even the rest of the nation how a district judge who decides against the Trump Administration is not "a corrupt and biased so-called judge", but rather has the support of her/his fellow district judges.

27. An en banc decision by a district court[2] can strengthen a district judge's order substantially faster than an appeal to a circuit court. It can strengthen also the resolve of a district judge to dare order respect for the law to an administration that only has contempt for it, as expressed by Vice President JD Vance in his February 8 statement "Judges aren't allowed to control the executive's legitimate power".

28. En banc district court orders can be, not merely judges' turf-defending countermeasures to the administration's 'dismantling' its status as an equal branch of government to treat it as a mere subordinate agency. Rather, en banc orders can become a sincere expression of district and higher judges' respect for the law. They can lend vigorous support to the public interest nature of the instant case.

F. The unconstitutionality of the self-serving doctrine of judicial immunity

29. To that end, the judges must denounce the hypocrisy of chastising the Trump administration for its disrespect for the law and the Constitution while they apply the doctrine of judicial immunity that they have self-servingly concocted for themselves. Instead of judges claiming brazenly that they can with impunity be 'malicious and have evil motives when issuing an illegal order', this Court can take the lead in declaring that it and its fellow judges hold themselves, not immune to the law, but rather accountable and liable to it.

30. This Court can assert its sincere respect for the law and its moral right to demand that the Trump administration respect it too by causing this district court to declare en banc that the self-serving judicial immunity doctrine is unconstitutional.

1. The Declaration of Independence

31. The Declaration of Independence states "that all Men [and women] are created equal…". Judges, including administrative law judges (ALJ), have no right to recreate themselves as unequally superior.

32. That is so because, "All Men [and women]…"

> are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness—That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any Form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles.

33. *We the People* never consented to the arrogation by judges to themselves of a position that nobody is entitled to: Above the Law. The justification for the War of Independence so that the Thirteen Colonies could form the United States was the need to remove as their ruler tyrannical Kind George and establish "government of laws and not of men" (Constitution of the Commonwealth of Massachusetts of 1780, Article XXX.; https://malegislature.gov/laws/constitution.

34. When in support of independence our forefathers listed the "Train of Abuses and…History of repeated Injuries and Usurpations…to reduce [Men [and women]] under absolute Despotism", they placed at the top of the list this one:

> He [King George of Great-Britain] has refused his Assent to Laws, the most wholesome and necessary for the public Good.

35. Judges have no greater right than the King to 'refuse their "Assent to Laws"'. By pretending that they do have such right, they become lawless, as they have in practice. That has been exposed by *The Wall Street Journal* in its serial articles "

Hidden Interests"[3]; Thomson Reuters in its "The Teflon Robe"[4] series; and ProPublica in 'amici of the justices'[5] articles, for which it won the 2024 Pulitzer Prize for Public Service.

36. It is inimical to "the public Good…to reduce [Men [and women]] under absolute Despotism" that derives from judges' arbitrary and capricious self-immunization from the laws adopted by the representatives of *We the People* assembled in Congress.

2. The Preamble to the Constitution

37. The Preamble to the Constitution states its purpose: "*We the People* of the United States, in Order to form a more perfect Union, establish Justice…establish this Constitution for the United States". Such "Union" is disrupted and "Justice" is dismantled when sovereign power of *the People*, entrusted for its exercise on their behalf to judges, is embezzled by the latter to exempt themselves from the laws on which "Justice" is established.

3. Other professionals under greater pressure are held accountable

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[3] 131 Federal Judges Broke the Law by Hearing Cases Where They Had a Financial Interest; https://www.**wsj**.com/articles/131-federal-judges-broke-the-law-by-hearing-cases-where-they-had-a-financial-interest-11632834421?fbclid=IwAR17veisSou0tQJdrn4VM9Ssvk_JYFqCY-Foselbnkb1SsNx2ia1Fji1GAQ; 28sep21.

[4] Part 1 of 3: https://www.reuters.com/investigates/special-report/usa-judges-misconduct/; 30jun20.

[5] https://www.propublica.org/article/clarence-thomas-scotus-undisclosed-luxury-travel-gifts-crow; https://www.propublica.org/article/pulitzer-prize-announcement-propublica-supreme-court

38. It is a bogus, frivolous argument to pretend that judges cannot be subject to the law because the risk of being sued would prevent them from discharging their duty to apply the law to resolve the controversies submitted to them.

39. The equivalent argument has been dismissed as bogus and frivolous when doctors pretended that they could not maintain the quite state of mind necessary to operate on patients' brains and other organs if they were constantly agitated by the fear of being sued. The fact is that they are subject to malpractice suits as the perils and cost of practicing medicine.

40. Likewise, there has been dismissed as a pretense of priests that they could not attend to the tribulations of the soul of others if they had to worry about their own survival. Priests have failed to place themselves above the law by pretending that the First Amendment Church and State separation clause immunizes them from suits. For proof, there is the more than $4 billion that the Catholic Church has had to pay in compensation to the victims of pedophilic priests and for its institutionalized covering up of their abuse.

41. Police officers have to make split second decisions to save the lives of crime victims and bystanders as well as their own. Yet, their abuse of power can be proven in court and they can be held liable to reform, damages, imprisonment, etc. How much more rampant police brutality would be if police officers were held to be immune to prosecution and conviction?

42. By contrast, judges are nowhere near similar time constraints to make their decisions; e.g., the Medicare Appeals Board took two years to issue its decision on Dr. Cordero's appeal. While attorneys must raise an objection on the spot or

waive it, judges can 'take it under advisement'; vacate a decision to issue the opposite one; order briefs and/or oral argument to help them decide; etc. They have the leisure of making "a do-over".

43. There is no objective, functionally required justification for immunizing judges from accountability. Instead, there is their abuse of power on their own behalf to arrogantly elevate themselves to the impermissible status of "Judges Above the Law".

4. Article III, Section 1

44. When in Article III, Section 1, the Constitution speaks to judges about knowledge of good and evil, it tells them that they can hold power only "during good Behaviour". Judges defy the word of the Constitution when they disrespectfully shout in the face of it and "all Men [and women]" that even when their "Behaviour" is with malice or in bad faith, they will remain in power 'during the rest of their lives'.

45. Judges have turned their knowledge of good and evil, legal and illegal conduct of their own, into an inconsequential suggestion. By so raising their voice above that of the Constitution, judges have committed constitutional sacrilege.

5. Article II, Section 4

46. The voice of the Constitution in Article II, Section 4, cannot be shouted down, for it covers judges in its all-inclusive language concerning the persons subject to it and the gravity of their conduct:

> The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and

Misdemeanors.

47. Such removal is mandatory, the non-optional consequence that "shall" follow conviction of even "Misdemeanors", the lower arm of the all-comprehensive scope of offenses whose upper arm is "High Crimes".

6. The precedent for equality in *Brown v . Board of Education*

48. In *Brown v. Board of Education*, 347 U.S. 483 (1954), the Supreme Court held that "separate educational facilities are inherently unequal", thereby violating the Equal Protection clause of the 14th Amendment. Today, that Court could embrace the courageous judge's decision that 'separate standards of accountability before the law for judges and *We the People* are inherently unequal, whereby 'power, which corrupts, becomes in the hands of judges absolute power, which corrupts them absolutely'; cf, Lord Acton, Letter to Bishop Mandell Creighton, April, 3, 1887.

49. The self-serving judicial immunity doctrine cannot be constitutional. This District Court en banc should be so principled, sincere, and courageous as to hold so in a decision. It could thereby set in motion from the inside of the judiciary a significant reform for transparency, accountability, and integrity. The judge who triggered that motion will become the Champion of Equal Justice Under Law.

G. Relief requested (supra SDNY:72¶4)

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H. Certificate of Compliance with Local Rule 7.1(c)

In this motion, the Notice of Motion has 478 words and the Memorandum of Law 3,021, for a total of 3,499 words, including the footnotes, but excluding the caption, table of contents, table of authorities, signature block, and this certificate. The number of words were counted by the word processor Microsoft Word.

Dated: 13 February 2025

/s/ Dr. Richard Cordero, Esq.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO, ESQ.,

Plaintiff,

-against-

THE SECRETARY OF HEALTH AND HUMAN SERVICES (HHS), ET AL.,

Defendants.

24-CV-9778 (JAV)

ORDER OF SERVICE

JEANNETTE A. VARGAS, United States District Judge:

Plaintiff, who is a licensed attorney proceeding *pro se*, brings this action under the court's federal question jurisdiction, seeking review of the Council of Medicare Appeals' denial of his requested medical coverage pursuant to 42 U.S.C. § 405(g), as well as claims for money damages. Named as Defendants are the United States Secretary of Health and Human Services ("HHS"), as well as dozens of other named and unnamed defendants, including, among others, two Administrative Law Judges ("ALJ"), the heads of various federal entities and other federal employees, and private insurance companies and their executives and other employees. By order dated January 28, 2025, the Court granted Plaintiff's request to proceed *in forma pauperis* ("IFP"), that is, without prepayment of fees. For the reasons set forth below, the Court directs service on the Secretary of HHS, EmblemHealth, and Maximus Federal Services; dismisses Plaintiff's claims against the remaining federal defendants; and dismisses with 30 days' leave to replead Plaintiff's claims against the remaining defendants.

STANDARD OF REVIEW

The Court must dismiss an IFP complaint, or portion thereof, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v.*

Adirondack Beverage Co., 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3). While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they *suggest*," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original). Because Plaintiff is an attorney, however, he is not entitled to the solicitude generally given to *pro se* litigants. *See Tracy v. Freshwater*, 623 F.3d 90, 102 (2d Cir. 2010) ("[A] lawyer representing himself ordinarily receives no such solicitude at all.").

DISCUSSION

A. Judicial immunity

Plaintiff attempts to sue ALJs Dean Yanohira and Loranzo Fleming for actions they allegedly took in the course of reviewing the denial of insurance coverage for Plaintiff's requested medical procedure. Judges are absolutely immune from suit for damages for any actions taken within the scope of their judicial responsibilities. *Mireles v. Waco*, 502 U.S. 9, 11 (1991). Generally, "acts arising out of, or related to, individual cases before the judge are considered judicial in nature." *Bliven v. Hunt*, 579 F.3d 204, 210 (2d Cir. 2009). "Even allegations of bad faith or malice cannot overcome judicial immunity." *Id.* (citations omitted). This is because, "[w]ithout insulation from liability, judges would be subject to harassment and intimidation . . . ." *Young v. Selsky*, 41 F.3d 47, 51 (2d Cir. 1994). Judicial immunity has been extended to others who perform functions closely associated with the judicial process. *Cleavinger v. Saxner*, 474 U.S. 193, 200 (1985). This immunity "extends to administrative officials performing functions closely associated with the judicial process because the role of the 'hearing examiner or administrative law judge . . . is functionally comparable to that of a judge.'"

Montero v. Travis, 171 F.3d 757, 760 (2d Cir. 1999) (quoting *Butz v. Economou*, 438 U.S. 478, 513 (1978)). Instead of suing an administrative law judge for damages, "[t]hose who complain of error in [administrative] proceedings must seek agency or judicial review." *Butz*, 438 U.S. at 514.

Judicial immunity does not apply when the judge takes action "outside" his judicial capacity, or when the judge takes action that, although judicial in nature, is taken "in absence of jurisdiction." *Mireles,* 502 U.S. at 9-10; *see also Bliven,* 579 F.3d at 209-10 (describing actions that are judicial in nature). But "the scope of [a] judge's jurisdiction must be construed broadly where the issue is the immunity of the judge." *Stump v. Sparkman,* 435 U.S. 349, 356 (1978).

Plaintiff does not allege any facts showing that ALJs Yanohira and Fleming acted beyond the scope of their judicial responsibilities or outside their jurisdiction. *See Mireles*, 509 U.S. at 11-12. Because Plaintiff sues ALJs Yanohira and Fleming for "acts arising out of, or related to, individual cases before [them]," they are immune from suit for such claims. *Bliven*, 579 F.3d at 210. The Court therefore dismisses Plaintiff's claims against ALJs Yanohira and Fleming because they seek monetary relief against a defendant who is immune from such relief, 28 U.S.C. § 1915(e)(2)(B)(iii), and, consequently, as frivolous, 28 U.S.C. § 1915(e)(2)(B)(i). *See Mills v. Fischer*, 645 F.3d 176, 177 (2d Cir. 2011) ("Any claim dismissed on the ground of absolute judicial immunity is 'frivolous' for purposes of [the in forma pauperis statute].").

B. Sovereign immunity

Plaintiff attempts to bring unspecified claims against the "directors/heads/top officers" of the HHS Department Appeals Board, the HHS Medicare Operations Division, the HHS Medicare Appeals Council, the Office of Medicare Hearings and Appeals ("OMHA") Headquarters, the OMHA Centralized Docketing, as well as HHS and OMHA employees David Eng, John Colter, Jon Dorman, Sherese Warren, Erin Brown, Andrenna Taylor Jones, James Griepentrog, and Denise Elosh. The doctrine of sovereign immunity bars federal courts from hearing all suits for

monetary damages against the federal government, including its agencies and employees acting in their official capacities, except where sovereign immunity has been waived. *See United States v. Mitchell*, 445 U.S. 535, 538 (1980) (quoting *United States v. Sherwood*, 312 U.S. 584, 586 (1941)). Because HHS is a federal agency and OMHA is a division of HHS, those entities and their employees are entitled to sovereign immunity for actions taken in their official capacities.[1] *See, e.g.*, *Wooten v. U.S. Dep't of Health & Human Servs.*, No. 10-CV-3728 (SAS), 2011 WL

[1] The Federal Tort Claims Act ("FTCA") provides a waiver of sovereign immunity for certain claims for damages arising from the tortious conduct of federal officers or employees acting within the scope of their office or employment. *See* 28 U.S.C. §§ 1346(b)(1), 2680. A claim brought under the FTCA must be brought against the United States. *See, e.g.*, *Holliday v. Augustine*, No. 14-CV-0855, 2015 WL 136545, at *1 (D. Conn. Jan. 9, 2015) ("The proper defendant in an FTCA claim is the United States, not individual federal employees or agencies.").

Before bringing a damages claim in a federal district court under the FTCA, a claimant must first exhaust his administrative remedies by filing a claim for damages with the appropriate federal government entity and must receive a final written determination. *See* 28 U.S.C. § 2675(a). This exhaustion requirement is jurisdictional and cannot be waived. *See Celestine v. Mount Vernon Neighborhood Health Ctr.*, 403 F.3d 76, 82 (2d Cir. 2005).

Here, the Court declines to construe the complaint as asserting claims under the FTCA because Plaintiff, who is an attorney and therefore not entitled to special solicitude, does not name the United States as a defendant, does not allege that he has exhausted his administrative remedies, and the complaint includes no indication that he intends to assert a claim under FTCA.

The Court also declines to construe the complaint as attempting to assert constitutional claims under *Bivens v. Six Unknown Names Agents*, 403 U.S. 388 (1971), against these defendants in their individual capacities because Plaintiff does not allege any facts showing that any of these individual defendants, except Elosh, were personally involved in the events giving rise to his claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) (to state a *Bivens* claims, "a plaintiff must plead that each Government-official defendant, through the official's own individual actions, as violated the Constitution"); *Perez v. Hawk*, 302 F. Supp. 2d 9, 19 (E.D.N.Y. 2004) ("Because personal involvement by a federal official is prerequisite to liability under *Bivens,* federal officials who are not personally involved in an alleged constitutional deprivation may not be held vicariously liable under *Bivens* for the acts of subordinates.").

While Plaintiff alleges that Elosh, who is a legal assistant to ALJ Yanohira, defamed him when she filed a complaint against him with Federal Protective Services due to Plaintiff's allegedly harassing her, he alleges no facts suggesting that Elosh did anything that violated his federal constitutional rights to support a *Bivens* claim.

536448, at *6 (S.D.N.Y. Feb. 15, 2011) (HHS is a federal agency protected by sovereign immunity). The Court therefore dismisses Plaintiff's claims for damages against these defendants under the doctrine of sovereign immunity, *see* 28 U.S.C. § 1915(e)(2)(iii), and consequently, for lack of subject matter jurisdiction, *see* Fed. R. Civ. P. 12(h)(3); *Celestine v. Mt. Vernon Neighborhood Health Ctr.*, 403 F.3d 76, 82 (2d Cir. 2005).

C. Rule 8

Rule 8 of the Federal Rules of Civil Procedure requires a complaint to make a short and plain statement showing that the pleader is entitled to relief. Under the Rule, a complaint to include enough facts to state a claim for relief "that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true "[t]hreadbare recitals of the elements of a cause of action," which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

Plaintiff sues various private actors who are not alleged to work for any government entity: the Health Insurance Plan of Greater New York; EmblemHealth President and CEO Karen Ignagni; the "Director of EmblemHealth Grievance and Appeals Department"; Sean Hillegass, Supervisor of the Grievance and Appeals Department at EmblemHealth; Stefanie Macialek, a Specialist with the Grievance and Appeals Department at EmblemHealth; Melissa Cipolla, a Senior Specialist in the Grievance and Appeals Department of EmblemHealth; Shelly Bergstrom, Quality Risk Management at EmblemHealth; Dr. Sandra Rivera-Luciano, EmblemHealth

Medical Director; the "Director of Quality Risk Management" at EmblemHealth; the President of Maximus Federal Services; the CEO of Maximus; and the Director of Medicare Managed Care & PACE Reconsideration Project at Maximus.

Plaintiff's complaint does not comply with Rule 8 with respect to his claims against these defendants because he alleges no facts describing what these defendants did that violated his rights under state and federal law. In fact, aside from their inclusion in the caption of the complaint, many of these defendants are not mentioned at all in the complaint. The Court therefore dismisses Plaintiff's claims against these defendants for failure to state a claim on which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

The Court grants Plaintiff 30 days' leave to replead his claims against these defendants in an amended complaint. Any amended complaint Plaintiff files must comply with Rule 8's requirement that it include a short and plain statement showing that he is entitled to relief against each named defendant. Plaintiff should also make sure that any amended complaint complies with Rule 18 and 20 of the Federal Rules of Civil Procedure regarding joinder of claims and parties.

D. Service on the Secretary of HHS, EmblemHealth, and Maximus

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.[2] *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all

[2]Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have effected service until the Court reviewed the complaint and ordered that any summonses be issued. The Court therefore extends the time to serve until 90 days after the date any summonses issue.

process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP).

To allow Plaintiff to effect service on Defendants Secretary of Health and Human Services, EmblemHealth, and Maximus Federal Services through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for each of these defendants. The Clerk of Court is further instructed to mark, on the USM-285 form for the Secretary of Health and Human Services, the box on the form labeled "Check for service on U.S.A." The Clerk of Court is also instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these defendants.

If the complaint is not served within 90 days after the date summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

E. Plaintiff's request to file electronically

The Court grants Plaintiff's motion for permission to file documents electronically (ECF 6). The ECF Rules & Instructions are available online at https://nysd.uscourts.gov/rules/ecf-related-instructions.

Following Plaintiff's registering to file documents electronically, he no longer will receive service of documents by postal mail, whether or not he previously consented to accept electronic service. All documents filed by the court, or any other party, shall be served on

Plaintiff by electronic notice to Plaintiff's designated email address. *See* Fed. R. Civ. P. 5(B)(2)(E).

Should Plaintiff have any questions regarding electronic filing, he may call the ECF Help Desk at (212) 805-0800.

CONCLUSION

The Court dismisses Plaintiff's claims against ALJs Yanohira and Fleming because they seek monetary relief against a defendant who is immune from such relief, 28 U.S.C. § 1915(e)(2)(B)(iii), and, consequently, as frivolous, 28 U.S.C. § 1915(e)(2)(B)(i).

The Court dismisses Plaintiff's claims against the "directors/heads/top officers" of the HHS Department Appeals Board, the HHS Medicare Operations Division, the HHS Medicare Appeals Council, the Office of Medicare Hearings and Appeals ("OMHA") Headquarters, the OMHA Centralized Docketing, as well as HHS and OMHA employees David Eng, John Colter, Jon Dorman, Sherese Warren, Erin Brown, Andrenna Taylor Jones, James Griepentrog, and Denise Elosh, under the doctrine of sovereign immunity, *see* 28 U.S.C. § 1915(e)(2)(iii), and consequently, for lack of subject matter jurisdiction, *see* Fed. R. Civ. P. 12(h)(3).

The Court dismisses Plaintiff's claims against the Health Insurance Plan of Greater New York, Karen Ignagni, the "Director of EmblemHealth Grievance and Appeals Department," Sean Hillegass, Stefanie Macialek, Melissa Cipolla, Shelly Bergstrom, Dr. Sandra Rivera-Luciano, the "Director of Quality Risk Management" at EmblemHealth, the President of Maximus Federal Services, the CEO of Maximus, and the Director of Medicare Managed Care & PACE Reconsideration Project at Maximus, for failure to state a claim on which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii). The Court grants Plaintiff 30 days' leave to replead his claims against these defendants in an amended complaint.

The Court grants Plaintiff's motion for permission to file documents electronically (ECF 6).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

The Clerk of Court is directed to mail an information package to Plaintiff.

SO ORDERED.

Dated: January 31, 2025
New York, New York

JEANNETTE A. VARGAS
United States District Judge

SERVICE ADDRESS FOR EACH DEFENDANT

1. Secretary of the United States Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

2. EmblemHealth
55 Water Street
New York, NY 10041

3. Maximus Federal Services
3750 Monroe Avenue, Ste. 702
Pittsford, NY 14534-1302

4. Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

5. United States Attorney
Southern District of New York
Civil Division
86 Chambers Street, 3rd Floor
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Daniel Patrick Moynihan U.S Courthouse
500 Pearl Street, New York, NY 10007
tel.: (212) 805-0136
https://www.nysd.uscourts.gov/

Docket no. 24 cv 9778-JAV Jury trial requested

Appellant/Plaintiff

Dr. Richard Cordero, Esq.

-vs-

Respondents/defendants in their official and individual capacities (see identifying information on page SDNY:117§0 below)

1A. The Secretary of Health and Human Services (HHS);

the respective directors/heads/top officers of:

2A. the HHS Departmental Appeals Board

3A. the HHS Medicare Operations Division

4A. the HHS Medicare Appeals Council

5A. the Office of Medicare Hearings and Appeals (OMHA) Headquarters

6A. the OMHA Centralized Docketing

7A. David Eng, Esq.; 8A. John Colter; 9A. Jon Dorman; 10A. Dr. Sherese Warren; 11A. Erin Brown; 12A. Andrenna Taylor Jones; 13A. James "Jim" Griepentrog;

14A. ALJ Dean Yanohira and 15A. Legal Assistant Deniese Elosh, both in OMHA Phoenix Field Office, AZ

16A. ALJ Loranzo Fleming, OMHA Atlanta Field Office, GA

17A. U.S. Attorney General

18A. U.S. Attorney for SDNY, Civil Division

1B. Health Insurance Plan of Greater New York (HIP);

2B. EmblemHealth;

3B. EmblemHealth President and CEO Karen Ignagni;

4B. the Director of EmblemHealth Grievance and Appeals Department

HIP and/or EmblemHealth officers:

5B. Sean Hillegass; 6B. Stephanie Macialek; 7B. Melissa Cipolla. 8B. Shelly Bergstrom; 9B. Dr. Sandra Rivera-Luciano,

AMENDED
(see SDNY:131§5a-c infra)

Complaint and **appeal** from the final decision of Medicare Appeals Council No. M-23-386; M-23-2791, M-23-3216, and M-23-32151; and

OMHA Appeal No. 3-108 1720 5455

Medicare Id. # 8G24-KQ8-WV67

ECAPE Id. E1021112;

EmblemHealth Id. # K405 191 5001

Health Insurance Plan of Greater Newy York (HIP) and EmblemHealth cases 1063 8576 et al.

and

motions for default judgment, judgment on the pleadings, summary judgment, and reconsideration

[1] The Council stated in its decision that it has consolidated these M-# cases under M-23-386.

10B. The Director of EmblemHealth Quality Risk Management Department

11B. Maximus Federal Services

12B. The President of Maximus Federal Services

13B. The CEO of Maximus Federal Services

14B. The Director of the Medical Managed Care & PACE Reconsideration Project at Maximus Federal Services

15B. John Doe and Jane Doe, who are employees in the OMHA Phoenix and Atlanta Offices and/or in the HHS Departments and offices who participated in the coordinated disregard of Plaintiff's phone calls, voice mail, and over 11,000 emails for two years, and in filing a complaint with the Federal Protective Services against Plaintiff for alleged threatening behavior

16B. John Doe and Jane Doe, who are EmblemHealth officers who interacted or failed to interact with EmblemHealth employees in The Philippines and the U.S., to Plaintiff's detriment

17B. Susan S., Emblem's New York SHIP (State Health Insurance Program)

18B. Tamika Simpson, Emblem's New York SHIP

19B. Thomas Gray, Emblem's New York SHIP

20B. The Director of NY SHIP

Table of Contents

Table of Authorities

RULES

STATUTES

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A. The court's basis of jurisdiction

1. This Court has jurisdiction under 28 U.S.C. §1331to determine the federal questions of this case involving the Social Security Act, in general, and its

Medicare provisions, in particular; as well as the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq.

2. This is an appeal from the decision of the Medicare Appeals Council [hereinafter the Council]. In its decision, the Council informs appellant Dr. Richard Cordero, Esq. (herein also plaintiff and referred to as Plaintiff) of his right under 42 U.S.C. §1395w-22(g)(5), which he is exercising in this action. It provides that :

> An enrollee with a Medicare+Choice plan of a Medicare+Choice[2] organization under this part [such as plaintiff Dr. Cordero, who is enrolled in a Medicare Advantage plan offered by defendant EmblemHealth] who is dissatisfied by reason of the enrollee's failure to receive any health service to which the enrollee believes the enrollee is entitled and at no greater charge than the enrollee believes the enrollee is required to pay [, as Dr. Cordero believes,] is entitled, if the amount in controversy is $100 or more, to a hearing before the Secretary to the same extent as is provided in section 405(b) of this title, and in any such hearing the Secretary shall make the organization a party. If the amount in controversy is $1,000 or more, [as it is in this case by admission of the Council in its decision,] the individual or organization shall, upon notifying the other party, be entitled to judicial review of the Secretary's final decision as provided in section 405(g) of this title, and both the individual and the organization shall

[2] A note above §1395w–21 provides as follows: "References to Medicare+Choice deemed to refer to Medicare Advantage or MA, subject to an appropriate transition provided by the Secretary of Health and Human Services in the use of those terms, see section 201of Pub. L. 108–173, set out as a note under section 1395w–21 of this title."

be entitled to be parties to that judicial review.... [3]

3. This court has supplemental jurisdiction under 28 U.S.C. §1367 to hear and determine „all other claims that are so related to claims in this action within [the above-mentioned] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution".

B. Venue of this case

4. Venue is proper in the U.S. District Court for the Southern District of New York under 28 U.S.C. §1391 because the requirements are met that it sets forth in:

> (b)(2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred,...
>
> (e)(1) A civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may, except as otherwise provided by law, be brought in any judicial district in which (A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred,..., or (C) the plaintiff resides....; id.

5. Since Plaintiff resides in the jurisdictional area of this court, venue is also proper under §1852(g)(5) of the Social Security Act, 42 U.S.C. §1395w-22(g)(5).

C. Information about Plaintiff

6. Plaintiff Dr. Richard Cordero, Esq., holds a Ph.D. in law from the University of Cambridge in the United Kingdom; an advanced degree in law from La Sorbonne

[3] https://uscode.house.gov/download/download.shtml

in Paris; and a Master in Business Administration from the University of Michigan; and is admitted to the New York State bar, where he is in good standing. He resides at 2165 Bruckner Blvd., Bronx New York City, NY 10472; telephone no. (718)827-9521; Dr.Richard.Cordero_Esq@verizon.net. He conducts professional law research and writing and strategizing. He posts some on his articles to his website at http://www.Judicial-Discipline-Reform.org. They have attracted so many webvisitors and impressed them so positively that the number of visitors that they had motivated as of 3 March 2025, to become subscribers was **54,031.**

D. Contact information about Defendants and other officers

	A	B
1.	The Secretary U.S. Department of Health and Human Services c/o: General Counsel 200 Independence Avenue, S.W Washington, D.C. 20201 [by registered or certified mail]	Health Insurance Plan of Greater New York 55 Water Street New York, NY 10041-8190 press@emblemhealth.com
2.	The Director HHS Departmental Appeals Board, MS 6127 330 Independence Avenue Cohen Building Room G-644 Washington, DC 20201 tel. (202)565-0100; toll free: (866)365-8204	EmblemHealth 55 Water Street New York, NY 10041-8190 press@emblemhealth.com
3.	The Director Medicare Operations Division - Departmental Appeals Board U.S. Dept. of Health and Human Services	Ms. Karen Ignagni President and CEO EmblemHealth 55 Water Street New York, NY 10041-8190

	A	B
	330 Independence Ave., S.W. Washington, D.C. 20201 OS DAB MOD Hotline (HHS/DAB) tel.: (202)565-0100; (866)365-8204 fax: (202)565-0227 DABMODHotline@hhs.gov	tel. (877)344-7364 press@emblemhealth.com
4.	The Director Medicare Appeals Council (MAC) 330 Independence Avenue Cohen Building Room G-644 Washington, DC 20201 tel. (202)565-0100; toll free: (866)365-8204	The Director Grievance and Appeals Department EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (646)447-0617
5.	The Director Office of Medicare Hearings and Appeals (OMHA) Headquarters 2550 S. Clark Street, Suite 2001 Arlington, VA 22202 Phone (703)235-0635 Medicare.Appeals@hhs.gov	Mr. Sean Hillegass Supervisor, Grievance and Appeals Department EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (646)447-0617 SHillegass@EmblemHealth.com
6.	The Director OMHA Centralized Docketing 1001 Lakeside Avenue, Suite 930 Cleveland, OH 44114-2316 tel. (866)236-5089 Medicare.Appeals@hhs.gov	Ms. Stefanie Macialek Specialist, Grievance and Appeals Department EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (646)447-6109 Stefanie.Macialek@emblemhealth.com
7.	David Eng, Esq. Lead Attorney Advisor Medicare Operations Division - Program Operations Branch U.S. Dept. of Health and Human Services - Departmental Appeals Board 330 Independence Ave., S.W.	Ms. Melissa Cipolla Senior Specialist, Grievance and Appeals Department EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (646)447-7026 M_Cipolla@emblemhealth.com

	A	B
	Washington, D.C. 20201 OS DAB MOD Hotline (HHS/DAB) tel.: (202)565-0100; (866)365-8204 fax: (202)565-0227 DABMODHotline@hhs.gov	
8.	Mr. John Colter, ARL FO Supervisor of Legal Administrative Specialists U.S. Dept. of Health and Human Services Departmental Appeals Board 330 Independence Ave., S.W. Washington, D.C. 20201 tel. (571)457-7290; John.Colter@hhs.gov	Ms. Shelly Bergstrom Quality Risk Management EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (631)844-2691 SBergstrom@emblemhealth.com
9.	Mr. Jon Dorman Director Appeals Policy and Operations Division Office of Medicare Hearings and Appeals Arlington Field Office; Presidential Tower 2550 S Clark St, Suite 3001 Arlington, VA 22202-3926 Jon.Dorman@hhs.gov	Dr. Sandra Rivera-Luciano Medical Director EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (631)844-2691
10.	Dr. Sherese Warren, DrPH, MPA Director, Central Operations Office of Medicare Hearings and Appeals 1001 Lakeside Avenue, Suite 930 Cleveland, OH 44114-2316 Office Phone: (216)462.4090 Work Cell: (216)401.6648 Sherese.Warren@hhs.gov	The Director Quality Risk Management EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (646)447-7026
11.	Erin Brown, Esq. Senior Legal Supervisor OMHA Headquarters 2550 S. Clark Street, Suite 2001	Maximus Federal Services 3750 Monroe Avenue, Suite 702 Pittsford, NY 14534-1302 tel. (585)348-3300

	A	B
	Arlington, VA 22202 tel. (703)235-0635; Erin.Brown@hhs.gov	medicareappeal@maximus.com
12.	Andrenna Taylor Jones, Esq. Senior Attorney Advisor Appeals Operations Branch Appeals Policy and Operations Division, Headquarters Office of Medicare Hearings and Appeals 2550 S. Clark Street, Suite 2001 Arlington, VA 22202 tel.(703)235-0635; Medicare.Appeals@hhs.gov	The President Maximus Federal Services 3750 Monroe Avenue, Suite 702 Pittsford, NY 14534-1302 tel. (585)348-3300 medicareappeal@maximus.com
13.	Mr. James "Jim" Griepentrog Legal Administrative Specialist US Dept. of Health and Human Services Office of Medicare Hearings and Appeals Arlington Field Office Presidential Tower 2550 S Clark St, Suite 3001 Arlington, VA 22202-3926 tel. (571)457-7200 (Main) toll free (866)231-3087, Desk Phone: (571)457-7262 "CU-04" or (571)457-7290 (JC) fax (703)603-1812 "Attn Jim G or SLAS/Pool" James.Griepentrog@hhs.gov	The CEO Maximus Federal Services 3750 Monroe Avenue, Suite 702 Pittsford, NY 14534-1302 tel. (585)348-3300 medicareappeal@maximus.com
14.	ALJ Dean Yanohira OMHA Phoenix Field Office 230 N. 1st Avenue, Suite 302 Phoenix, AZ 85003-1706 tel.: (833)636-1476 tel. (602)603-8609 fax (602)379-3038 and -3039	The Director Office of the Project Director Medicare Managed Care & PACE Reconsideration Project Maximus Federal Services 3750 Monroe Avenue, Suite 702 Pittsford, NY 14534-1302 tel. (585)348-3300 medicareappeal@maximus.com

	A	B
15.	Legal Assistant Deniese Elosh OMHA Phoenix Field Office 230 N. 1st Avenue, Suite 302 Phoenix, AZ 85003-1706 tel.: (833)636-1476 tel. (602)603-8609 fax (602)379-3038 and -3039	John Doe and Jane Doe, who are employees in the OMHA Phoenix and Atlanta Offices and/or in the HHS Departments and offices who participated in the coordinated disregard of Plaintiff's phone calls, voice mail, and over 11,000 emails for two years, and in filing a complaint with the Federal Protective Services against Plaintiff for alleged threatening behavior.
16.	ALJ Loranzo Fleming OMHA Atlanta Field Office, GA Atlanta Field Office, 2nd Floor 77 Forsyth Street SW Atlanta, GA 30303 tel.: (470)633-3500 direct tel.: (470)633-3424 fax: (404)332-9566 toll free: (833)636-1474	John Doe and Jane Doe, who are HIP and/or EmblemHealth officers who interacted or failed to interact with EmblemHealth employees in The Philippines and the U.S., such as those listed in SDNY:125§3 below to Plaintiff's detriment.
17.	U.S. Attorney General U.S. Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530-0001 tel. (202)514-2000	Ms. Susan S. Emblem New York SHIP (State Health Insurance Program) tel. (800)447-8255 and (877)344-7364
18.	United States Attorney for SDNY Civil Division 86 Chambers Street, 3rd Floor New York, NY 10007 tel. (212)637-2800 https://www.justice.gov/usao-sdny U.S. Attorney's Office for SDNY Main Office 26 Federal Plaza, 37th Floor New York, NY 10278 tel. (212)637-2200	Ms. Tamika Simpson Emblem New York SHIP (State Health Insurance Program) tel. (800)447-8255; T_Simpson@emblembhealth.com; case 0028 0626 11
19.		Mr. Thomas Gray Emblem

	A	B
	(Reserved)	New York SHIP (State Health Insurance Program) tel. (800)447-8255; T_Gray@emblemhealth.com; case 1016 8705 12
20.	(Reserved)	The Director of New York SHIP Emblem New York SHIP

E. Statement of claims

1. Date and place of occurrence

7. On September 8, 2021, Plaintiff Dr. Cordero was eating chocolate in his office when the crown in tooth #19 (hereinafter the crown) together with the post (a spike-like structure to which the crown tapers) that affixes it to the root of the tooth came out. Whatever little had been there of the walls of the tooth in which the crown was nested broke off. There remained only the root of the tooth -whose top part was at the gum level, thus leaving a gap between the adjacent teeth, and whose apex sat in the bone of the lower jaw.

8. Within the hour, Plaintiff called his health insurance company, EmblemHealth of Greater New York (Emblem) to find out what to do. He dialed the Customer Service number on the back of the Emblem membership card, i.e., 1(855)283-2146. He landed at Emblem's call center in The Philippines. The representative who picked up the phone on a recorded line did not have the faintest idea how to answer the obvious question: "What treatment will Emblem cover to deal with

the crown that came out stuck on a piece of chocolate?[4]"

9. The representative kept putting Plaintiff on hold while she typed an email for her supervisor and waited for an emailed reply. Upon realizing that this so-called "Customer Service" was not working at all, Plaintiff asked to speak with the supervisor. The supervisor who came to the phone would be the first of 19 Emblem SUPERVISORS to deal with this problem on recorded lines, emails, letters, and the briefs[5], which only Plaintiff, but no other party, wrote and filed. That is how this concrete, contemporaneously documented, case started more than three years ago.

2. This case and public animosity after the UnitedHealhcare CEO murder

10. The evidence in the record and that which may be added to it through discovery will illustrate how the largest health insurance agency in the U.S. government with over 67 million insureds, Medicare, together with one of the largest health

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[4] Eventually, Plaintiff would learn from the dentists at NYU College of Dentistry that the detail about the chocolate was meaningful, for it most probably indicated that the root of the tooth in which the crown post was inserted had cracked so that it no longer tightly gripped the post, whose top part is the crown. As a result, the single piece that they formed could easily come out stuck on gooey chocolate. The root would not grip another post+crown. It could not be salvaged. It had to be extracted and a base for another crown had to be constructed with bone powder.

[5] Brief for the fair hearing: http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero_**Statement_on_Appeal**.pdf.

Brief for the appeal to the Medicare Appeals Council: http://Judicial-Discipline-Reform.org/ALJ/**22-10-26**DrRCordero-**Medicare_Appeals_Council**.pdf; see also its supplements: http://Judicial-Discipline-Reform.org/ALJ/**23-3-11**DrRCordero_**supp_brief**-Medicare_Appeals_Council.pdf and http://Judicial-Discipline-Reform.org/ALJ/**23-3-27**DrRCordero_efiled_faxed_supp_brief.pdf.

insurance companies with over 3 million insureds, Emblem, and a company that reviews healthcare denial decisions to perform a reconsideration, Maximus Federal Services (Maximus), engage in conduct that the whole nation has been familiarized with since the murder of UnitedHealthcare CEO Brian Thomson on December 4, 2024, in New York City: "deny, delay, defend".

11. Plaintiff Dr. Cordero will argue not only to this court and the jury in this case, but also to the lawyers that will defend the suspected murderer, the press, social media, the jury pool, and the online amateur sleuths. He will tell them that while the suspect may not win his freedom, they can use this case to save his objective: to expose the healthcare industry's abusive claim evasion tactics that constitute its modus operandi: "delay, deny, defend".

12. By its reaction to the murder of the CEO, the national public, including the jury pool here in NY City, has shown that it is already outraged as a result of so many people having experienced pain and suffering and reckless indifference to them when seeking healthcare in their personal cases. This case can expose the inner workings of a vast industry with different types of entities and officers. Through complicit coordination, those at the top level of the industry pursue their corporate and individual greed through the lack of training of, and supervision and control over, those at lower levels, whose incompetence, unaccountability, and lack of sense of responsibility towards the insureds are sought after or tolerated.

13. This deeper exposure of the healthcare industry can turn this into a test case through self-reinforcing cycles: The case better informs the public, who becomes

more gravely outraged; so, the case becomes a rallying point for ever more people to tell their story of abuse by the healthcare industry, whereby a more informed and outraged public energizes another self-reinforcing cycle: Many of those who will hear those stories will jump to their feet with tears in their eyes as they scream, "That happened to *me too!*" They will ask to tell their story. The media and universities may find it in their interest to respond positively to the request that they hold at their media stations and auditoriums unprecedented citizens hearings where people can tell their story in person or online to the national public.

14. Only an ever more informed and outraged public can by joining forces grow strong enough to compel principled and opportunistic politicians to impose on the healthcare industry transformative transparency, accountability, and liability.

15. This is how a murder can be responsibly and imaginatively used to reform an industry and give a better life to so many people.

3. Emblem supervisors who unceremoniously passed Plaintiff to each other like a hot potato

1. Ms. Jessica (Jessie) Ebeng in The Philippines; tel. (877)344-7364
2. Nick Edwards in The Philippines; tel. (877)344-7364, ext. 19467; n_enopia@emblemhealth.com
3. Kevin Buttler in The Philippines
4. Chris Osorno in The Philippines; (877)344-7364, ext. 19479; k_osorno@emblemhealth.com
5. Eps G. in The Philippines; (877)344-7364, ext. 17913
6. Joseph Sanches Lomocso in The Philippines; j_lomocso@emblemhealth.com
7. Sergio Diaz, DentaQuest; tel. (844)776-8749; reference # 2021 0035 6184

8. Supervisor Joan in The Philippines, (877)444-9961, who at Dr. Cordero's request transferred his call to the U.S.

9. Susan S., Emblem's NY SHIP (State Health Insurance Program); tel. (800)447-8255

10. Tamika Simpson, Emblem's New York SHIP; tel. (800)447-8255

11. Thomas Gray, Emblem's NY SHIP; tel. (800)447-8255

12. Melissa Cipolla, Sr. Specialist, Grievance and Appeals Department; tel. (646)447-7026

13. Sean Hillegass, Supervisor at the Grievance and Appeals Department; tel. (646)447-0617

14. Ms. Darwin Quipit Arcilla, ref. 112 096 55

15. May E. in The Philippines

16. Shelley Bergstrom, Quality Risk Management; tel. (631)844-2691

17. Sandy Yang, Specialist, Grievance and Appeals Department; tel. (646)447-4380

18. Murugan Sudalai; letter of March 15, 2022,

19. Stephanie Macialek, Specialist, Grievance and Appeals Department; tel. (646)447-6109

4. Links to Plaintiff's briefs

16. The only briefs written and filed in this case are those by plaintiff Dr. Cordero. Neither Emblem nor Maximus wrote and filed any briefs. Dr. Cordero's briefs and supporting documents are incorporated herein by reference as though they were fully set out:

1) http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero_Statement_on_Appeal.pdf

2) http://Judicial-Discipline-Reform.org/ALJ/22-6-3DrRCordero_motion_recuse_ALJDYanohira.pdf

3) http://Judicial-Discipline-Reform.org/ALJ/22-8-17DrRCordero_motion_recuse_ALJLFleming.pdf

4) http://Judicial-Discipline-Reform.org/ALJ/**22-8-24ALJL Fleming**-DrRCordero.pdf

5) http://Judicial-Discipline-Reform.org/ALJ/DrRCordero-Form **DAB-101 filled out**

6) http://Judicial-Discipline-Reform.org/ALJ/**22-10-26**DrRCordero-**Medicare**_Appeals_Council.pdf

7) http://Judicial-Discipline-Reform.org/ALJ/**23-3-11**DrRCordero_**supp_brief**-Medicare_Appeals_Council.pdf

9) http://Judicial-Discipline-Reform.org/ALJ/**23-3-27**DrRCordero_efiled_**faxed_supp_brief**.pdf

10) http://Judicial-Discipline-Reform.org/ALJ/**23-3-28** Dkt M-23-3216.pdf

11) http://Judicial-Discipline-Reform.org/ALJ/**23-8-28**DrRCordero_**class_action_v_Medicare**.pdf

12) http://Judicial-Discipline-Reform.org/ALJ/22-3-9DrRCordero_unsubstantiated_dismissal.pdf

17. The above files have been combined and their pages numbered consecutively in the file at:

13) http://www.Judicial-Discipline-Reform.org/ALJ/**24-12-15**DrRCordero-v-MedAppCouncil_record.pdf

18. The combination file is around 41+ MB in size, nevertheless, it is downloadable; otherwise, download its individual component files, if need be, by copying a link, pasting it in the search box of your browser, and pressing "Enter".

5. Concise statement of facts and summary of the argument

19. Plaintiff Dr. Cordero had the crown of a tooth fall out. For months health insurer Emblem represented that its rules controlled coverage. After Plaintiff provided a certificate of medical necessity, Emblem denied coverage and alleged that only Medicare rules controlled, even failing to coordinate benefits with Medicaid. Thereby it disavowed its own advertised coverage, engaging in false advertisement, breach of contract, fraud, and unfair surprise.

20. Emblem and medical reviewer Maximus withheld the latter's confirmation of

denial to make Plaintiff miss the deadline to demand a fair hearing. Plaintiff demanded a hearing. Emblem contacted the ALJ ex parte to inquire about the ALJ's decision of the hearing, although not even its date had yet been fixed, thus treating the outcome of the hearing as a done deal. Maximus filed with the ALJ ex parte an alleged „case file“, of which it provided no copy to Plaintiff.

21. Plaintiff requested a copy of the alleged "case file". The ALJ assistant filed a complaint against Plaintiff with the Federal Protective Services of Homeland Security, as if Plaintiff were a terrorist! An investigator even called Plaintiff to initiate the investigation of the complaint.

22. Plaintiff moved to recuse the ALJ for whom the complaining legal assistant worked. The ALJ had a boilerplate denial rubberstamped with his signature and mailed to Plaintiff. Subsequently, the ALJ sent another boilerplate with his rubberstamped signature, this time reversing his denial and granting the recusal motion. Neither boilerplate discussed Plaintiff's statement of facts or memorandum of law. Both were unreasoned, arbitrary, and capricious fiats, the perfunctory and irresponsible excercise of abuse of process and power.

23. Plaintiff filed a brief for the fair hearing. Neither Emblem nor Maximus filed any answer; Maximus did not even attend the hearing. Plaintiff moved for judgment by default. The newly assigned ALJ would not even discuss it. Instead, he limited the hearing to what he percieved as the Defendants’ issue. Thereby the ALJ disregarded the issues raised by Plaintiff in his brief and his right as Plaintiff to raise the issues for the hearing. The ALJ, not Emblem, debated Plaintiff throughout the hearing, advocating for both Defendants; and denied coverage.

The ALJ tolerated and participated in a hearing by ambush where he and Defendants unfairly surprised Plaintiff about the matters to be dealt with, not to mention who would appear as 'opposing counsel'.

24. Plaintiff appealed to the Medicare Appeals Council. Since Defendants had not produced any brief or evidence requested by Plaintiff in discovery, Plaintiff moved for judgment by default. Instead, Medicare on their behalf tried to pass off as discovery the very briefs, letters, and emails that Plaintiff had composed and exchanged with Defendants from the start of this case.[6]

25. The Council had 90 days to issue its decision. It failed to do so. Plaintiff called, faxed, and emailed tens of officers to find out the reasonf for the delay in deciding, the status of the appeal, and the likely date of a decision. But they engaged in a coordinated effort to wear Plaintiff down through silence and delay.

26. Plaintiff kept emailing daily up to 30 officials of HHS, its Departmental Appeals Board, the Medicare Appeals Council, the Office of Hearings and Appeals, Emblem, and Maximus[7] (cf. SDNY:117§0 above), but nobody would even

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[6] http://Judicial-Discipline-Reform.org/ALJ/23-3-11DrRCordero_supp_brief-**Medicare_Appeals_Council**.pdf

[7] Medicare.Appeals@hhs.gov, Sherese.Warren@hhs.gov, erin.brown@hhs.gov, Kathy.Greene@hhs.gov, Robin.Decker-Une@hhs.gov, OSDABImmediateOffice@hhs.gov, OSOMHAATLECAPE@hhs.gov, OSOMHAHearingTechSupport@hhs.gov, DABMODHotline@hhs.gov, notifications@dab.efile.hhs.gov, appeals@dab.efile.hhs.gov, James.Griepentrog@hhs.gov, Jon.Dorman@hhs.gov, john.colter@hhs.gov, erin.nugent@hhs.gov, Darryl.Holloway@hhs.gov, Rajda.Nachampassak@hhs.gov, dawn.kos@hhs.gov, alethia.wimberly@hhs.gov, hillary.didona@hhs.gov, James.Brown@hhs.gov, leslie.mcdonald@hhs.gov, Carlton.Drew@hhs.gov, beau.rightsell@hhs.gov, amy.porter@hhs.gov, medicareappeal@maximus.com, SHillegass@emblemhealth.com, CManalansan@emblemhealth.com, lcampos@emblemhealth.com,

acknowledge receipt of them, though Plaintiff sent them in two years more than 11,000 emails! There is probable cause to believe that if Plaintiff had not persisted in such burdensome, time-consuming, and frustrating effort, the Council would have evaded its duty to decide the appeal so as to spare Medicare's network members Emblem and Maximus any accountability and liability. The Council proceeded in bad faith to delay its decision, the injury to Plaintiff notwithstanding.

27. The Council denied Plaintiff his right to process, for "justice delayed is justice denied".

28. During those years, the Council has shown reckless indifference to the pain and suffering that Plaintiff has let it know that he was experiencing and continues to experience. This is attested to by doctors finding the recommended treatment for the tooth whose crown fell out a medical necessity in accordance with commonly accepted standards of medical care. That pain and suffering has now become a permanent injury, as discussed below in the statement of injuries.

29. Defendants Emblem and Maximus resorted to their "delay, deny" tactics of abusive claim evasion at the four levels of Medicare administrative appeal provided for under 42 U.S.C. §1395w-22(g), namely, determination, reconsideration, fair hearing, and Medicare Appeals Council. Neither filed a brief responsive to Plaintiff's. Maximus did not even appear at the fair hearing. Consequently, Defendants cannot "defend" in this fifth level appeal to a district

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EHCommunications@emblemhealth.com, esosa@emblemhealth.com, SBergstrom@emblemhealth.com, sdambrosio@emblemhealth.com,

court for judicial review because they waived their right to file any pleadings.

30. Defendants must be held to have admitted the statements of facts and contentions of law set forth by Plaintiff in his briefs. There is no legitimate dispute as to them. They stand uncontested and no longer contestable. Defendants forfeited their right to contest them.

31. Hence, Plaintiff requests judgment by default under FRCP 55, judgment on the pleadings under FRCP 12(c), and summary judgment under FRCP 56; and the grant of the relief requested on SDNY:171§P below.

5.a. A complaint consists of "a short and plain statement of the claim"

31.a. FRCP 8 sets forth the "General Rules of Pleading (a) CLAIM FOR RELIEF" thus:

> (2) a short and plain statement of the claim showing that the pleader is entitled to relief.

31.b. For its part, FRCP 11 shows that when filing a pleading, such as a complaint, the plaintiff need not base his claims on proven facts, let alone a memorandum of law. Whenever such a memorandum is needed, it is not confined to arguing existing law, but rather can make:

> (b)(2)…an argument for extending, modifying, or reversing existing law or for establishing new law.

31.c. Moreover, plaintiff is only required to make:

> (b) REPRESENTATION TO THE COURT…to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances.

31.d. What is more, the pleader is not limited to making 'factual contentions that are

already warranted on the evidence', but can also make:

> (b)(3) ...factual contentions [that] **will likely** have evidentiary support after a reasonable opportunity for further investigation or discovery. [bold emphasis added]

31.e. The claims against Defendants made by Plaintiff Dr. Cordero have been "formed after an inquiry reasonable under the circumstances": He has communicated by phone, email, and letters for more than three years with dozens of officers of Emblem, Maximus, OMHA, the Medicare Appeals Council, and medical services and equipment providers of theirs. He has described those communications in his briefs, which he has incorporated by reference in every subsequent brief, as he did in his pleadings in this Court(SDNY:126¶16 supra).

31.f. Those are the circumstances that warrant Plaintiff's reasonable contention underlying his claims against each and all the individual and institutional Defendants: They have complicitly coordinated the plotting and execution as their modus operandi of their abusive insurance claims evasion "delay, deny, defend" tactics.

31.g. Further investigation and discovery will strengthen the evidentiary support for Plaintiff Dr. Cordero's contention and claims. Investigation and discovery are all the more necessary because Plaintiff repeatedly requested paper and digital materials and recorded phone conversations with and among Emblem supervisors(SDNY:125§3 supra) and Maximus; the administrative law judges and their assistants; the series of OMHA and Council officers handling this

case(admin_rec:160 to 30[8] (emails are placed in reverse chronological order in an email thread)); for use in preparing for both the fair hearing and the appeal to the Medicare Appeals Council. They failed to provide a single one of them. On the contrary, they engaged in an elaborate scheme to deceive; e.g., they pretended that they were producing recorded phone conversations on a CD sent to Dr. Cordero, which turned out to be merely the messages that he had recorded on their answering machines after their failure to pick up the phone(admin_rec:343).

31.h. By Emblem and Maximus failing to provide discovery to Dr. Cordero, it violated his right to due process: Its second prong after 'notice' is 'opportunity', not only to defend, but also to establish charges brought as plaintiff against a defendant. The justice system is required to protect the right of the defendant as well as of the plaintiff, for if plaintiff is denied opportunity to press his charges by discovering pertinent evidentiary materials, the system ensures that the defendant gets away with its chargeable conduct. This turns the administration of justice into a rigged game for the protection of only defendants.

31.i. *Daily* for close to two years, Dr. Cordero made his discovery requests known by email to eventually more than 30 Emblem, Maximus, OMHA, and Medicare Appeals Council officers. By the time the decision of the Council reached him

[8] http://Judicial-Discipline-Reform.org/ALJ/22-3-9DrRCordero_unsubstantiated_dismissal.pdf

on 25 October 2024, he had sent them more than 11,000 emails!

31.j. Such disregard by so many people for such a long time could only be the result of complicit coordination among those officers. Their coordination has become their institutionalized policy determinative of the officers' modus operandi. It is how they effectively execute their abusive claim evasive "delay, deny, defend" tactics.

31.k. Actually, such coordination raises the reasonable presumption that it has been plotted and supervised by the top Emblem and Maximus officers with the cover-up of OMHA and the Council. That presumption finds solid foundation in the respondeat superior and the principal-agent doctrines.

31. L. Moreover, joining those officers as defendants is required and permitted under:

FRCP 18. Joinder of Claims

(a) IN GENERAL. A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

FRCP 19. Required Joinder of Parties

(a) PERSONS REQUIRED TO BE JOINED IF FEASIBLE.

(1) Required Party. A person…must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties;

FRCP 20. Permissive Joinder of Parties

(a) PERSONS WHO MAY JOIN OR BE JOINED.

(2) *Defendants*. Persons…may be joined in one action as defendants if:

(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and

(B) any question of law or fact common to all defendants will arise in the action.

31.m. Without including the officers that communicated with Dr. Cordero, the institutional defendants are likely to try to escape liability by claiming that those officers went rogue, that is, 'on a folly of their own outside the scope of their employment', so that the institution is not liable for their abuse.

31.n. Hence, it is only after discovery, the presentation of evidence at trial, and a finding of fact by the jury, that it can be determined whether the directors of the defendant institutions and departments knew, or by proceeding with due diligence to control and supervise their subordinate officers would have known, that those officers had gone rogue or were 'just following institutional policy and specific orders'. The top officers had actual or imputed knowledge of what their lower officers were doing.

31.o. Therefore, "the court cannot accord complete relief among existing parties" until it has allowed a fair and impartial process to find out the nature, extent, and gravity of each defendant's participation in, and liability for, plotting and executing through complicit coordination as their modus operandi the abusive claim evasive "delay, deny, defend" tactics aided by a cover-up to the detriment of insureds.

5.b. Dumping a complaint by stamping it "unsubstantiated"

31.p. Complicit coordination is illustrated by Emblem's 'delay, deny' tactics executed to dismiss Dr. Cordero's complaints of April 2023(admin_rec:566 et seq.)[9], about the incompetence, indifference, and unprofessionalism at Jacobi Medical Center in Bronx, NY, and his Primary Care Physician (PCP), i.e., a generalist, there. He informed of these complaints Mr. Sean Hillegass, Ms. Stefanie Macialek, Ms. Melissa Cipolla, Ms. Shelly Bergstrom, among others, as shown by the letters and emails in that admin_rec file.

31.q. Those complaints were peremptorily dismissed by Emblem Medical Director Dr. Sandra Rivera-Luciano by labeling them "unsubstantiated" in her letter to Dr. Cordero of 17 May 2023(admin_rec:599). That was it. No discussion. Such self-serving dismissal spared her even having to read his complaint, never mind to investigate it. He filed a complaint against her on May 30, 2023. Cf. another peremptory and even ruder dismissal of a patient's concerns about the handling of his blood and required tests thereon(admin_rec:639) by the director of the Jacobi laboratory.

31.r. Thereafter Dr. Cordero learned that all Emblem Dr. Rivera and her 'reviewing' Emblem colleagues did -if any review was undertaken- was ask the complained-about PCP...and take her word that the PCP, though a generalist, had found no "medical necessity" for referrals to specialists. That PCP was ill equipped both professionally and temperamentally to reach such diagnosis: In

[9] http://Judicial-Discipline-Reform.org/ALJ/22-3-9DrRCordero_unsubstantiated_dismissal.pdf

addition to being a generalist, she never even auscultated or palpated patient Dr. Cordero. That is the first thing that even veterinarians do for their animal patients. But she was indifferent to the health concerns of her person patient.

31.s. What kind of 'investigator' simply takes the word of the individual complained-about to dispose of the complaint?: one in search of a pretext to 'dump' the complaint. Emblem 'delayed, delayed, denied" these complaints until it informed Dr. Cordero that his healthcare plan would end on 31 December 2023, so that he would have to find another plan.

31.t. Emblem irresponsibly slapped the "unsubstantiated" label on the complaints to perfunctorily dismiss them and rubberstamped a boilerplate that it sent Patient Dr. Cordero. It never answered key questions; e.g.: How does a patient or Emblem "substantiate" a complaint? Is there a procedure for "substantiating" a complaint prescribed by Medicare or generally accepted standards of medical care; or is it an insurer's "Anything goes" quick job done with the intention to expediently dump the complaint with "no more communication on this matter"?(admin_rec:639).

5.c. A pattern of abuse that calls for investigation and discovery

31.u. The above establishes a pattern of abusive claim evasive "delay, deny, defend" tactics. Indeed, 18 U.S.C. §1961(5) provides that "a pattern of racketeering activity" is constituted by "two acts of racketeering" committed within 10 years; e.g., one concerning the crown on tooth #19 and the second one concerning the dismissal of complaints as "unsubstantiated".

31.v. A reasonable opportunity for further investigation or discovery"(FRCP 11((b)(3)) is necessary to find out the role that the named individual and institutional defendants played in plotting and executing it on the complaints and claims of Dr. Cordero' and so many other healthcare insureds. Thereby it may be proven that they evaded their duty to supervise and control their providers of medical services and equipment in order not to embarrass them, expose them to legal action by affected insureds, and cause the providers to leave the networks of Medicare and the insurers.

31.w. The Defendants had motive, means, and opportunity. Plaintiff Dr. Cordero should now have the opportunity to expose them. They may have handled abusively and self-servingly only his complaints and claims, which is implausible, or did so through complicit coordination that produced an institutionalized pattern of conduct as their modus operandi. In either case, they must be held accountable and liable.

31.x. That is required in the interest of justice with regard to Dr. Cordero and in the public interest with regard to millions of other insureds similarly situated. While they are similarly situated in terms of being old, sick, and disable, most of them lack his knowledge of the law and determination to protect himself and them. The Court should afford him the opportunity to do so in his and the public interest by ordering that all the individuals and entities that he has named as defendants be served with its summons and this amended complaint.

NOTES: References given in this amended complaint-appeal bear the format admin_rec:page#. In the record, they appear in the middle of the bottom margin.

The numbers in the bookmarks indicate the pages that belong to the same individual pleading or same thread of emails.

In a thread of emails, emails appear in reverse chronological order. When a reference is given as a range, e.g., admin_rec:161-152, read the email that begins on page 161 and then go up to look for the first email above it until you finally read the email that begins on page 152. See http://Judicial-Discipline-Reform.org/ALJ/23-8-28DrRCordero_class_action_v_Medicare.pdf

The page numbering format OL3:# was used when OL3 pages were written. Their page number appears in their footer. OL3:# references are kept as they were so that the reader who finds such a reference can easily find the referred-to page.

The record that this case is building in the U.S. District Court, SDNY, uses an appropriate prefix to identify its pages: SDNY:#.

	A	B
1.	The HHS Secretary (already served)	Health Insurance Plan of Greater NY It is well established that parent companies can be held accountable and liable for what their wholly or partially owned companies do. The corporate veil can be pierced to prevent subsidiarity to be a subterfuge for abusing power with impunity.
2.	The Director HHS Departmental Appeals Board Under the respondeat superior doctrine and principal-agent provisions, directors bear official and individual responsibility for what happens under their watch, especially when they participate in, or condone, the plotting and execution of an unlawful policy. admin_rec:160 to 30; SDNY:71.	EmblemHealth (to be served) press@emblemhealth.com
3.	The Director Medicare Operations Division -	Ms. Karen Ignagni President and CEO EmblemHealth

	A	B
	See the statement in A2 supra.	See the statement in A2 supra.
4.	The Director Medicare Appeals Council (MAC) See the statement in A2 supra and admin_rec:160 to 30.	The Director Grievance and Appeals Department EmblemHealth See the statement in A2 supra and admin_rec:160 to 30.
5.	The Director Office of Medicare Hearings and Appeals (OMHA) Headquarters See the statement in A2 supra andadmin_rec:160 to 30.	Mr. Sean Hillegass Supervisor, Grievance and Appeals Department EmblemHealth Mr. Hillegass engaged in a pattern of deception to prevent the timely submission to Dr. Cordero of the affirmance by Maximus of Emblem's denial of his claim so that the time for Dr. Cordero to demand a fair hearing might run out. He condoned or participated in the dismissal of a complaint by Dr. Cordero with the fiat "it is unsubstantiated". See the statement in A2 supra; and SDNY:136§5b
6.	The Director OMHA Centralized Docketing Medicare.Appeals@hhs.gov See statement in 13A below and admin_rec:160 to 30	Ms. Stefanie Macialek Specialist, Grievance and Appeals Department EmblemHealth See the statement in A2 supra; and SDNY:136§5b
7.	David Eng, Esq. Lead Attorney Advisor Medicare Operations Division - DABMODHotline@hhs.gov	Ms. Melissa Cipolla Senior Specialist, Grievance and Appeals Department EmblemHealth

	A	B
	See statement in 13A below and admin_rec:160 to 30	See the statement in A2 supra; and SDNY:136§5b
8.	Mr. John Colter, ARL FO Supervisor of Legal Administrative Specialists HHS Departmental Appeals Board See statement in 13A below and admin_rec:160 to 30	Ms. Shelly Bergstrom Quality Risk Management EmblemHealth See the statement in A2 supra; and SDNY:136§5b
9.	Mr. Jon Dorman Director Appeals Policy and Operations Division OMHA See statement in 13A below and admin_rec:160 to 30	Dr. Sandra Rivera-Luciano Medical Director EmblemHealth See the statement in A2 supra; and SDNY:136§5b
10.	Dr. Sherese Warren, DrPH, MPA Director, OMHA Central Operations See statement in 13A below and admin_rec:160 to 30	The Director Quality Risk Management EmblemHealth See the statement in A2 supra; and SDNY:136§5b
11.	Erin Brown, Esq. Senior Legal Supervisor OMHA Headquarters See statement in 13A below and admin_rec:160 to 30	Maximus Federal Services (to be served)
12.	Andrenna Taylor Jones, Esq. Senior Attorney Advisor OMHA Appeals Operations Branch See statement in 13A below and admin_rec:160 to 30	The President Maximus Federal Services See the statement in A2 supra.
13.	Mr. James “Jim” Griepentrog OMHA Legal Administrative Specialist Mr. Griepentrog conscientiously discussed on the phone Dr. Cordero's problems;	The CEO Maximus Federal Services See the statement in A2 supra.

	A	B
	wrote him several long emails; and even wrote as the subject of some "**Re Partial Case File Req Processed and Ready to Proceed**' and stated its UPS tracking number…but the package was never even entrusted to UPS for delivery; and then he failed to pick up Dr. Cordero's calls or answer any of the hundreds of emails that Dr. Cordero sent him. Such a diametrically opposed change in attitude does not happen unless Mr. Griepentrog was ordered by his superiors to stop communicating with Dr. Cordero. admin_rec:160 to 30	
14.	ALJ Dean Yanohira OMHA Phoenix Field Office admin_rec:5PartI; admin_rec:68	The Director Office of the Project Director Medicare Managed Care & PACE Reconsideration Project Maximus Federal Services See the statement in A2 supra.
15.	Legal Assistant Deniese Elosh OMHA Phoenix Field Office There is no justification why a law clerk should be invested with absolute immunity regardless of the maliciousness, wrongfulness, and harmfulness of her act. Nobody can establish by an arbitrary and capricious fiat: "The clerk can do no wrong!" admin_rec:5PartI; admin_rec:68	John Doe and Jane Doe, who are employees in the OMHA Phoenix and Atlanta Offices and/or in the HHS Departments and offices who participated in the coordinated disregard of Plaintiff's phone calls, voice mail, and over 11,000 emails for two years, and in filing a complaint with the Federal Protective Services against Plaintiff for alleged threatening behavior.
16.	ALJ Loranzo Fleming OMHA Atlanta Field Office, GA	John Doe and Jane Doe, who are HIP and/or EmblemHealth officers who interacted or failed to interact with EmblemHealth employees in The

	A	B
	See in the reconsideration motion the arguments for the suability of judges, as required by the tenet "Equal Justice Under Law" admin_rec:144	Philippines and the U.S., such as those listed in SDNY:125§3 above to Plaintiff's detriment.
17.	The U.S. Attorney General	United States Attorney for SDNY Civil Division (already served)
18.	Mr. Thomas Gray Emblem New York SHIP (State Health Insurance Program) The phone conversations with NY SHIP staff began on 23nov21.	Ms. Susan S. Emblem NY SHIP (State Health Insurance Program) The phone conversations with NY SHIP staff began on 23nov21.
19.	The Director of New York SHIP Emblem New York SHIP The phone conversations with NY SHIP staff began on 23nov21.	Ms. Tamika Simpson Emblem NY SHIP The phone conversations with NY SHIP staff began on 23nov21.
20.	(Reserved)	(Reserved)

F. The decision on appeal is misleading from its first paragraph

32. *The Wall Street Journal* published on 9 July 2024, an article titled "Insurers Pocketed $50 Billion From Medicare for Diseases No Doctor Treated"[10]. The sheer incompetence and suspect connivance of Medicare exposed by that title and the data in the article lend credence to the criticism of Medicare made in this brief.

[10] https://www.wsj.com/health/healthcare/medicare-health-insurance-diagnosis-payments-b4d99a5d?%20mod=Searchresults_pos1&page=1

33. The decision herein on appeal of the Medicare Appeals Council of 17 October 2024 (hereinafter the Decision) states on page 1 paragraph 1 that:

> Appellant made a "request for pre-authorization to the Medicare Advantage (MA) plan (Plan) to cover dental services, specifically: a guided tissue regeneration compression (D4267), surgical placement of implant body: endosteal implant (D6010), custom fabricated abutment (D60S7), abutment supported case metal crown (D6202), implant supported porcelain/ceramic crown (D6065), and an implant supported crown (D6066)".

34. That statement is false. Appellant/Plaintiff Dr. Cordero never made such request. It should be quite obvious that Plaintiff, who is not a dentist or even a doctor of medicine, could hardly have had the knowledge to make such a technically phrased request, which even includes medical coding.

35. It would be equally false to assert that the Emblem people with whom Plaintiff was forced to speak on the phone for months ever made such a highly technical request for pre-authorization of medical treatment coverage.

36. The request that Plaintiff made to Emblem from the moment the crown on tooth # 19 came out on September 8, 2021, and he called its Customer Service number, i.e., 1(877)344-7364, on the back of his Emblem member card, was phrased in layman terms: 'a crown came off one of my teeth and I would like to know what to do to repair it and what Emblem will cover'.

37. This is a key issue because when Plaintiff called Emblem, he landed repeatedly in its call center in The Philippines (the Emblem Philippine people).

38. It would not be accurate to refer to the Emblem people with whom Plaintiff was

forced to deal as "officers", for that term would mask the sheer poor training, incompentence, and lack of sense of responsibility exhibited by even the supervisors with whom Plaintiff was forced to deal: 19 of them! See the list at SDNY:125§33 above.

39. None of the supervisors took ownership of the case. They passed Plaintiff from one to the other to the other: Poorly trained and incompetent, they would stop with reckless irresponsibility dealing with him, thus forcing him to start all over again with yet another supervisor, whether in The Philippines or in Emblem's SHIP center in the U.S. (State Health Insurance Program).

40. There is objective evidence supporting the above statements, to wit, the more than 50 hours of recorded phone conversations that Plaintiff had with the Emblem people.

41. Those recordings are so damning for Emblem that it failed to produce a single one of them in response to Plaintiff's request during discovery in preparation for the fair hearing and the appeal to the Medicare Appeals Council.

G. False statements by the Council concerning coverage

42. The Council states on Decision, page 2, that "the appellant presents no argument that the dental services requested are covered by Medicare or the Plan".

43. For months after Plaintiff called Emblem on September 8, 2021, Emblem via its Customer Service call center in The Philippines never even mentioned Medicare as having anything to do with the coverage of treatment for the fallen-out crown.

44. It is patently unreasonable to expect insureds to know more about coverage and

its limitations than the Customer Service representatives supposedly trained to provide information on coverage to the insureds.

> Plaintiff did argue in its brief to the Council itself[11] what Emblem had advertised in layman's terms in the advertisement "EmblemHealth Enhanced Care (Medicaid) Member Benefits - Covered by EmblemHealth -All Members, Customer Services, tel. (855)283-2146":
>
> We believe that providing you with good dental care is important to your overall health care. EmblemHealth members must choose a dentist in the DentaQuest Network for preventive and restorative dental care such as routine checkups, X-rays, fillings, root canals, **crowns and more**. If you need help finding a dentist, call DentaQuest Customer Service at 1-844-776-8748, Monday through Friday, 8 am to 5 pm, for the most up-to date network information. [**bold** emphasis added]

45. You can also go to a dental clinic that is run by an academic dental center without a referral [as did Plaintiff when he went to NYU College of Dentistry]. Call EmblemHealth Customer Service at 1- 855-283-2146 for a list of academic dental centers near you. Call your dentist right away to schedule appointments for you and all other enrolled family members. Just show your dentist your member ID Card.

46. Likewise, in his appellate brief[12] to the Council, Plaintiff also discussed how

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[11] http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-**Medicare_Appeals_Council**.pdf >

[12] Fn11 > MApCouncil:6¶8

Medicaid covered dental services:

8. In the same vein, the “2021 Evidence of Coverage for EmblemHealth VIP Dual or EmblemHealth VIP Dual Select – Chapter 4. Benefits Chart (what is covered)” (Exhibit 22-4-8 EH Hillegass-DrRCordero) provides as follows in pertinent part:

page 114: “Members who qualify for Medicare and Medicaid are known as "dual eligibles." As a dual eligible member, you are eligible for benefits under both the federal Medicare Program and the New York State Medicaid Program. The Original Medicare and supplemental benefits you receive as a member of this plan are listed in Section 2.1.”

page 118. “Dental. Medicaid covers preventive, prophylactic and other dental care, services, supplies, routine exams, prophylaxis, **oral orthotic appliances** required to alleviate a serious health condition, including one which affects employability.” [bold emphasis added]

47. Emblem's people in The Philippines never mentioned Medicare rules, never mind that they were coverage determinative, much less anything about 'medical codes'. When Emblem advertised that it covered "**crown and more**", a prospective insured was entitled to interpret those them expansively. The correctness of such interpretation is provided by precisely the Emblem member ID card, which states "Comprehensive Dental" (see a photo of it at id. >alj:5

48. Contract law principles provide that terms and statements are interpreted against the party that offers them and in favor of the party who receives them.

49. Also, contract law principles provide that when a layperson reads a provision written by an expert for laypeople, the layperson is entitled to interpret them according to their customary meaning among laypeople. The burden is on the ex-

pert to alert her laypeople audience to any specialized meaning that the provision may have. The expert cannot abuse her superior knowledge to induce laypeople into error. By so doing, the expert commits fraud by misleading laypeople.

50. After the "delay" for more than three months and the time-consuming and frustrating hassle of dealing with Emblem Customer Service did not cause Plaintiff to abandon his claim, Emblem resorted to a sleight of hand to pull Medicare rules out of thin air as an excuse to execute its second abusive claim evasion tactic: "deny".

H. Council disregarded bias & due process violations by the ALJ appealed from

1. Maximus filed ex parte an alleged “case file” that it never served on Plaintiff

51. Neither Emblem nor Maximus produced to Plaintiff a single piece of evidence requested during discovery.

52. By contrast, Maximus filed with the Office of Medicare Hearings and Appeals (OMHA) Field Office in Phoenix, AZ, (OMHA Phoenix) an alleged “case file” that it never served on Plaintiff in preparation for the fair hearing initially assigned to that Office.

53. The administrative law judge (ALJ) in OMHA Phoenix assigned to the fair hearing requested by Plaintiff was ALJ Dean Yanohira. His Legal Assistant was Deniese Elosh. In the course of her calling Plaintiff to agree on a hearing date, Plaintiff inquired how ALJ Yanohira would prepare for the hearing since neither Emblem nor Maximus had served him with their briefs. Legal Assistant Elosh blurted that ALJ would read 'the case file of Maximus'. What "case file", asked Plaintiff, since

none had been served on him?

54. Plaintiff requested that Legal Assistant Elosh send him a copy of the alleged "case file". She said that she would have to discuss the request with ALJ Yanohira.

55. Plaintiff had to call her and others in the Phoenix Office (tel. (602)603-8609) and (833)636-14760) several times and leave voice mail on her answering machine to restate his request and make sure that the date for the fair hearing would not be set until he had received a copy of the alleged "case file" and had had time to review it.[13]

I. Defamatory complaint against Plaintiff to the Federal Protective Service

56. On Tuesday, May 17, 2022, Plaintiff received a phone call from Inspector Cory Hogan (tel. (602)514-7130) at the Federal Protective Service of Homeland Security. The Inspector informed him that Legal Assistant Elosh had filed a complaint against him with his office because Plaintiff had made multiple phone calls to her and was harassing her.[14] The complaint was taken so seriously that it was being investigated…as if Plaintiff were a terrorist threatening a U.S. officer! After a discussion with Plaintiff, Investigator Hogan realized the baseless and arbitrary nature of the complaint. So much so that he agreed to cause his supervisor to get Plaintiff a copy of the "case file" that Legal Assistant Elosh had said Maximus had filed with her superior, ALJ Yanohira.

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[13] http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero_**Statement_on_Appeal**.pdf >Part I

[14] Id.

57. There is every reason to believe that before taking such a momentous action, Legal Assistant Elosh discussed the matter with ALJ Yanohira and received his consent. So, when Plaintiff complained in writing (id.) to the ALJ about his Assistant and petitioned him for his recusal, ALJ Yanohira did not even address the issue. He had somebody rubberstamp his signature on a boilerplate denying the petition to recuse himself.

58. The complaint filed by Legal Assistant Elosh constituted a humiliating and defamatory abuse of process and power.

59. Plaintiff is gravely anguished by the possibility that whenever he may try to enter an airport, a federal building, such as a U.S. courthouse, or any social activity where guests are vetted, his name may appear in a database for having engaged in conduct that motivated federal officers to complain about him for threatening them and prompted other officers to investigate him.

60. This possibility is all the more realistic by the fact that although Plaintiff complained about Legal Assistant Elosh and ALJ Yanohira to the Council, the latter did not even acknowledge reciept of his complaint. That makes reasonable to conclude that the Council took no action to clear Plaintiff Dr. Cordero's name by having it removed from any database of potential terrorists or people otherwise threatening violence.

61. The fact is that when eventually ALJ Yanohira vacated his denial and recused himself, he did it by having once more his signature rubberstamped on another boilerplate, which, of course, did not mention the complaint against Plaintiff filed by his Legal Assistant Elosh with the Federal Protective Services. In fact, in

footnote 2 of its Decision, the Council wrote: "When later withdrawing from the matter, the ALJ did not specify what "recent events" led the ALJ to withdraw."

62. ALJ Yanohira hid behind a generic, meaningless, one-size-fit-all boilerplate the reasons for first denying Plaintiff's recusal motion and for subsequently reversing himself and granting it. That is how he avoided explaining his conduct.

63. The Council hid similarly: It did not even acknowledge receipt of Plaintiff Dr. Cordero's complaint to it against ALJ Yanohira and his Legal Assistant Elosh.

64. From its failure to acknowledge receipt it is reasonable to infer that the Medicare Appeals Council did not bother to investigate why ALJ Yanohira had behaved as he did, for "he who cannot do the lesser cannot do the more".

65. ALJ Yanohira's colleague who wrote the Decision on behalf of the Council was Administrative Appeals Judge Vanessa M. Hunte. She could not find any report of any such investigation, if she looked for it at all.

66. But if AAJ Hunte found it, she would not dare reveal its existence, which would have made it subject to discovery, not to mention that she would have revealed herself as the one who lifted the black robe of complicity used to cover up the abuse of power of her colleagues.

67. Thereby the Council through her held ALJ Yanohira unaccountable.

68. As a result of the Council's partiality to cover for one of its own, ALJ Yanohira is free to treat other fair hearing petitioners as he treated Plaintiff:

    a. tolerating ex parte communications from Medicare-related parties;

    b. uncritically admitting into the "case" more than 2,000 pages that had never

been served on the fair hearing petitioner so that they were unilaterally and self-servingly turned into "case files";

c. allowing his legal assistants to retaliate against petitioners who assert their rights to due process;

d. allowing his assistants to abuse their access to agencies such as the Federal Protective Services, which can ruin a person's reputation;

e. dealing with petitioners perfunctorily and irresponsibly through boiler-plates that disregard statements of facts and arguments of law; etc.

69. Likewise, the Council and its officers condoned the filing of a humiliating and defamatory complaint against Plaintiff Dr. Cordero by Legal Assistant Elosh and those who aided and abetted her.

70. Unaccountability is the hallmark of absolute power, and just as "power corrupts, absolute power corrupts absolutely".

71. The above illustrates how the Council and its officers, with no regard for due process, engage in "delay", and if the petitioner/appellant/insured does not abandon his claims, proceed to "deny".

J. Coordination allows Defendants to operate a racketeering organization

72. Plaintiff prevailed in having the fair hearing transferred from OMHA Phoenix, AZ, to OMHA Atlanta, GA.

73. The ALJ in OMHA Atlanta and the Medicare Appeals Council limited themselves to alleging that the Medicare rules were dispositive of Plaintiff's claim. They would not take into account "the totality of circumstances", such as those abuses of

power and process and conduct in bad faith and illegal described above.

74. Emblem and Maximus rely on the assurance that if an insured survives their "delay, deny" abusive claim evasion tactics, and still is persistent enough to demand a fair hearing and even appeal from the ALJ's decision, the Council will come to their rescue by merely:

a. holding that the Medicare rules do not cover the claim;

b. pretending to ignore that on the very same day Plaintiff called for the first time about his fallen-out crown, Emblem had actual or imputed knowledge of what the Medicare rules covered or not covered concerning that claim;

c. disregarding Emblem's own advertisement and evidence of coverage;

d. not giving any weight to Emblem's failure to discharge its duty to coordinate benefits with Medicaid;

e. not even mentioning Emblem's and Maximus's coordinated withholding of the reconsideration negative decision to make the insured miss the deadline for requesting a fair hearing;

f. paying no attention to their failure to provide discovery;

g. not even discussing Maximus's filing with the ALJ of an alleged “case file” without serving it on Plaintiff;

h. not being shocked by the burying in the more than 2,000 pages of that alleged “case file” of a note by Legal Assistant Elosh to ALJ Yanohira that Emblem had called to ask about the decision on the fair hearing at a time when the hearing's date had not even been set.

75. All of the above statements and similar ones found in Plaintiff's briefs stand uncontroverted by Emblem and Maximus. It is not in this third appeal after the appeals to an ALJ and the Council that they can conveniently contest them in a brief or at oral argument.

76. The Council rubberstamped a decision with a template tenor. By so doing, it protected the interests of Medicare in retaining in, and attracting to, its network ever more medical services and equipment providers. The Council wanted to avoid by all means giving the impression that if insureds sue Medicare network members, they will be held accountable:

    a. to their advertisements on coverage;

    b. their own rules providing extra coverage above what Medicare does;

    c. their contracts with the insureds;

    d. to the insureds' reasonable expectations based on the assumption that the network member is acting in good faith;

    e. for showing reckless indifference to a plaintiff who let them know that he was in pain and suffering;

    f. for failing their duty under 42 U.S.C. §1395w-22(g)(3)(A)(i) to proceed expeditiously 'to prevent seriously jeopardizing the health of the enrollee or the enrollee's ability to regain maximum function';

    g. for engaging in a "pattern of racketeering" as defined in the Racketeer Influenced and Corrupt Organizations Act (RICO) at 18 U.S.C. §1961(5), namely, 'two racketeering acts committed within 10 years';

h. for failing their employment life cycle duty to properly hire, train, supervise, control, and promote or terminate its employees to ensure that they serve the insureds in accordance with generally accepted standards of medical care; etc.

77. Medicare itself has that membership life cycle duty with respect to its network members.

78. Medicare failed to discharge that duty with respect to Emblem and Maximus.

79. The Council held Medicare as well as Emblem and Maximus unaccountable.

80. Consequently, the Council's Decision should be reversed and the relief requested below granted.

K. CD produced by Council to Plaintiff contained only his own materials

81. Neither Emblem nor Maximus ever filed a brief responsive to Plaintiff's briefs for the fair hearing or the appeal to the Council[5].

82. Nor did they produce a single piece of evidence requested by Plaintiff.

83. The Council produced to Plaintiff a CD on February 15, 2023, belatedly, after the 90 days for it to decide the appeal filed on October 28, 2022, had passed.

84. That CD consisted of the very materials that Plaintiff had submitted to Emblem, Maximus, and OMHA.

85. The phone recordings that the CD contained were not two-party conversations, but rather the recorded messages that Plaintiff had left them as voice mail!

86. The Council knew that because it either listened to the sound files to determine

which ones to include on the CD or because by the time it wrote its Decision on October 17, 2024, it had received Plaintiff's supplemental brief of March 11, 2023,[15] complaining about it. Since it was the Council that prepared that CD, actual knowledge of its contents is imputed to it.

87. Consequently, the Council proceeded in bad faith when it alleged in its Decision that Plaintiff had received discovery on a CD. It deceptively tried to pass off Plaintiff's own materials for the discovery that he had requested repeatedly but never received. It engaged in racketeering to protect Emblem and Maximus.

L. Delay, deny to wear down the insured and cause him to abandon his claim

88. Plaintiff's statements show that the conduct of Emblem's people when they pass an insured from one supervisor to the other and to the other and so on (SDNY:125§3 above), constitutes Emblem's institutionalized way of doing business: Those supervisors were not rogue employees; rather, they are the face and body of Emblem. They make up what Emblem is. They were executing Emblem's first abusive claim evasion tactic: "delay, delay, delay".

89. Their purpose is to drag out the claim for coverage for so long, raise so many obstacles, disrupt the insured's life so profoundly, and cause so much frustration, that he, sick, old, and financially exhausted, will be worn out. Then he will abandon his claim.

90. Their pattern of conduct started to manifest itself with the first level Emblem

[15] http://Judicial-Discipline-Reform.org/ALJ/23-3-11DrRCordero_**supp_brief-Medicare_Appeals_Council**.pdf

people in The Philippines that picked up the phone when Plaintiff called Emblem's so-called Customer Service at (877)344-7364.

91. These phone picker uppers did not have the faintest idea how to answer Plaintiff's question about what to do with the crown that had fallen out of tooth # 19. Hence, they would put Plaintiff on hold every time he asked a question so that they could write an email to their supervisors to describe to them Plaintiff's question.

92. This means that the first level phone picker uppers did not have access to a floor supervisor or manager.

93. One clear reason for this is that many, if not all, phone picker uppers worked from home, not in a building that houses Emblem's offices in The Philippines.

94. It is in the self-interest of the phone picker uppers to make up all sorts of excuses not to put callers in direct contact with their supervisors: The more the phone picker uppers connect callers and supervisors directly to each other, the more they inevitably reveal that they do not have answers to the questions of yet another caller.

95. It is reasonable to infer from their work setup that such revelation would put their job with Emblem at risk, i.e., the job of the phone picker uppers because they have not learned enough to know the answers; and that of the supervisors because they have not taught them sufficiently well for them to figure out the answers based on the information that they have. This deficiency in critical thinking may be traced back to how the Philippine educational system in the

grades educates children.

96. Critical thinking allows jurors to draw inferences from the facts known to them even before they become jurors, making them 'peers of the parties'; the verbal statements and body language of the parties at the tables and the witnesses on the stand; and the physical evidence introduced at trial.

97. No wonder it was so exasperating and time-consuming for Plaintiff to prevail upon phone picker uppers to stop emailing their supervisors and transfer his call to whomever was the supervisor at the time.

98. Soon Plaintiff realized that it was a total waste of time to speak with the first level Emblem Philippine people. Consequently, he would systematically ask to be transferred to a supervisor.

99. The supervisors did not know what to do either. So, they told Plaintiff that they would have to do some "research" to find out what to do.

100. The supervisors never mentioned that the "research" that they had to do was on anything other than Emblem's own advertisement and evidence of coverage.

101. The supervisors never mentioned that they had to do "research" on Medicare rules.

102. Nor did they mention anything about Medicaid, let alone about "Medicaid COB", for they did not know what "COB" meant. It means "Coordination of Benefits". Of course, they did not know with what Medicaid had to be coordinated, how, and to what extent.

103. The supervisors never mentioned anything remotely similar to the above-quoted

(SDNY:143¶32 above) technical description, which includes even medical coding, of 'the requested pre-authorization' for treating tooth # 19 after its crown fell out.

104. The recorded phone conversations between Plaintiff and Emblem people would bear that out, which explains why Emblem never produced them during discovery.

105. When the Philippine supervisors could not find out what Emblem would cover to deal with the fallen-out crown, they would stop communicating with Plaintiff.

106. After a cost-benefit analysis it is highly likely that Emblem has determined that it is not cost-effective to try to teach their Philippine people to think critically, or learn anything other than the basic.

107. That analysis may be confirmed by the very high employee turnover that Emblem has to deal with. Why spend an enormous amount of money to properly train people for months on end given that after only a very short time on the job they will suffer under crushing intellectual demands and quit?

108. Emblem's Customer Service in The Philippines is staffed with people who are neither trained to deal, nor intellectually capable of dealing, with the problems that insureds bring to them.

109. For one thing, the Emblem Philippine people are required to repeat the question that an insured asks of them in order to obtain confirmation from the insured that they understood the question.

110. That requirement shows that Emblem itself does not trust their capacity to even understand what insureds are talking about.

111. This explains why Emblem Philippine people so often appear to be reading from

a script when speaking with an insured while disregarding what the insured is asking or saying. If taken off-script by the questions of an insured, they do not know what to say. They repeat the script or ask a supervisor. It is as exasperating as a conversation with a person whom you can hear but who cannot hear you.

112. This may also explain why the Emblem Philippine people either do not have the authority to solve the problem that the insured brings to them or do not feel confident in exercising that authority.

113. The Emblem Philippine supervisors did not have a direct phone extension.

114. The Emblem Philippine supervisors did not return the phone call messages that Plaintiff left on their general voice mailbox.

115. The Emblem Philippine supervisors did not return the messages for them that Plaintiff would leave with the first level telephone picker uppers.

116. If a supervisor transferred the case to another supervisor, the latter did not know anything about the case either.

117. If a previous supervisor wrote notes on Plaintiff's chart -forget about a phone picker upper doing so-, the next supervisor would not have read it, either because it was poorly written or because he or she was not competent enough to understand what was going on or responsible enough to make the effort to understand.

118. After all, "*why sweat it?!*" It is not as if any higher supervisor were listening, or would listen, in on the conversation to realize what was happening and hold anybody accountable. Having supervisors listen in would cost too much.

119. After being dropped by the latest supervisor, Plaintiff had to begin all over again

with another supervisor…after wrestling with phone picker uppers to have his call transferred while hearing in the background dogs barking, chickens crowing, and children crying or adults laughing or talking all at the same time. Oh, life in the countryside is so convivial with fowl and folks around!

120. This unaccountability on which phone picker uppers and supervisors alike can rely accounts for the fact that for them callers are nothing but a transient nuisance. Inconsequentially, they can be dropped and forgotten if they demand reliable information….or simply information.

121. Since they are unsupervised and thus held unaccountable, the Philippine people do whatever they want. They are a ship cast onto the ocean and forgotten by the Emblem U.S. captains.

122. After a while, Plaintiff refused to deal with the Emblem Philippine people. He requested to be transferred to the Emblem people in the U.S.

123. It took the Philippine people far more than an hour just to get connected to somebody in the U.S. to whom to transfer Plaintiff. After a shockingly long time, he found somebody in the U.S. who would deal with him. It was not a great improvement, except for the absence of domestic animals' noise.

124. This indicates that Emblem's Customer Service call center in The Philippines is not in constant contact with their counterparts, much less their superiors, in the U.S. The Philippines call center is in practice left to its own devices by Emblem officers in the U.S.

125. Running a call center with phone picker uppers in The Philippines, some of

whom have been elevated to supervisors, may cost a pittance of what it costs in the U.S. But what they offer is only a mockery of Customer Service.

126. It follows that Emblem Customer Service call center in The Philippines is a sham. Its purpose is to pretend to satisfy the Medicare requirement that its network members have such a Service, at least in name and appearance.

127. Medicare knows, and by exercising due diligence in supervising and controlling would know, that such a Customer Service is a sham.

128. Plaintiff would not give up his demand for an answer to his question about crown repair coverage even after months of Emblem's "delay, delay, delay". So, Emblem executed its second claim evasion tactic: On December 12, 2021, it denied Plaintiff's claim. Like a poker player, it pulled out from under its sleeve the excuse that Medicare did not cover the repair of tooth # 19 after its crown fell out.

129. It is not possible that nobody in Emblem knew what Medicare did or did not cover, or with due diligence could have found out during Plaintiff's first call.

130. The evidence shows that Emblem's delay was in bad faith. It was part of a racketeering scheme to wear Plaintiff down and cause him to abandon his claim without Emblem having to issue yet another denial and enter it on its records…assuming it keeps such records.

131. Emblem, Maximus, and Medicare must know it. But how many sick, old, and law-ignorant insureds are going to survive four levels of appeal and still have the stamina to climb to the fifth level to appeal to a U.S. district court for judicial review of the administrative proceedings below?

132. Insureds are likely scared away from appealing to a district court by the specter of what awaits them there: A hypertechnical, protracted, and unaffordable battle with an army of corporate lawyers determined to crush the insureds with the third and merciless tactic of abusive claim evasion: "defend".

M. Defendants are barred from defending against what they failed to contest

133. Neither Emblem nor Maximus wrote and filed any brief for either the fair hearing or the appeal to the Medicare Appeals Council.

134. Neither contradicted any of the statements of facts or arguments of law made by Plaintiff in his briefs[5 above] for the hearing and the appeal to the Council.

135. Those statements and arguments stand uncontested as a matter of fact, and they should be held no longer objectionable as a matter of law.

136. Emblem and Maximus waived their right to object to Plaintiff's statements and arguments by failing to exercise it below.

137. Emblem and Maximus must be deemed to have admitted Plaintiff's statements of facts and arguments of law.

138. Emblem and Maximus are barred by laches from mounting any defense in this court.

139. Emblem and Maximus are estopped from contesting those facts and arguments in another lawsuit.

140. Defendants' "delay, deny" tactics were executed through misrepresentations intended to conceal the real motive of claim evasion of an otherwise payable claim. They have injured Plaintiff through deprivation of coverage while securing

for themselves the benefit of saving money through breach of contract and unlawful conduct. The essential requirements for a charge of fraud are satisfied.

141. As a result, Defendants come into this court with dirty hands.

142. The court should not wash Defendants' hands by allowing them to file the brief that they failed to file twice below and that they would file in this court to execute the third tactic of abusive claim evasion: "defend".

143. Defendants' dirty hands would make any brief filed by them dirty and appealable to the circuit court.

144. The Defendants have coordinated their deprivation under color of law of Plaintiff's civil right to due process, including:

a. his right to notice, not only of any charges brought against him, but also of the defenses to his charges against an opposing party so that the he may not be ambushed by that party's unfair surprises before the adjudicator;

b. his right to discovery to avoid an unfavorable judgment through concealment of evidence; and

c. his right to administrative adjudication free of bias and partiality resulting from connivance between an adminstrator and those supervised and controlled by it.

N. Denial of due process has consumed Plaintiff's effort, time, and money

145. The court is justified in drawing from the illegal handling of the Maximus's alleged “case file” the inference that it contains evidence that Maximus intended to use and used ex parte to influence OMHA in its favor while concealing from

Plaintiff evidence that incriminated it in illegal and unethical conduct.

146. Indeed, Maximus filed more than 2,000 pages ex parte with the OMHA Phoenix Field Office. Those pages contain irrelevant and repetitive materials as well as materials that Emblem did not submit to Plaintiff or to its own Customer Service supervisors. Eventually, at least 19 supervisors (SDNY:125§3 above) dealt with Appellant for months without ever making reference to those materials because the supervisors were either poorly trained, incompetent, or lacked any sense of responsibility to take ownership of the medical problem that Appellant had brought to their attention in order to find the extent of coverage by Emblem.

147. The Maximus's alleged “case file” was a slapped-together job done by Emblem and Maximus at a convenient time for them only and filed with the OMHA Phoenix.

148. Its purpose was to influence ex parte OMHA Phoenix in favor of Maximus and Emblem, inducing the ALJ to conclude that 'If the file submitted by Maximus is so voluminous, it must provide ample support for the outcome of its reconsideration confirming Emblem's denial of coverage'.

149. Moreover, the "case file" served to bury in it a single page bearing a note from OMHA Phoenix Deniese Elosh, legal assistant to the administrative law judge assigned to conduct the fair hearing there, ALJ Dean Yanohira.

150. Legal Assistant Elosh noted a call from Emblem Legal Department asking the judge what the decision of the fair hearing was, the very hearing that Emblem was supposed to attend and whose date had not even been fixed! They knew that

the hearing was rigged.

151. In spite of Plaintiff's objections, the Maximus's alleged "case file" remained in the appeals process:

152. While discussing the possible dates for the fair hearing, Legal Assistant Elosh blurted that there was a record. Plaintiff was shocked. He asked that she send him a copy of it. What she did was file a complaint against Plaintiff with the Federal Protective Service…as if Plaintiff were a terrorist threatening her. Her complaint was so serious that Investigator Cory Hogan called Plaintiff. Upon discussing with Plaintiff the circumstances of the complaint, the investigator realized that it was so baseless that not only did he drop it, but also prevailed upon Legal Assistant Elosh to send Plaintiff a copy of the Maximus's alleged "case file".

153. Plaintiff moved ALJ Yanohira to recuse himself[16]. The ALJ denied the motion by having a form rubberstamped that did not discuss either the basis of either the motion or the denial. See Medicare Appeals Council (the Council) Decision, page 6 footnote 2.

154. Plaintiff appealed to the Council. The latter never responded. But ALJ Yanohira reversed his denial and recused himself by having yet another form rubberstamped, where he did not discuss the reasons for his reversal. Upon Plaintiff's demand, the fair hearing was transferred from the OMHA Field Office

[16] http://Judicial-Discipline-Reform.org/ALJ/22-6-3DrRCordero_**motion_recuse_ALJDYanohira.pdf**

in Phoenix to that in Atlanta, Georgia (OMHA Atlanta).

155. However, the Maximus's alleged "case file" was also transferred to OMHA Atlanta. In spite of Plaintiff's objections, it was relied upon by ALJ Loranzo Fleming during the fair hearing and as support for his decision.

156. ALJ Fleming did so despite failing to even discuss Plaintiff's motion to find both Emblem and Maximus in default for never having filed a brief for the hearing, whereby they deprived Plaintiff of advanced notice of what their position was on the matter at hand.

157. Maximus did not even bother to attend the fair hearing.

158. By Emblem and Maximus failing to file an answer to Plaintiff's brief[17] for the hearing, but nevertheless Emblem stating its position at the hearing, Emblem committed unfair surprise upon Plaintiff.

159. The alleged "case file" entered by Maximus ex parte in the OMHA Phoenix, and thus illegally, which it never served on Plaintiff, did not address Plaintiff's brief for the hearing in OMHA Atlanta at all.

O. ALJ Fleming argued for Defendants at the hearing, forfeiting his impartiality

160. ALJ Fleming failed to find Emblem and Maximus in default for failure to file a responsive brief, which Plaintiff had requested him to do.[13 above]

161. He would not even discuss Plaintiff's default motion.

[17] http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero_**Statement_on_Appeal.**pdf

162. By contrast, ALJ Fleming relied on the alleged “case file” filed ex parte by Maximus, which it never served on Plaintiff.

163. Maximus's alleged “case file” did not address Plaintiff's brief at all.

164. In reliance on Maximus's "case file", ALJ Fleming engaged throughout the hearing in a debate with Plaintiff where he argued the case for Emblem and Maximus as their advocates.

165. By allowing Emblem, which had filed no brief, to make a statement, ALJ Fleming tolerated an impermissible hearing by ambush that relied on Emblem's unfair surprise on Plaintiff.

166. As advocate for Emblem and Maximus, ALJ Fleming forfeited his impartiality and acted unfairly toward Plaintiff.

167. ALJ Fleming had prejudged the outcome of the hearing and did not come to it with an open mind. He had already made up his mind. The recording of the hearing bears this out.

168. ALJ Fleming's bias is all the more manifest because he failed to discuss any of the issues that Plaintiff had raised in his brief. He was impervious to the fact that from the beginning the 19 Emblem supervisors (SDNY:125§3 supra) had discussed Plaintiff's request for treatment only under Emblem's advertisement and evidence of coverage. They did not even mention Medicare regulations, never mind those of Medicaid.

169. As a matter of fact, practically none of them knew what "D-SNP" on the front side of the Emblem member ID card received by Plaintiff meant -dual Medicare and

Medicaid benefits for members on the Special Need Plan-.

170. They were not aware that on its front side the card states "Comprehensive Dental". Of course, they ignored the nature and extent of such comprehensiveness.

171. Nor did they know that also on its front side the ID card states "Medicaid COB may apply". They did not even know where to search for its meaning. Plaintiff found out that it means "Medicaid Coordination of Benefits may apply". But the supervisors did not know what benefits were supposed to be coordinated and to what extent.

172. The above statements are facts that the more than 50 hours of recorded phone conversations with the 19 supervisors can prove. This explains why Emblem failed to produce in discovery a single one of those recordings.

173. Emblem withheld the proof of Plaintiff's assertions in violation of discovery.

174. ALJ Fleming and the Medicare Appeals Council condoned such violation'

175. They violated Plaintiff's due process right by withholding the means needed for his defense.

176. Abusing his power, ALJ limited the hearing to what benefited Emblem and Maximus, that is, an arbitrary limitation of the hearing to Medicare rules, with no regard for the interaction of Plaintiff with the 19 Emblem supervisors; Emblem's advertisement and evidence of coverage; and the need to coordinate with Medicaid.

177. ALJ Fleming blatantly disregarded the foundational principle of due process: It

is the plaintiff who gives notice of the charges. The defendant must defend against them, and do so timely, rather than when it is most convenient to itself. The defendant does not pick and choose what charges it wants to defend against and what charges it simply wants to disregard with impunity.

178. When a defendant disregards a charge, it admits to it and waives any defense. It loses the opportunity to defend against it.

179. ALJ treated Plaintiff with disrespect, as described in the motion for him to recuse himself or be disqualified.[18]

180. ALJ Fleming denied Plaintiff due process of law.

181. By adopting ALJ Fleming's decision, the Council:

a. failed to find Emblem and Maximus in default;

b. condoned their withholding of evidence;

c. allowed the entry of an alleged "case file" ex parte;

d. tolerated the abuse of that "case file" to bury an incriminating communication of Emblem with the OMHA Phoenix to find out how the ALJ there had decided the hearing at a time when not even its date had been set;

e. condoned ALJ Fleming's partiality and unfairness, and consequent denial of due process to Plaintiff.

[18] http://Judicial-Discipline-Reform.org/ALJ/22-8-17DrRCordero_**motion_recuse_ALJLFleming**.pdf

P. Injuries caused Plaintiff by Defendants

1. Defendants disregarded Plaintiff's pain: permanent consequences

182. The Defendants, in their official and personal capacities, have executed against Plaintiff Dr. Cordero their "delay, deny, defend" tactics intended to wear him down and force him to abandon his claim for insurance coverage of the treatment determined by doctors to be a medical necessity.

183. The Defendants had the duty to deal fairly and impartially with him and his grievances.

184. That duty was all the more acute because he told them that he was in pain and suffering: As a result of the falling out of the crown of tooth #19, he was repeatedly biting his tongue and chewing his left cheek. This problem became acute so that he was afraid to eat, for it would not be a moment of pleasure, but rather a cause of apprehension and suffering.

185. Due to avoiding that side of the mouth and chewing food only on his right side of the mouth, his jaws were becoming misalinged. That in itself was causing pain.

186. A thick scar resulting from repeatedly chewing his left cheek has formed, namely, a lineal keloid.

187. Since the missing crown did not offer resistence to the tooth above it, the latter was growing down, that is, supra eruption was occurring. The prospect that when he would open his mouth he would look like a freak to other people made him anxious all the time.

188. Defendants have kept Plaintiff suffering for weeks and months and years and

they knew it: They have been informed thereof in writing by:

a. the doctors at the NYU College of Dentistry and his Primary Care Physician who considered treating the problems arising from the falling out of the tooth #19 crown a matter of medical necessity that required the extraction of the root, curettage, reconstruction of the base with bone powder, and the implant of a post+crown; and

b. panoramic and individual X-rays, which have shown that there is a large area of infection under what remains of tooth # 19, to wit, its root, and that the infection keeps spreading to the adjacent teeth so that the infection has to be removed through the surgical procedure of curettage, to wit, accessing the jaw bone through the mouth and scraping the infected bone area.

189. Precisely because the infection under the root of tooth # 19 has spread, once the root is extracted, the curettage will have to be more extensive. Doctors have warned Plaintiff that the extraction and the curettage will provoke copious hemorrhage. In the midst of so much blood, it will be difficult to ascertain the depth that they have reached with the scraping instruments. Consequently, there is the risk that they might sever the mental nerve, which runs thereunder from below the left ear to the middle of the chin. If the mental nerve were severed, Plaintiff would permanently lose sensitivity on the left side of his face. That is a most frightening prospect.

190. Meantime, the gum around tooth #19 keeps creeping up and over what is left of the tooth. That is soft and thin tissue. If Plaintiff were to eat on that side of his mouth, the pressure would crush that tissue and cause it to bleed. In fact, the

doctors have noticed that pressing down that tissue with a dental instrument has caused it to bleed. The bleeding of tissue in the mouth increases the probability of the tissue becoming a focus of infection.

191. Defendants' execution of their "delay, deny" tactics has caused an inordinate amount of time to go by without treatment for Plaintiff's # 19 tooth problem. They have allowed the problem to fester. It has now become untreatable, unless the doctors and Plaintiff were willing to assume considerable risk of causing irreversible and grave injury.

192. Defendants have indisputably been aware that they have failed to act for an unjustifiably long amount of time. Indeed, Plaintiff filed his appeal from the decision of the ALJ to the Medicare Appeals Council on October 28, 2022. Social Security Act §1869, codified to 42 U.S.C. §1395ff, imposes on the Council this duty:

> (2) Departmental Appeals Board review
>
> (A) In general
>
> The Departmental Appeals Board of the Department of Health and Human Services **shall** conduct and conclude a review of the decision on a hearing described in paragraph (1) and make a decision or remand the case to the administrative law judge for reconsideration by not later than the end of the 90-day period beginning on the date a request for review has been timely filed. [**bold** emphasis added]

193. In his voice mails and emails, Plaintiff informed the Council that his calls were going straight to voice mail, where he would record messages to no avail, for

nobody would call him back.

194. Plaintiff was sending emails daily to up to 30 officers (cf. SDNY: fn[7]; SDNY:117§0 above)…in two years more than 11,000 emails![19]

195. Plaintiff kept emailing those officers until the Council must have realized that he would not allow it to wear him down and cause him to abandon the appeal.

196. Finally, the Council moved from its abusive claim evasion "delay" tactic on to its "deny" tactic by issuing on October 17, 2024, its Decision, which denies coverage of the treatment prescribed by the doctors for tooth # 19.

197. This collective unresponsiveness and contemptuous disregard of repeated requests for information and action provide probable cause to believe that it was the product of complicit coordination among Defendants.

198. Indeed, it is not by mere coincidence that up to 30 officers, never mind individuals, for two years received daily emails requesting them to discharge their duty or cause others to do so, but they decided independently from each other to do nothing, not even scream in exasperation by emailing: '*STOP SENDING ME THIS EMAIL!!!* I've got nothing to do with it. I forwarded it to X@Y.Z, who is in charge of this matter."

199. Rather, these officers have coordinated their response, some issuing the order and all executing it: 'Say nothing, do nothing…other than delay'.

200. Defendants operate as a coordinated organization, a racketeering and corrupt

[19] See the file at http://Judicial-Discipline-Reform.org/ALJ/23-8-28DrRCordero_**class_action_v_Medicare**.pdf

one.

Q. Relief requested

201. Defendants have engaged in conduct that foreseeably would prolong Plaintiff Dr. Cordero's physical pain; inflict emotional distress on him; defame him, and deprive him of due process. They have acted intentionally, for "people are deemed to intend the foreseeable consequences of their conduct".

202. By coordinating their conduct, they have acted more beneficially for themselves and injurious to Plaintiff and others. So, they have acted fraudulently. They form a corrupt organization that engages in racketeering.

203. For the injury that they have caused Plaintiff, he demands compensation for him and a change in Defendants' conduct that may benefit the public at large.

204. Therefore, Plaintiff Dr. Cordero respectfully requests that the court grant him the following relief:

a. reverse the decisions of the Council and of ALJ Loranzo Fleming;

b. enter default judgment, judgment on the pleadings, and/or summary judgment against Defendants and in favor of Plaintiff;

c. order the Defendants to pay Plaintiff jointly and severally:

1) damages in the amount of $1,000,000; if the court orders to proceed to trial and to that end engage in discovery, this amount may be revised upward in light of the nature, extent, and gravity of Defendants' abuse of power and process, and other forms of illegality that may be revealed, and further damages and costs caused; the

amount may also be revised upward if there is a need to appeal to the U.S. Court of Appeals for the Second Circuit or this appeal is removed in whole or in part to state court;

2) punitive damages;

3) treble damages;

4) damages for pain and suffering;

5) reasonable attorney's fee for his work prosecuting this case for years;

6) reimbursement of his expenses and court costs;

d. as to the file concerning the complaint filed by Legal Assistant Deniese Elosh at OMHA Phoenix, AZ, against Plaintiff, order the Federal Protective Services, Homeland Security, the Council, Emblem, Maximus, all other Defendants, and all other entities and persons in possession of that file, to release it to Plaintiff and to the court under seal so that it does not become part of the public file;

e. hold that Legal Assistant Elosh and those who acted with her as principals or accessories humiliated and defamed Plaintiff and are liable to him;

f. order the removal of Plaintiff's name from the watch list and similar lists of the Federal Protective Services, Homeland Security, and all other similar agencies;

g. order Defendants to enter into a binding agreement with the court and Plaintiff to change their conduct in the public interest in concrete, realistic, quantifiable, and verifiable ways through research, publications, and

education, and that such agreement be supervised by the court, Plaintiff, and one or more public interest entities, whether in existence currently or to be created for that purpose and attached to a highly competent and esteemed university or school;

h. award all other relief that to the court may appear just and fair.

Dated: 2 March 2025 /s/ Dr. Richard Cordero, Esq.

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Bronx, NY City, NY 10472

SDNY:178-180

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD CORDERO, Plaintiff, -v- THE SECRETARY OF HEALTH AND HUMAN SERVICES, EMBLEMHEALTH, MAXIMUS FEDERAL SERVICES, *et al.*, Defendants.	:	24-CV-9778 (JAV) ORDER

JEANNETTE A. VARGAS, United States District Judge:

On January 31, 2025, the Court issued an Order of Service (the "Order") directing service on the United States Secretary of Health and Human Services, EmblemHealth, and Maximus Federal Services, and dismissing Plaintiff's claims against the remaining federal defendants. ECF No. 13. On February 14, 2025, Plaintiff submitted a motion for reconsideration of that Order. ECF No. 16. As Plaintiff presents no valid grounds for reconsideration, the motion is DENIED.

"A motion for reconsideration should be granted only when the defendant identifies an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Trust*, 729 F.3d 99, 104 (2d Cir. 2013) (cleaned up). A motion for reconsideration is "not a vehicle for relitigating old issues, presenting the case under new theories, securing a rehearing on the merits, or otherwise taking a second bite at the apple." *Analytical Surveys, Inc. v. Tonga Partners, L.P.*, 684 F.3d 36, 52 (2d Cir. 2012) (citations and quotation marks omitted).

The standard for granting a motion for reconsideration is "strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked." *Id.* (quoting *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995)) (quotation marks omitted).

Plaintiff does not identify any change of controlling law, any new evidence, the need to correct a clear error, or prevent injustice. First, Plaintiff argues that the Court deprived him of "access to judicial process" by dismissing defendants before they had been served. ECF No. 16, ¶ 12. But as stated in the Order, the Court must dismiss portions of an *in forma pauperis* ("IFP") complaint that are frivolous, fail to state a claim on which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). This dismissal can be done "at any time." 28 U.S.C. § 1915(e)(2). Accordingly, pursuant to section 1915, the Court dismissed the improper defendants from whom Plaintiff could not seek relief before they were served.

Second, Plaintiff argues that the judicial immunity doctrine is unconstitutional. ECF No. 16, ¶¶ 29-49. But "[i]t is well settled that judges generally have absolute immunity from suits for money damages for their judicial actions." *McKnight v. Middleton*, 699 F. Supp. 2d 507, 523 (E.D.N.Y. 2010); *see also Bliven v. Hunt*, 579 F.3d 204, 210 (2d Cir. 2009) (defining judicial actions as "acts arising out of, or related to, individual cases before the judge"). "The doctrine of judicial immunity is supported by a long-settled understanding that the independent and impartial exercise of judgment vital to the judiciary might be impaired by exposure to potential damages liability." *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435 (1993). Thus, judicial immunity means "immunity from suit, not just from ultimate assessment of damages." *Mireles*

v. Waco, 502 U.S. 9, 11 (1991). As explained in the Order, that immunity is also extended to administrative law judges, who perform similar functions to judges. *See Montero v. Travis*, 171 F.3d 757, 760 (2d Cir. 1999).

Seeing that Plaintiff has not pointed to any clear error in the interpretation of the judicial immunity doctrine nor provided any case law in support of his argument, the Court does not find that Plaintiff has satisfied the standard for reconsideration. Accordingly, Plaintiff's motion for reconsideration is DENIED.

The Clerk of Court is directed to terminate ECF No. 16.

SO ORDERED.

Dated: March 13, 2025
New York, New York

JEANNETTE A. VARGAS
United States District Judge

SDNY:183

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24 March 2025

Re: *Cordero v. HHS Secretary, Medicare, EmblemHealth, Maximus Federal Services, et al.*
24-cv-9778-JAV,
U.S. District Court, SDNY

Ms. Rebecca Salk

The supervisor of Ms. Rebecca Salk

Mr. Matthew Podolsky
Acting U.S. Attorney, SDNY,
Southern District of New York
86 Chambers Street, 3rd Floor
New York, NY 10007
tel: (212)637-2614

Dear Ms. Salk, your supervisor, and Acting U.S. Attorney Podolsky,

1. I am in receipt of your email to me of last 14 March, which reads as follows:

> Re: Cordero v. Secretary of Health and Human Services, 24-cv-09778 (JAV)
>
> Inbox
>
> Salk, Rebecca (USANYS)
> From: rebecca.salk@usdoj.gov
> To: Dr.Richard.Cordero_Esq@verizon.net
> Fri, Mar 14 at 11:15 AM
>
> Dr. Cordero,

> I represent the federal defendants in the above-referenced matter. My office was served with your initial complaint by mail on 2/17/25. I also see that you filed an amended complaint on 3/5. The current deadline for the federal defendants to respond is 4/18/2025. Fed. R. Civ. P. 12(a)(2); Fed. R. Civ. P. 15(a)(3).
>
> However, we requested a certified copy of the Administrative Record and have been told that it will not be ready until May 21, 2025. Pursuant to 42 USC 405(g), we are required to provide a certified copy of the Administrative Record along with our answer. I therefore plan to seek an extension of time to respond to your complaint (60 days from 5/21/25--the date that we receive the record). Please let me know whether you would consent to this request so that I can indicate as such in my letter to the Court.
>
> Thank you,
>
> Rebecca Salk
>
> ---
>
> Rebecca Salk
> Assistant United States Attorney
> Southern District of New York
> 86 Chambers Street, 3rd Floor
> New York, NY 10007
> Tel: 212-637-2614

2. I would be grateful if you would acknowledge receipt of both versions of my emails to you, namely, this final version with an attachment and the one that I sent you on Friday, 21 March 2025.

Table of Contents

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A. What made the amendment of the complaint necessary

3. Concerning my amended complaint[1], I filed it upon the critical comments on my complaint and leave of the Court to amend it when it took the initiative last January 31, to terminate 27 of the 29 defendants that I had named in my original complaint filed on December 16, 2024 (aside from the three parties that by law had to be named, that is, the HHS Secretary, the AG, and the AUSA for SDNY). Surprisingly, this was the first action that the Court took after Judge Jeannette A. Vargas was assigned to my case the day before, January 30. For a month and a half nothing had happened in my case, except my calls to the Court to find out why that was so.

4. Yet, it is well known that in a civil case you name all related people and entities and let them blame each other as defendants in the courtroom. That is what FRCP 18-20 on joinder permit and require.

5. To terminate all individual defendants and even institutional ones, the Court invoked sovereign immunity -so antithetical to a system of justice founded on the tenet "Equal Justice Under Law"-; and the self-servingly concocted doctrine

[1] http://Judicial-Discipline-Reform.org/ALJ/24-12-15DrRCordero-v-Medicare_EmblemHealth_et_al.pdf

of judicial immunity. By so doing, it blatantly disregarded:

> FRCP 12(a)
>
> > (2) United States and Its Agencies, Officers, or Employees Sued in an Official Capacity. The United States, a United States agency, or a United States officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney.
> >
> > (3) United States Officers or Employees Sued in an Individual Capacity. A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

6. The Court also disregarded FRCP 8(a)(2), requiring only "a short and plain statement of the claim", where discussion of the law has no place at all.

7. The Court terminated 27 of 29 defendants even before they had been served; thus functioning as their advocate and sparing them any response or consideration of a settlement. The Court acted arbitrarily and capriciously, disregarding constitutional and regulatory provisions. It abused its power, rather than its discretion, which it did not have for what it did. Its conduct provides the basis for my proposal to you below.

B. The limited extent of the amendments to the complaint

8. I filed the amended complaint through the CM/ECF system on 3 March. It clearly

indicates on the caption page the precise place and limited extent of the amendments thus:

	AMENDED (see SDNY:131§5a-c infra) **Complaint** and **appeal ...**

9. To reinstitute the terminated defendants my amended complaint shows to the Court that my original complaint had more than satisfied the requirement of FRCP 8(a)(2) that it provide "a short and plain statement of the claim" against the defendants; and that the complaint was not the paper where I had to discuss any legal theories on judicial or sovereign immunity or anything else.

10. Indeed, my "statement of the claim" could be very "short and plain" because the Defendants had been informed of my claim against them, individually and as members of a coordinated group of abusers of power, through:

    a. my dealings with them for years since September 8, 2021, through my initial request for medical insurance coverage, which they protracted through their "delay" tactic; and after they applied the "deny" tactic, through four levels of administrative appeals, all of which had produced:

    b. scores of phone conversations with me that they had recorded;

    c. the emails and letters that we had exchanged, which I collected and

included as exhibits in…

d. my statements at the recorded fair hearing, which EmblemHealth (Emblem) did not challenge and Maximus Federal Services (Maximus) did not even attend;

e. the briefs that I had served on them, none of which they answered with a responsive pleading; to wit:

a) Links to the only briefs and exhibits in the Administrative Record

1) http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero_Statement_on_Appeal.pdf

2) http://Judicial-Discipline-Reform.org/ALJ/22-6-3DrRCordero_motion_recuse_ALJDYanohira.pdf

3) http://Judicial-Discipline-Reform.org/ALJ/22-8-17DrRCordero_motion_recuse_ALJLFleming.pdf

4) http://Judicial-Discipline-Reform.org/ALJ/**22-8-24ALJL Fleming**-DrRCordero.pdf

5) http://Judicial-Discipline-Reform.org/ALJ/DrRCordero-Form **DAB-101 filled out**

6) http://Judicial-Discipline-Reform.org/ALJ/**22-10-26**DrRCordero-**Medicare**_Appeals_Council.pdf

7) http://Judicial-Discipline-Reform.org/ALJ/**23-3-11**DrRCordero_**supp_brief**-Medicare_Appeals_Council.pdf

8) http://Judicial-Discipline-Reform.org/ALJ/**23-3-27**DrRCordero_efiled_**faxed_supp_brief**.pdf

9) http://Judicial-Discipline-Reform.org/ALJ/**23-3-28** Dkt M-23-3216.pdf

10) http://Judicial-Discipline-Reform.org/ALJ/**23-8-28**DrRCordero_**class_action_v_Medicare**.pdf

11) http://Judicial-Discipline-Reform.org/ALJ/22-3-

9DrRCordero_unsubstantiated_dismissal.pdf

f. The above files have been combined and their pages numbered consecutively in the file at:

12) http://www.Judicial-Discipline-Reform.org/ALJ/**24-12-15**DrRCordero-v-MedAppCouncil_record.pdf

g. The combination file is around 41+ MB in size, nevertheless, it is downloadable; otherwise, download its individual component files, if need be, by copying a link, pasting it in the search box of your browser, and pressing "Enter".

C. Neither Emblem nor Maximus served any brief on me

11. I trust that the AUSA did read my complaint and learned that neither Emblem nor Maximus ever served on me anything that they might have filed for the fair hearing before the administrative law judge(ALJ) or the Medicare Appeals Council(Council). Hence, they cannot produce now anything that they had the duty to disclose, produce for discovery, or testify to. They waived, forfeited, and lost through laches their right to do so. By not objecting to any of my assertions in my briefs, those parties admitted them. They are now barred from challenging them.

12. What is more, not even the Commissioner of Social Services or the Secretary of Health and Human Services can produce now as part of a “certified copy of the Administrative Record” (a certified Record) what was never served on me and filed for the fair hearing or the appeal to the Council.

13. In fact, despite my repeated requests for specific evidentiary materials that I

needed to prepare for the hearing and my appeal to the Council, nothing was produced. The deadline for me to appeal from the ALJ decision to the Council was on October 28, 2022.

14. I nevertheless kept asking Emblem, Maximus, the two ALJs, and the Council for such materials. I left even more recorded messages on their answering machines, which were not answered, and sent them daily my email requesting it.

15. On or around 17 February 2023, the Council sent me a CD. It pretended to contain the recorded phone conversations that I had requested. When I listened to those audio files that opened, as opposed to those that did not even open, they contained the messages asking for such materials that I, upon their failure to answer my calls, had recorded on their own answering machines!

16. The Council produced and sent me that CD in bad faith. It was fraudulent in the intent and the performance. My statement of details concerning this matter are in my contemporaneous files.[2]

17. I kept requesting the evidentiary materials that were so damningly incriminating that neither Emblem, Maximus, the two ALJs, nor the Council would produce it. By the time I received the decision of the Council on October 25, 2024, I had emailed daily more than 30 officers, sending them in the aggregate over 11,000 emails! They never answered even one. They knew my claims. They acted in coordination to suppress them and wear me down. They plotted and executed

[2] http://Judicial-Discipline-Reform.org/ALJ/**23-3-11**DrRCordero_**supp_brief**-Medicare_Appeals_Council.pdf and http://Judicial-Discipline-Reform.org/ALJ/**23-3-27**DrRCordero_efiled_**faxed_supp_brief**.pdf

jointly their abusive claim evasive "delay, deny, defend" tactics.

18. The above repeats much of the essential elements of what I stated in my original complaint and its amendment as well as in my motion for reconsideration. I must assume that the AUSA is aware that the Defendants cannot now mount a defense: They waived their right to do so and cannot now by sleight of hand come up with one. They can only be found in default or subject to an adverse judgment on the pleading, that is, my complaint, or summary judgment.

19. Since the AUSA has been made aware of these circumstances, it cannot argue in favor of the Defendants any evidence in the "certified Record" that they never served on me and never gave notice of having filed. Defendants cannot profit from their own concealment of evidence and abuse of power. Their spoliation supports the inference that the evidence was unfavorable to them. And what they cannot argue on their behalf themselves, they cannot argue through the AUSA as their proxy.

D. Your reference to 42 U.S.C. §405(g)

20. Yet, in your email to me you justified your request for such record on 42 U.S.C. §405(g). However, that provision does not mention either the AUSA or the General Attorney(AG). It only mentions the Commissioner for Social Security(SS Commissioner), who operates under the jurisdiction of the Secretary for Health and Human Services. Neither the AG nor the AUSA can capriciously and arbitrarily substitute themselves for the HHS Secretary or his Commissioner.

21. What is more, doing so by a fiat of their own would not help them at all: What

§405(g) provides in pertinent part is the following:

> Any individual, after any final decision of the Commissioner of Social Security…may obtain a review of such decision…in the district court of the United States…As part of the Commissioner's answer the Commissioner of Social Security **shall** file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. [boldface emphasis added]

22. It is the SS Commissioner who has, not an option, but rather a statutory duty to file a certified copy of the record. Moreover, he must do so in a timely fashion together with his answer to the complaint. Whatever the AUSA may want to do, §405(g) does not relieve the SS Commissioner of that duty.

23. In the same vein, §405(g) does not entitle the AUSA to substitute itself for the SS Commissioner in order to engage in dilatory tactics: The record was available to the Commissioner as recently as last October and he based his decision thereon. The Commissioner knew that his decision was subject to appeal, for his own decision advised the appellant -that is, me- thereof. Thus, the Commissioner was not authorized, of course, to destroy the record or even to send it away to a storage facility. The Commissioner knew that §405(g) requires him to certify and attach it to his timely response to an appeal from his decision. The appeal was filed timely.

24. Therefore, the Commissioner has and must have that record in his hands, ready for a moment like this, when he has to attach it to his timely response. He can produce it to the AUSA by practically pressing the “copy” button. Neither the

Commissioner nor the AUSA has any justification for engaging in more "delay" tactics. The latter are prohibited under FRCP 11(b)(1).

25. As stated above, §405(g) does not mention either the AUSA or the AG anywhere. If AUSA claims to be the legal representative of the Commissioner, let it cite the provision so stating and let it quote the language that allows it to engage in dilatory tactics on the Commissioner's behalf.

26. Even as the Commissioner's legal representative, the AUSA stands in the Commissioner's shoes. They form a single entity, as do a party and its lawyer:

    a. The record that the party used to give rise to the appeal it must make available to its lawyer without delay. Making such record available does not justify a lawyer asking a court to delay the proceedings or extend its time to respond.

    b. **This is not a request for discovery**. The party need not search its files. In fact, no new materials can be added to the Record. That Record is what the party -the Commissioner- necessarily had in its right hand when it took an appealable decision. An appeal was filed. Now the party must release the record to its left hand, i.e., that of its lawyer -the AUSA-. And it must do so timely, as it knew all along that it had a legal duty to do.

27. The AUSA is very limited in what it can do under §405(g) with the record, certified or not: The AUSA has no standing to challenge a "finding of the Commissioner of Social Security…adverse" to it, for the AUSA was not "a party to the hearing before the Commissioner".

> §405(g) …The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Commissioner of Social Security or a decision is rendered under subsection (b) of this section which is adverse to an individual who was a party to the hearing before the Commissioner of Social Security, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) of this section, the court shall review only the question of conformity with such regulations and the validity of such regulations….

28. Therefore, the allegation that an unidentified person or entity cannot produce a "certified copy of the Administrative Record" until May 21 is legally and factually bogus.

29. Likewise, it is disingenuous for the AUSA to write to me "Pursuant to 42 USC 405(g), we are required to provide a certified copy of the Administrative Record along with our answer". That section does not even mention the AUSA and it certainly does not require it to do anything.

30. Accordingly, I do not consent to any extension of time for AUSA, or the Commissioner for that matter, to file an answer.

E. The General Counsel to the HHS Secretary must have the Record

31. The HHS Secretary has no justification for taking months to produce what he necessarily had in his hands when he took his decision of 17 October 2024(my complaint SDNY:57), now on appeal.

32. Moreover, in his own "Notice of Decision", he informed the addressee, that is, me,

as follows:

> The Secretary must be served by sending a copy of the summons and complaint by registered or certified mail to the General Counsel, Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, D.C. 20201. (SDNY:58)

33. Docket entry no. 20 states that the summons and the complaint were served on February 10 and the reply was due on March 3. Upon receipt of the summons and the complaint, the General Counsel for HHS must have requested the record, for he/she knew that they were working toward a deadline. There can be no conceivable scenario in which the Secretary would be justified holding back the record from his own General Counsel for more than three months until May 21, for the Counsel then to have the leisure of filing a response in an already extended period of 60 days granted for having waived service rather than the normal 21 days.

34. The General Counsel must have received right away the record that was complete, in use, and thus available as of October 17, and likely to have to be further used because it concerned a party, me, who had already gone through four levels of administrative appeals, is a lawyer, and thus able to go to the fifth level to appeal in a district court, and had given every indication that he would do so in an email sent daily to around 30 defendants, including the top officers in the Counsel's office, for more than two years. As a result, when the HHS Secretary's decision was received by me on October 25, the number of emails that I had sent them exceeded 11,000!

35. The General Counsel, the HHS Secretary, the Medicare Appeals Council and their fellow officers cannot reasonably deny that they were on notice that they would have to use the record to accompany their answer to my complaint. Hence, there is no good reason for some unidentified entity to have "told AUSA that the record will not be ready until May 21, 2025". In fact, theirs is required to be a "good reason".

F. Requirement of a "good reason set forth clearly" for an extension of time

36. Any reason for not making available the record for months and requesting an extension of time to file it must be in nature and quality the same as that which the HHS Secretary required for the same purpose from the addressee, that is, me, in his "Notice of Decision", last paragraph(SDNY:57):

> "If you [the appellant, me] cannot file your complaint within sixty days, you may ask the Council to extend the time in which you may begin a civil action. However, the Council will only extend the time if you provide **a good reason** for not meeting the deadline. Your reason must be **set forth clearly** in your request. 42 C.F .R. § 405.1134."[**bold** emphasis added]

37. In my original complaint -also found in my amended one- and my motion for reconsideration(SDNY:71), I pled more facts and arguments than were necessary to state "a short and plain statement of the claim", as required by FRCP 8(a)(2), against individual and institutional defendants, and discussed constitutional provisions against preemptively exonerating them by holding them immune from prosecution even before they had been served. Yet, the Court terminated 27 of 29 defendants named by me, as opposed to the three required by law to be

named, that is, the HHS Secretary, the AG, and the AUSA.

38. This is how the Court deals with what only needs to be "short and plain". Consequently, one can reasonably expect a fair and impartial court determined to abide by the constitutional requirement of "equal protection of the laws" and "due process of law", to place a very high bar for a party to satisfy the requirement that a request for an extension of time to answer a complaint be predicated on a "good reason set forth clearly".

39. It is all the more appropriate that it be so because it was the HHS Secretary himself who saw fit to alert the addressee of his "Notice of Decision" that he, the Secretary, would hold the addressee, if he requested an extension of time to appeal, to that high bar of "a good reason set forth clearly".

    a. The "reason" for petitioning an extension of time to file an answer to a complaint must be particularly "good" because such delay defeats the stated decision of this district court "To ensure that all cases are handled promptly and efficiently". The AUSA is undeniably aware of that decision given that this district court has issued it as a standing order and included it in case dockets. In this case, it appears as:

> Docket entry no. 8: STANDING ORDER IN RE CASES FILED BY PRO SE PLAINTIFFS (See 24-MISC-127 Standing Order filed March 18, 2024). To ensure that all cases heard in the Southern District of New York are handled promptly and efficiently,…

    b. The fact that such order applies to a specific class of cases, namely, those filed by pro se plaintiffs, indicates that in the experience of this district

court such plaintiffs generally lack in promptness and efficiency.

c. Conversely, it can be assumed that this district court would not expect dilatory tactics and inefficiency from lawyers, never mind those of law firms as prestigious and big as that of the US Attorney, SDNY, or the General Counsel of the HHS Secretary, who is a member of the President's cabinet.

d. Hence, any petition for a time extension coming from such lawyers, not to mention a petition so facially bogus as the instant one, should be received unfavorably by the any judge of this court and scrutinized strictly.

G. Requested action

40. I respectfully request that AUSA produce:

a. concerning the officer that "requested a certified copy of the Administrative Record":

1) the name,

2) title,

3) physical and email address,

4) phone number,

5) copy of the request,

6) date of the request,

7) a list of the cases, identified by title, docket number, and filing date, in the past year where the AUSA office, SDNY, petitioned this district

court for an extension of time to answer a complaint,

8) a copy of such petitions;

9) a copy of the decision of the court regarding each petition;

b. concerning the officer to whom the request was made:

1) the name,

2) title,

3) physical and email address,

4) phone number,

5) copy of the request,

6) date of the request;

c. concerning the officer that "told (AUSA) that it [the certified Record] will not be ready until May 21, 2025"

1) the name,

2) title,

3) physical and email address,

4) phone number,

5) copy of that statement,

6) date of that statement,

7) a "good reason set forth clearly" for the certified Record not being "ready until May 21, 2025".

H. Proposed action: a meeting for us to advance our harmonious interests

41. I propose to meet with you, Ms. Salk, your supervisor, and Acting U.S. Attorney, SDNY, Matthew Podolsky, in the latter's office to discuss joining forces to advance our harmonious interests:

a. You all, the AG, and the Trump administration have an interest in:

1) restraining the power of judges who interfere with, and even impede, the implementation of the President's agenda. Precisely the judge presiding over this case, J. Jeannette A. Vargas, has granted a preliminary injunction in *State of New York v. Donald J. Trump*, 25-CV-01144, where she opens her opinion and order by stating, "This is one of many lawsuits [46 as of March 15] brought in recent weeks challenging aspects of the work of the newly established Department of Government Efficiency ("DOGE"). In this particular case, nineteen states challenge…"[3]; and

2) showing a justifiable basis for cutting waste, poor performance, and jobs in the second largest government entity, Medicare, which has an annual budget of around $850 billion[4] and is unable or unwilling to prevent being defrauded of scores of billions every year, as shown

[3] https://www.nysd.uscourts.gov/sites/default/files/2025-02/State%20of%20NY%2C%20et%20al%20v.%20Donald%20J.%20Trump%20et%20al.pdf

[4] "The government spent about $848.2 billion on Medicare in fiscal year 2023, or 13.7% of that year's $6.2 trillion federal budget"; https://usafacts.org/articles/how-much-does-the-**government-spend-on-medicare**/.

by *The Wall Street Journal*.[5]

b. I am interested:

1) in particular, in reversing the arbitrary and capricious termination by this Court of 27 out of the 29 defendants that I had named; and having them reinstated and served by the U.S. Marshall, as were the HHS Secretary, the AUSA, Emblem, and Maximus.

a) This Court terminated those 27 defendants in its decision of January 31, 2025, on its own motion even before any service at all had started. It alleged that they are beyond prosecution by granting them the unrequested benefit of the self-serving doctrines of judicial immunity and sovereign immunity, and by denigrating my claims as "frivolous" despite the defendants never having contested my assertions in my briefs and the injury in fact that they have caused me.

b) By so doing, the Court has abused its power and me, depriving me of due process by denying me my day in court; acting as the defendants' advocate; and usurping the jury's fact-finding role.

c) Consequently, the Court has forfeited any pretense of coming to this case with an open mind and being committed to its impartial adjudication based on the facts and the law;

[5] http://Judicial-Discipline-Reform.org/OL3/DrRCordero-**WSJ_on_Medicare**.pdf

and

2) in general, I am interested in:

a) bringing a test case in the public interest that exposes the abuse of the millions of old, sick, disabled, and law-ignorant insureds by Medicare and its medical services and equipment providers who in coordination plot and execute their claim evasive "delay, deny, defend" tactics. Certainly, those millions of insureds do not consider the abuse of them through those tactics to be "frivolous";

b) creating for the protection of those insureds an institute attached to a preeminent university or news network; and

c) being compensated, as demanded in the complaint and the motion for reconsideration, for the injury in fact and related harm that I have suffered, and for the cost and attorney's fees involved in the five administrative and judicial appeals that I have had to go through.

I. Impeaching one judge at a time v. discrediting the Federal Judiciary and all its judges

42. Up to now the Trump administration has called for the impeachment of individual judges who have issued orders unfavorable to it.

a. That mechanism for removing federal judges from the bench has been extremely cumbersome and inefficient: In the last 236 years since the creation of the Federal Judiciary in 1789, the number of federal judges

impeached and removed is 8[6].

b. Today it would be unsuccessful because the votes both in the House and the Senate necessary to impeach and remove a judge do not obtain. A piecemeal approach by impeaching, never mind merely criticizing, one judge at a time will not address the core problem: self-immunized, unaccountable judges who have abused the public power entrusted to them for the public good in order to establish for their selfish gain and convenience a State within a state.

1. The inform and outrage strategy to expose judges' abuse of power

43. I respectfully submit a different strategy: exposing the Federal Judiciary's and its judges' abuse of power that injures *We the People*, as opposed to only the President's agenda.

44. There should be exposed how federal judges abuse their power -illustrated concretely below- for their convenience and gain in such a systematic and coordinated way as to have turned abuse into the institutionalized modus operandi of a racketeering and corrupt organization AND, as a result, have caused, not theoretical, academic, moral injury, but rather injury in fact to millions of people.

45. Nothing is moral visceral, constantly painful, nothing burns more intensely the human spirit than the feeling of having been abused. You cannot just ignore or

[6] https://www.fjc.gov/history/judges/impeachments-federal-judges

forget it. Abuse is personal. It drives you. It forces you to take action: to expose it, demand accountability and compensation, and prevent its repeat.

46. That can be the reaction of millions of people across the country. That is the objective of the strategy to inform the national public of, and outrage it at, the judges who injure the people as a gang of abusers and the Federal Judiciary that covers for them as their front.

47. An informed people will react by turning judges and their Judiciary into the target of their outrage, whether it be by[7]:

    a. picketing their courthouses;

    b. boycotting their courtrooms;

    c. marching in the streets;

    d. surfing social media, and appearing at press conferences;

    e. calling for the resignation of judges;

    f. asking professional and citizens journalists and the authorities to investigate judges' abuse of power;

    g. protesting judges' sexual abuse of court personnel and their abuse of law clerks through letters of recommendation to find a job after the clerkship is over;[8]

[7] http://Judicial-Discipline-Reform.org/OL2/DrRCordero-**SupCt_CJ_JGRoberts**.pdf

[8] http://Judicial-Discipline-Reform.org/OL2/DrRCordero_**CJJRoberts_toleration_of_abuse**.pdf

h. defunding courts and the Judiciary;

i. making Fahrenheit 9/11-like expository documentaries[9]; and

2. The unprecedented citizens hearings[10]

48. The citizens hearings will afford people the opportunity to tell in five minutes in person and via video conference wherever they are their story[11] of the abuse of power by judges that they have suffered or witnessed. The hearings are to be sponsored by academe and the media; and held at media stations and academic auditoriums. They will be moderated by journalists, lawyers, professors, experts, and public interest advocates.

49. The findings of the citizens hearings will be published in the first edition of the *Annual Report of Abuse of Power and Unaccountability*. It will be presented at the first national conference on that subject to be held at, and broadcast from, media stations and academic auditoriums here and abroad.

J. The study of the judiciaries' unaccountability and riskless abuse of power

50. Forms of judges' abuse[12] are briefly illustrated below. However, they and many

[9] http://Judicial-Discipline-Reform.org/OL2/DrRCordero_Black_Robed_Predators_documentary.pdfv

[10] http://judicial-discipline-reform.org/OL3/DrRCordero-schools_holding_**citizens_hearings**.pdf

[11] http://judicial-discipline-reform.org/OL2/DrRCordero_method_for_writing_your_story.pdf

[12] See the blurbs and abstracts of, and references to, articles describing some of the forms of judges' abuse of power at http://Judicial-Discipline-Reform.org/OL3/DrRCordero-**blurbs&abstracts**_of_cases&articles.pdf.

others are discussed in greater detail in my three-volume study[13] of judges and their judiciaries, the product of my professional law research and writing, and strategic thinking. The study is titled and downloadable thus:

Exposing Judges' Unaccountability and Consequent Riskless Abuse of Power:
Pioneering the news and publishing field of judicial unaccountability reporting and reform advocacy* † ♣

51. I post to my website, **Judicial Discipline Reform**[14], some of my articles[15]. They do not have video or audio; are written in long form, having more than 1,000 words; and are intellectually demanding. Yet, they have attracted so many webvisitors and elicited such a positive response from them that as of 23 March 2025, the number of visitors who had become subscribers was **54,386**.

52. Those subscribers can reasonably be expected to be educated, well-off, and influencers. Many are outraged at judges' abuse of power. Many have been abused. Many will be willing and able to join the demand for judicial abuse exposure, compensation, and reform, regardless of their stance on the Trump administration and its dealings with judges.

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[13] * http://Judicial-Discipline-Reform.org/OL/DrRCordero-Honest_Jud_Advocates.pdf
†http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Honest_Jud_Advocates2.pdf
♣ http://Judicial-Discipline-Reform.org/OL3/DrRCordero-Honest_Jud_Advocates3.pdf

[14] http://www.Judicial-Discipline-Reform.org

[15] http://judicial-discipline-reform.org/OL2/DrRCordero_individual_files_links.pdf

K. Exposing judges' abuse by releasing the FBI secret reports on vetted judges

53. Mobilizing people like those subscribers as well as millions of people much less fortunate is the objective of the inform and outrage strategy. However, the President and his administration can take strategic action to provoke intense national outrage at the coordinated abuse of power and cover-up by federal judges and the Federal Judiciary.

54. President Trump just ordered released secret documents relating to the 1963 assassination of President John F. Kennedy. He can issue an order directing the FBI to release its confidential vetting reports on then-Judge Sonia Sotomayor of the 2nd Circuit before and after she was nominated in 2009 by President Barak Obama to the Supreme Court.

    a. The objective is to answer the pregnant question: What did President Obama, Senators Chuck Schumer and Kirsten Gillibrand, who shepherded Judge Sotomayor through the Senate confirmation process, and federal judges know, and when did they know, about the concealment of assets by J. Sotomayor?

    b. She was suspected by *The New York Times*, *The Washington Post*, and Politico of concealing assets. Its commission entails the crimes of tax evasion and money laundering. Its cover-up entails the crimes of fraud on the Senate and the public by lying about the material issue of any dishonesty on their part in order to secure her confirmation.[16]

[16] http://Judicial-Discipline-

c. An incriminating answer to that question can give rise to calls for the resignation and even impeachment of those senators and the justice.

d. It can also give rise to a deluge of motions to revise all the cases that J. Sotomayor presided over as district judge or on whose appellate panels she sat as a circuit judge. Doing that would be well founded in the legal maxim “she who lies about one thing, lies about everything" (“falsus in uno, falsus in omnibus," in its original Latin version, which attests to the maxim’s longstanding use and validity). It would be a nightmare!

e. Indeed, let’s assume that the release of the FBI vetting reports concerning J. Sotomayor established a precedent. Assume further that the reports on other justices and judges were released and that they incriminated some of those nominated by President Trump. That in itself would not insulate them from calls for their resignation or impeachment. But let’s continue thinking strategically.

f. At stake would be not only evidence of any legal or unethical conduct that the justices and judges, by whomever nominated, engaged in, but also any “appearance of impropriety”[17]. The cumulation of such evidence and appearance could be so damaging and inexcusable as to make holding on to a judgeship untenable.

g. The damage could cause a domino effect toppling one judge or justice after

Reform.org/OL2/DrRCordero_**institutionalized_judges_abuse_power**.pdf >§§A, E.

[17] https://www.uscourts.gov/judges-judgeships/**code-conduct**-united-states-judges >Canon 2

another, whether they acted as principals or covered for them, thus acting as accessories, even if only by failing to report principals or indulging in willful ignorance or blindness.

h. Also, judges could topple each other, either by shouting, 'I know what you too did! I'm not going down alone. *I'll take you with me!*"; or by trading up in plea bargaining in exchange for leniency.

i. The misconduct could be so pervasive as to become apparent that it was not limited to a rogue judge, but rather, was coordinated as the institutionalized way of a court or even the whole judiciary doing business. A whole court could resign…and then the unthinkable could occur under the crushing pressure of national outrage: one justice after another resigned until the whole Supreme Court had resigned. The realistic precedent for this scenario is the recusal in one case of the whole bench of the U.S. Court of Appeals for the Fourth Circuit.[18]

j. Replacing so many judges who resigned or were impeached and removed would allow President Trump to "pack" the Federal Judiciary.

k. Allowing one single president to name so many justices and judges could be so contrary to the necessary representativity and political balance of

[18] Caryn Strickland v. United States; the Judicial Conference of the U.S.; the Administrative Office of the U.S. Courts; U.S. Court of Appeals for the Fourth Circuit; Judicial Council of the Fourth Circuit; et al; No. 21-1346 (4th Cir. 2022); United States Court of Appeals, Fourth Circuit. April 26, 2022; 32 F.4th 311; 2022 WL 1217455. As a result of the recusal of the 4th Circuit bench, three judges from other three circuits sat by designation on the appellate panel.

the courts as to make it inevitable for Congress to step in.

L. The need to find a way out of this extraordinary institutional crisis under intensifying pressure of public outrage could force Congress to do what in its self-interest of preserving its power and privileges it has refused to do for more than a decade: call a constitutional convention upon Michigan becoming on April 2, 2014, the 34th state to invoke Article V of the Constitution to petition Congress to convene a convention to amend the Constitution, whereby the requirement that two thirds of the states call for it was satisfied.

m. That constitutional convention could become as much of a runaway convention as the assembly of delegates from the 13 recently freed colonies that was convened in 1787 only to amend the Articles of Confederation, but which ended up tearing them up and drafting the current Constitution of 1789.

n. If you and I presented this strategy to President Trump, do you think that he would be enthralled by the opportunity of topping "the Gulf of America" by calling this "the Constitution of Trump"?

L. Other stories that can be investigated by the media and outrage the public

55. The inform and outrage strategy can also be launched by bringing to the public through well-reputed and ambitious journalists and media outlets the credible and verifiable evidence of abuse of power described in my list of blurbs and

abstracts[19] and in my study of judges and their judiciaries. They are supported by:

a. *The Wall Street Journal* investigative article series beginning on 28 September 2021 with "131 [updated to 156] Federal Judges Broke the Law by Hearing Cases Where They Had a Financial Interest"[20];

b. ProPublica, though a small media outlet, conducted first-rate investigative journalism that resulted in its serial articles exposing 'the billionaire Friends of the Justices of the Supreme Court'. As a result, it won the 2024 Pulitzer Prize for Public Service. Those justices set a deplorable example for all federal and state judges of what judges can risklessly do for their greedy gain and selfish convenience.

c. Thomson Reuters, a worldwide news organization with more than 2,500 reporters and over 600 photojournalists, investigated state judges. In its three-part report "The Teflon Robe", the first of which appeared on June 30, 2020, it described its finding of "hardwired judicial corruption", i.e., corruption that is so intertwined among judges and between them and the commissions -e.g., NYS Commission on Judicial Conduct[21]- for overseeing

[19] http://Judicial-Discipline-Reform.org/OL3/DrRCordero-**blurbs&abstracts**_of_cases&articles.pdf

[20] https://www.**wsj**.com/articles/131-**federal-judges-broke-the-law**-by-hearing-cases-where-they-had-a-financial-interest-11632834421?fbclid=IwAR17veisSou0tQJdrn4VM9Ssvk_JYFqCY-Foselbnkb1SsNx2ia1Fji1GAQ.

[21] http://judicial-discipline-reform.org/IAB/DrRCordero-**Commission_Judicial_Conduct**.pdf

their performance as to constitute part of their institutionalized modus operandi.[22]

d. *The Boston Globe*, the main paper in Massachusetts and the 11th largest by circulation in the U.S., published on 30 Sept. 2018, its report "Inside our secret courts", in whose "private criminal hearings [conducted even by clerks with no law degree], who you are –and who you know– may be just as important as right and wrong". Judges and politicians are complicit in removing Justice's blindfold.

1. Judge Sotomayor and her cover-up of the bankruptcy fraud scheme

56. Then-Judge Sotomayor, the presiding judge on the 2nd Circuit panel that heard and decided *In re Delano*,[23] covered up the bankruptcy fraud scheme run by federal judges[24]. What follows is also supported by my personal experience, as I was the attorney in *In re DeLano*.

a. Federal bankruptcy judges decide who keeps or pays scores of billions of dollars every year[25]. They are appointed to a 14-year term by the circuit

[22] http://Judicial-Discipline-Reform.org/OL3/DrRCordero_**biz.venture.proposal**-Thomson_Reuters.pdf

[23] http://Judicial-Discipline-Reform.org/OL2/DrRCordero_bankruptcy_fraud_scheme_cover-up.pdf

[24] http://Judicial-Discipline-Reform.org/OL2/DrRCordero_**institutionalized_judges_abuse_power**.pdf >§§E, G

[25] BAPCPA Table 1X. Assets and Liabilities Reported by Individual Debtors in only Nonbusiness Bankruptcy Cases, to which must be added the value of the assets and liabilities in commercial bankruptcies;

https://pdf.browsealoud.com/PDFViewer/_Desktop/viewer.aspx?file=https://pdf.browsealoud.com/StreamingProxy.ashx?url=https://www.uscourts.gov/sites/default/files/data_tables/**bapcpa**_

judges of the circuit where they sit, who also uphold or reverse their decisions on appeal. They can reappoint a bankruptcy judge or together with district judges remove him/her depending on whether the judge shows mastery of the appointer/appointee game.

b. Indeed, a bankruptcy judge wields leverage too, for he can remove from all cases a bankruptcy trustee, who can have over 3,000 cases. If that happens, the trustee can find herself overnight unemployed and at the back of the cold, disreputable public defender room waiting for an assignment. Obviously, the trustee will try to avoid that by all means possible, even by trampling on legal and ethical requirements.

c. A trustee receives by law a commission from each of her cases, that is, so long as she remains a trustee. To hold on to her job she must master the expression of obedience and gratitude for the only thing that matters in bankruptcy court: the signature of the judge approving what the trustee proposes. Bankrupt parties can hardly afford an appeal. Creditors' lawyers dare not challenge the decision of a bankruptcy judge, before whom they have to appear time and again given that there is only a handful of such judges in a bankruptcy court: There are 90 bankruptcy courts[26] and 298

1x_1231.2023.pdf&opts=www.uscourts.gov#langidsrc=en-us&locale=en-us&dom=www.uscourts.gov. See also https://www.uscourts.gov/data-news/reports/statistical-reports/**bankruptcy-filings-statistics**

[26] https://www.uscourts.gov/about-federal-courts/court-role-and-structure/about-us-**bankruptcy-courts**

active bankruptcy judges[27]. Hence, what the bankruptcy judge decides stands[28].

d Bankruptcy judges must make the trustees share and then share in turn with their appointing judges, and worse yet, with the removing judges too, among whom are also district judges, whom they are likely to see in the same courthouse every day.

2. Judges abuse their Judiciary's national computer network

57. The cover-up of the bankruptcy scheme and the transfer of ill-gotten money is aided by federal judges' abuse of the Federal Judiciary's national computer network, which is one of the largest in the U.S.

a. Every day, that computer network files, stores, and retrieves hundreds of thousands of documents concerning hundreds of millions of cases and activities, such as briefs, motions, fee payments, letters, orders, decisions, audio recordings, dockets, schedules, announcements, statistics, reports, speeches, procedural rules of the courts and of individual judges, proposed rules amendments, minutes of meetings of circuit councils and the Judicial Conference and its 192 past and present committees, etc.[29]

[27] https://www.uscourts.gov/sites/default/files/data_**table**s/jff_**1.1**_0930.2023.pdf

[28] http://Judicial-Discipline-Reform.org/OL2/DrRCordero_**how_fraud_scheme_works**.pdf

[29] https://www.fjc.gov/history/administration/judicial-conference-united-states-committees-chronological

b. The investigation[30] of the abuse of this network in search of judges' illegal financial transactions can be assisted by the wealth of experience and data gained by, among others, the International Consortium of Investigative Journalists (ICIJ)[31], headquartered in Washington, DC, in connection with the Offshore Leaks, the Panama Papers, the Pandora Papers, etc.

3. Judges intercept people's emails and mail

58. To protect themselves, judges intercept people's emails and mail to detect and suppress those of their critics.[32]

a. Hardly could there be anything that would outrage the American public more than to be informed that for their selfish convenience and gain judges risklessly violate *We the People*'s most cherished constitutional rights, to wit, those under the First Amendment that guarantee our "freedom of speech, of the press, the right of the people peaceably to assemble [on the Internet and social media too], and to petition the Government [of which judges constitute the 3rd Branch] for a redress of grievances [including compensation paid to abusees]".

b. The technology[33] to intercept mail, not just emails, has been in use for

[30] http://Judicial-Discipline-Reform.org/OL2/DrRCordero_strategy_for_IT_experts.pdf

[31] https://www.icij.org/

[32] http://judicial-discipline-reform.org/OL2/DrRCordero_**emails_mail_intercepted_by_judges**.pdf

[33] http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Cybersecurity_experts.pdf

years. For instance, the U.S. Postal Service processes and delivers on average 318 million pieces of mail daily.[34] Its "Informed Delivery"[35] service scans them to detect those addressed to its 70.3 million subscribers and sends the latter every morning an email with the photo ("Impressions") of the front side of every piece of mail that each subscriber is going to receive later that day. The computing power needed to provide that service is mindboggling…and the capacity for spying on every person that sends or receives mail is frightening.

c. Given the current enmity between the President, with the approval of many Republicans, and federal judges, daily revelations by ever more journalists of judges' coordinated interception of emails and mail would be a nationwide scandal! "Scandal sells" and covering it thoroughly and competently can earn a journalist or a media outlet a Pulitzer Prize.

4. Parties defrauded of filing fees for services not rendered

59. Every party to a lawsuit that pays the fee to file a case in a federal court pays the same amount. However, from the moment a party checks the box "Pro se" on the Case Information Sheet, the Administrative Office of the U.S. Courts officially weights the case as a third of a case, whereas "a death-penalty habeas corpus case

[34] https://facts.usps.com/one-day/

[35] https://www.usps.com/business/pdf/**informed-delivery**-year-review.pdf?msockid=23d8d337d2db6a7d2c59c75cd32b6be7

is assigned a weight of 12.89"[36]. By comparison, a student loan default is weighted as a tenth of a case.

a. This means that a federal judge, who may have 600 cases assigned to him before an emergency in her court is declared, is not only entitled to, but also is expected not to, give to a pro se case more than a third of her attention, effort, and time. In effect, pro ses do not pay a filing fee; rather, federal judges extract from them a burial fee under the fraudulent advertisement that the judges will give pro ses' cases "equal protection of the laws".

b. All those who have had an email or piece of mail intercepted, even if after the interception the piece was allowed to continue its way and be delivered to its addressee, have a cause of action against the interceptors, whether they acted as principals, agents, or accessories, and even those who passively and silently condoned the interception despite their professional and/or civic duty to denounce it to their superiors and the authorities.

5. Judges do not read most briefs; have their clerks use dumping forms

60. The Math of Abuse provides a mathematical demonstration based on official court statistics that shows that judges do not read the large majority of cases and motions that are decided: The ratio of judges to cases and to documents per

[36] http://Judicial-Discipline-Reform.org/OL2/DrRCordero_judicial_accountability_presentation.pdf >OL2:455§§B, D

case makes such reading materially impossible.[37]

a. Instead, judges have their clerks dispose pro forma of categories of cases in which the judges are not interested. Thus, a substantial number of cases get dumped on procedural grounds -including the catchall pretext of "lack of jurisdiction" or "jurisdictional defect"-; and in unsigned decisions, and even without comments.[38] The easiest and laziest ways for a judge to get rid of unwanted cases and motions is to rubberstamp them "affirmed!"; otherwise, "denied for failure to provide new evidence or valid grounds for the petition". That's all! Next!

b. Those pro forma decisions are unresearched, reasonless, arbitrary, capricious, ad-hoc, fiat-like orders, rubberstamped with or without the name of the clerk of court, on a 5¢ *dumping form!* Compare that with the filing fee of $405 that parties must pay, to which they must add the cost of printing, binding, mailing, and serving briefs, paying attorney's fees, etc. What an outrageous abuse of power!

M. No impeachments, yet judges end up discredited, resigning, overburdened

1. Collective actions in and out of court by abusees

61. Informed and outraged abusees, including pro ses, can flood the courts with their demands for the refund of the filing fee that they paid, a new trial, compensation, call for the recusal or disqualification of an abusive judge, etc.

[37] Id.; http://Judicial-Discipline-Reform.org/OL2/DrRCordero_**judges_do_not_read**.pdf.

[38] https://www.uscourts.gov/sites/default/files/2025-02/fcms_na_**appprofile**1231.2024.pdf

They will be more effective if they file their demands collectively, rather than individually, which will give judges the opportunity to deny one at a time without attracting media attention. Parties can find each other by looking up the cases filed in the same court, which are public documents and downloadable through the court's website or available in the room of the clerk of court.[39]

62. Abusees can proceed as members of a huge multidistrict class action never before seen: *We the People* v. the Federal Judiciary, its judges, John Doe, and Jane Widget.[40] All those who were defrauded of a fee and were misled into trusting that judges would render them honest services, as they are duty-bound to do, have a cause of action against judges and the Federal Judiciary that institutionalized their abuse and covers for them.

63. The abusees can join one class; a subclass; different classes; or non-class aggregate joinders. In any event, the weight of the abusees' total litigation and the media's investigative reporting will overburden the courts and deplete the Federal Judiciary itself of any credibility, funds, and judges, who may resign serially or simultaneously.

2. Presentations to students and demonstrations by them

64. Law, journalists, business, and IT/AI students, professors, and experts together with journalists and lawyers will assist the abusees in investigating and

[39] http://Judicial-Discipline-Reform.org/OL2/DrRCordero_**auditing_judges**.pdf

[40] http://Judicial-Discipline-Reform.org/OL2/DrRCordero_**class_actions**-Duane_Morris_LLP.pdf

prosecuting their grievances through a new form of multidisciplinary practice: representative journalism.[41]

65. This component of the inform and outrage strategy aims to win over students and professors and the rest of academe through presentations in their auditoriums that describe how judges abuse them and their friends and relatives, and will continue to abuse them as members of academe and in every other aspect of their lives.[42]

66. Students and professors can be given sound reasons for demonstrating against judges and the Federal Judiciary, whom even the President and his administration admit must be obeyed. Thus, demonstrations against the Judicial branch, the stronger State within the state, will curb and counterbalance[43] those against policies of the administration. This strategy is more sensible and promising than indulging one's self-harming, blind, and pathological need to assert one's power by making enemies of everybody around, which only leads to self-defeating chaos.

3. Presentations to the media for it to expose judges' abuse of power

67. "In chaos there is opportunity" (Sun Tzu)…if one strategizes. Coming ahead out of chaos calls for identifying harmonious interests and strategizing to advance them

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[41] http://Judicial-Discipline-Reform.org/OL3/DrRCordero_proposal_**expose_abuse_power**.pdf

[42] http://judicial-discipline-reform.org/OL2/DrRCordero-**Harvard_Yale_prof_students**.pdf

[43] Cf. Proposal for a joint demonstration of Jewish and pro-Palestinian students at the Lincoln Memorial in Washington, DC; http://Judicial-Discipline-Reform.org/OL3/DrRCordero-leaders_**demonstration**_citizens_hearings.pdf

together. This we can do by working together with the media and journalists: Their interest is to have access to information; sell copy; earn public respect; and win Pulitzer Prizes.

68. Our harmonious interests are in persuading the media to inform *We the People* about federal judges' self-serving abuse of power and channel *the People*'s outrage thus provoked to demand that judges be held accountable and liable to compensate the abusees, and their discredited Judiciary be reformed through dismantlement and replacement.

N. Let's meet to strategize advancing jointly our harmonious interests

69. Therefore, I look forward to meeting with you all so that we can take advantage of a most opportune moment to attract the attention of the President to advance jointly his, your, and my harmonious interests.

Sincerely,

/s/ Dr. Richard Cordero, Esq.
Judicial Discipline Reform
2165 Bruckner Blvd.
Bronx, NY 10472-6506
tel. (718)827-9521

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Daniel Patrick Moynihan U.S Courthouse
500 Pearl Street, New York, NY 10007
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10 April 2025

Docket No. 24-cv-9778-JAV Jury trial requested

Dr. Richard Cordero, Esq. Appellant/Plaintiff -vs- The Secretary of HHS, Medicare; EmblemHealth, Maximus Federal Services, et al Respondents/Defendants	**Motion for** **Chief Judge Laura Taylor Swain** to submit this case to this district court *en banc* to: **a.** reinstate the 27 out of 29 defendants that Judge Jeannette Vargas terminated, and have them served them by the U.S. Marshall; **b.** restore the IFP status that CJ Swain had granted Plaintiff but that J. Vargas took away; **c.** grant Plaintiff's motion for default judgment; otherwise, judgment on the pleadings or summary judgment; **d.** provide a more definite statement of the order taking away Plaintiff's IFP status; **e.** reverse the order granting AUSA's request for an extension of time to answer; **f.** reassign this case to another or other judges

NOTICE OF MOTION

1. Plaintiff Dr. Richard Cordero, Esq., respectfully proceeds under Local Civil Rule 6.1 to give notice of this motion. The motion will be entertained at the address stated in the caption above.

2. Plaintiff requests a hearing on this motion at a date and time that the Court may deem appropriate given that 27 out of 29 Defendants in this case were terminated at the sole initiative of this Court, Judge Jeannette A. Vargas presiding; the parties have yet to file a responsive pleading; and there is uncertainty about the deadline for serving the terminated Defendants or the need for a new summons because Judge Vargas allowed Plaintiff to amend his complaint. Plaintiff did so timely (the docket is in the Exhibits >entry no. 22), but Judge Vargas has not taken a position on it.

A. Nature of this case and opportunity that it offers this court en banc

3. This is a case of healthcare insurers' abusive claim evasion through coordinated "delay, deny, defend" tactics. Many people are abused by the insurers; many of them are similarly situated to Plaintiff. The benefit that they can receive from this case and that they are unable to obtain by taking individual action makes this a test case in the public interest:

   a. In particular, defendant Medicare has over 68.3 million subscribers, all old, sick, disabled, and almost all lacking the legal knowledge necessary to even recognize that they are being abused by Medicare and its network of tens of thousands of medical services and equipment providers. Most cannot muster the necessary physical and emotional energy to overcome pain, fear, and frustration and go through four levels of administrative appeals and still climb to the fifth level of judicial review in a U.S. district court.

   b. In general, the overwhelming reaction of the public to Luigi Mangione's alleged murder of UnitedHealthcare CEO Brian Thompson in NYC on 4

December 2024, was of moral approval and financial support with donations for his legal defense because the public has suffered the same healthcare insurers' abusive "delay, deny, defend" tactics as Mr. Mangione has.

4. Hence, this court, especially if acting en banc, can hold the insurers accountable and liable for their abusive tactics. Thereby it can launch a process of judicial review that can end up having a transformative impact on healthcare in our country. The merit can go to this district court's chief judge and her fellow judges if they have the same civil courage to act in the public interest and the interest of justice as eventually was shown by the justices in a case of extraordinary significance: *Brown v. Board of Education*[1].

5. The significance of this case makes its handling in this court since its filing all the more suspect. This warrants its investigation by the court en banc. Judges en banc will be able to detect, disapprove, and correct any bias and prejudice that has deprived Plaintiff of "due process of law" and "the equal protection of the laws" guaranteed by the 5th and the 14th Amendments.

6. In the course of their investigation, judges en banc may find a pattern of bias, prejudice, and implementing manipulations that have been committed by some judges and covered-up by others. Their findings will not further detract from public confidence in the Federal Judiciary if they are used to set off transformative reform that holds judges too accountable and liable, as are police officers, lawyers, priests, doctors, etc.

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[1] *Brown v. Board of Education,* 347 U.S. 483 (1954)

7. In the civil suit *Strickland v. U.S., the Judicial Conference,* the Court of Appeals for the 4th Circuit, *et al.*, a panel of judges from other circuits sitting by designation held on April 26, 2022, that the Federal Judiciary and its officers in their official and individual capacities, including judges, can on constitutional grounds be sued and held liable. The plaintiff's exposure of complicit coordination of a cover-up caused the recusal of the Court's bench![2]

8. Moreover, it is precisely district courts en banc that can lend weight to the decisions of individual judges. The latter are easy and lonely targets of President Trump, his administration, and some of their supporters. This court en banc can set the foundational principles for a change in the functional paradigm of district courts and their role in exposing and correcting widespread socio-political problems.

9. Hardly any other case can earn this court en banc more attention than a case that concerns the foremost interest of everybody: their health and the healthcare insurance on which they count when they are sick and growing sicker as a result of insurers' coordinated plotting and execution of their abusive claim evasive "delay, deny, defend" tactics.

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[2] *Caryn Strickland v.* U.S.; Judicial Conference of the U.S.; Brian Stacy Miller, The Hon., in his official capacity as Chair of the Judicial Conference Committee on Judicial Resources; Administrative Office of the U.S. Courts (AO); Roslynn R. Mauskopf, The Hon., in her official capacity as Director of AO; Sheryl L. Walter, in her individual capacity as General Counsel for AO; JOHN DOE(S), c/o Office of the General Counsel for the AO; U.S. Court Of Appeals For The Fourth Circuit; Judicial Council Of The Fourth Circuit; Roger L. Gregory, The Hon., in his individual capacity and his official capacity as Chief Judge of the Fourth Circuit and as Chair of the Judicial Council of the Fourth Circuit; et al.;. April 26, 2022; 32 F.4th 311, 2022 WL 1217455; https://www.ca4.uscourts.gov/Opinions/211346.P.pdf

10. You can remain some judges among some 2,500 federal judicial officers or you can stand out for your civil courage and institutional responsibility, thereby becoming nationally known, admired, and followed Champions of Justice.

B. Sample of the requested relief

11. The relief requested by Plaintiff is set forth below (SDNY:286), and includes:

    a. the convening of this court en banc;

    b. the investigation of the suspect handling of this case in this court;

    c. the reinstatement of the 27 terminated Defendants and the service on them by the U.S. Marshall of the summons and complaint;

    d. the restoration of this case to its IFP status;

    e. the grant of Plaintiff's default motion against all the Defendants;

    f. the reversal of the order granting the motion of AUSA[3] to extend the time to answer;

    g. the reassignment of this case to another or other judges; etc.

C. The materials constituting the basis of this motion and the Record of this case

12. Plaintiff supports this motion upon:

    a. *District courts en banc*, by Cornell Law Professor Maggie Gardner[4]

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[3] http://judicial-discipline-reform.org/ALJ/24-12-15DrRCordero-v-Medicare_EmblemHealth_et_al.pdf

[4] *District Court en bancs*, Professor Maggie Gardner, vol 90 Fordham Law Review 1541 (2022); https://fordhamlawreview.org/wp-content/uploads/2022/03/Gardner_March.pdf

b. the statement of facts and memorandum of law;

c. Plaintiff's amended complaint of 2 March[5];

d. his motion for reconsideration of 14 March[6];

e. his brief[7] arguing against the request of AUSA, SDNY, to consent to an extension of time to answer the complaint; and

f. Plaintiff's main and supplemental briefs filed for the Medicare fair hearing[8] and the appeal to the Medicare Appeals Council[9], which are the only briefs[10] ever filed by any party in this case so that they constitute the Record of this case together with the orders appealed from.

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TABLE OF CONTENTS

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[5] http://Judicial-Discipline-Reform.org/ALJ/24-12-15DrRCordero-v-Medicare_EmblemHealth_et_al.pdf. References to that brief and to this motion follow this format: SDNY:page#section§alphanumericID or paragraph¶# or fn(footnote)#.

[6] [5] >SDNY:71

[7] [5] >SDNY:191

[8] http://Judicial-Discipline-Reform.org/ALJ/**22-5-21**DrRCordero_Statement_on_Appeal.pdf

[9] http://Judicial-Discipline-Reform.org/ALJ/**22-10-26**DrRCordero-**Medicare**_Appeals_Council.pdf

[10] The list of those briefs is at SDNY:126§4. All those briefs are combined and their pages numbered consecutively as SDNY:# in the file at http://www.Judicial-Discipline-Reform.org/ALJ/**24-12-15**DrRCordero-v-MedAppCouncil_record.pdf.

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TABLE OF AUTHORITIES

CONSTITUTION

Federal STATUTES

STATE LAW

CASES

RULES

OTHER AUTHORITIES

DOCKET ENTRIES

****

DISTRICT COURTS EN BANC

D. Why review by a district court en banc is the proper course of action

13. Cornell Law Professor Maggie Gardner has shown through her team research that a long list of district courts have convened district courts en banc; and that their convening coincides with moments of turmoil in our country and cases of extraordinary significance.[4]

14. The law requires a district court to convene a three-judge panel for certain cases:

> 28 U.S. Code § 2284 - Three-judge court; when required; composition; procedure
>
> (a) A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body. …

15. Convening a district court en banc falls within the inherent power of a district court, as provided for by:

> 28 U.S.C. §132. Creation and composition of district courts
>
> (c) Except as otherwise provided by law, or **rule or order of court**, the judicial power of a district court with respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges. [**bold** emphasis added]

> FRCP[11] 83.(b) PROCEDURE WHEN THERE IS NO CONTROLLING LAW.
>
> A judge may regulate practice in any manner consistent with federal law, rules adopted under 28 U.S.C. §§2072 and 2075, and the district's local rules.

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[11] http://Judicial-Discipline-Reform.org/docs/28usc_Civ_App_Evi_Rules.pdf

16. Convening a district court en banc is consistent with convening a circuit court en banc when there is a conflict,

> FRAP Rule 40. Panel Rehearing; En Banc Determination
>
> (b)(2) Petition for Rehearing En Banc. A petition for rehearing en banc must begin with a statement that:
>
> (A) the panel decision conflicts with a decision of the court to which the petition is addressed…and the full court's consideration is therefore necessary to secure or maintain uniformity of the court's decisions.

> Cf. Supreme Court Rules[12], Rule 10. Considerations Governing Review on Certiorari
>
> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; … or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

17. There is such conflict here: As discussed below (¶59), Chief Judge Swain granted Plaintiff IFP status, but two days later and based on the same and only pleading at the time, that is, the complaint, and without any intervening event in the case whatsoever, Judge Vargas took it away. This conflict needs to be not only resolved by this court en banc, but also investigated by it to determine its nature, extent, and gravity. "The devil is in the detail."

18. The chief district judge has power to divide court business among the judges in her court:

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[12] https://www.supremecourt.gov/filingandrules/2023RulesoftheCourt.pdf

28.U.S.C.§137. Division of business among district judges

> (a) IN GENERAL.—The business of a court having more than one judge shall be divided among the judges as provided by the rules and orders of the court. The chief judge of the district court shall be responsible for the observance of such rules and orders, and shall divide the business and assign the cases so far as such rules and orders do not otherwise prescribe.

19. A court may regulate practice to achieve the purpose of the FRCP, as stated in Rule 1:

> FRCP 1. These Rules should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.

1. Speedier and more inexpensive than a circuit court appeal

20. This court recognizes those objectives of the FRCP and strives to attain them. It has taken action to do so and gives notice thereof to all those who consult a docket. In this case, it states so in:

Docket entry no. 8.

> STANDING ORDER IN RE CASES FILED BY PRO SE PLAINTIFFS (See 24-MISC-127 Standing Order filed March 18, 2024). To ensure that all cases heard in the Southern District of New York **are handled promptly and efficiently**, …(Signed by Chief Judge Laura Taylor Swain on 3/18/2024) (anc) (Entered: 12/26/2024) [**bold** emphasis added]

21. The review en banc by a district court of a decision of one of its judges can be speedier than by a court of appeals. According to the official statistics provided by the Court of Appeals for the Second Circuit and compiled for publication as a public document in the Annual Report of the Administrative Office of the U.S.,

the "Median Time From Filing Notice of Appeal to Disposition [is] 13.4 months".[13]

22. In addition, it is more inexpensive not only for the would-be appellant, but also for all the other parties to a case, to have a decision reviewed by a district court en banc than to have the parties incur the enormous expense attendant upon seeking review in a court of appeals: Not all trial law firms provide also appellate services to their clients. Having a new team of appellate lawyers read the record below; research and write an appellate brief and a reply or an answer; print, file, and serve them and the record; and argue orally can cost between $20,000 and $100,000.

23. District judges may want to be speedier and more inexpensive than appellate judges because they are likely aware that they can carry more weight in the Federal Judiciary and in the eyes of the public if they issue a decision en banc before the completion of the whole trial or conduct a trial by a panel of judges than if they proceed as single judges, thereby exposing the parties and themselves to the risk that the appeals court may remand the case for a total or partial new trial.

2. An appeal to a court of appeals is too complex for most parties

24. An appeal to a court of appeals is overwhelming even for many lawyers, for writing the 10 parts of an appellate brief required by FRAP 28 is hard and time-consuming work.

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[13] https://www.uscourts.gov/sites/default/files/2025-02/fcms_na_appsummary1231.2024.pdf

25. For the majority of pro ses it is an exercise in futility. They can hardly understand and cannot abide the limitation on courts of appeals to deal with correcting errors of law, rather than offer a second chance to relitigate the facts by examining witnesses and introducing evidence. Laypeople cannot improvise themselves as lawyers, much less as appellate lawyers.

26. District judges can enlarge parties' access to justice by offering them 'a second opinion' of their case before deciding to appeal…unless the judges treat parties as nuisance that distract them from that case where they can write a landmark opinion.

3. Court en banc as mechanism to check any judge's ego

27. District courts en banc can curb the arrogance of district judges who come to consider the courtroom assigned to them as "my court", where "I do or do not allow or demand this or that". They arrogate to themselves a fiefdom and in it they become the lord that wields unaccountable power. There they rule by fiat based on their personal notions of right and wrong rather than apply the law of which *notice* by publication was given to the parties so that they had the *opportunity* to accord their conduct to its requirements, whereby the two foundational demands of due process are satisfied.

28. It is "just", as required by FRCP 1, for a decision of a fellow district judge to be reversed if a district court en banc concludes that such decision was:

    a. erroneous on the law;

    b. an abuse of discretion;

c. unsupported by the facts;

d. a usurpation of the fact-finding role of the jury;

e. inconsistent with decisions of her own, a majority of judges, and precedent; etc.

29. Reversal of that decision is in the interest of justice and the public, for it may deter the reversed judge from being 'unjust' toward other parties.

30. A reversal by a district court en banc of a decision of a single district judge serves the significant federal interests in:

a. ensuring the reliability and predictability of decisions;

b. doing what is right by the parties affected by them; and

c. assuring all actual and potential parties that judges assume their institutional responsibility for applying the law and administering justice rather than take advantage of the occasion for saving the face of a fellow judge as a downpayment on their saving their own face if the need arises in the future.

4. Advantages of a district court en banc over a court of appeals

31. An appeal to a court of appeals is by no means a substitute for review by a district court en banc. For one thing, a district court en banc can take a broader look at the facts than a court of appeals. It can even order discovery, hear witnesses, allow the introduction of evidence, charge the jury with questions, and take into account the findings of the jury in its answers and verdict. By so doing, a district

court en banc can broaden access to justice, not only that prescribed by the laws to free a process from errors of law, but also that done by taking into account aggravating and mitigating facts.

32. Consequently, a district court en banc can correct the denial of access to justice by a fellow judge who came to a case with her mind made up, closed to examining the issues of law and fact at stake, and simply took the easy way out by abusing her power to dismiss practically the whole case as her first step in the case subsequent to the plaintiff filing it.

5. A decision of a district court en banc is heftier on appeal

33. If an appeal to an appeals court is taken, the district court and the rest of the judiciary benefit when the decision appealed from has the heft of an affirmance, reversal, or modification resulting from its review by a district court en banc. The benefit of collective review and imprimatur is recognized by the Supreme Court, which overwhelmingly denies review of a decision from a district judge which was not reviewed by a court of appeals.

6. Sobering effect of the specter of an appeal to a district court en banc

34. Since a court of appeals is inaccessible to most litigants, it is not perceived by many district judges as a sobering deterrence to their abuse of power. That is what district courts en banc can become: the 'prompt and efficient' mechanism for judges' collective judgment to ensure the correctness of their decisions as well as for their joint moral force to police the honesty of their individual and collective conduct.

35. That mechanism is likely to come into being when fellow judges are less concerned with protecting one of their own and more intent on being faithful individually and as a group to the oath that they took:

> 28 U.S.C. 453. Oath of office. I swear that I will administer justice without respect to persons [whether they be fellow Judge X or Joe Schmock or Jane Widget], and do equal right to the poor [in strength and connections to push back] and to the rich [such as the billionaire "Friends of the Justices"], and that I will ¶ and impartially discharge and perform all the duties incumbent upon me as _judge_ under the Constitution and laws of the United States [rather than those that I pick and choose and my fellow judges allow me to get away with it].

36. No doubt, judges can defeat the purpose of district courts en banc if they reach explicit or implicit reciprocal agreements driven by their self-interest in ensuring that 'if you don't reverse or even criticize my decisions, I won't yours'. CA2 former Chief Judge Dennis Jacobs wrote that "to rely on tradition to deny rehearing in banc starts to look very much like abuse of discretion"[14] In the same vein, CA2 Judge Jose Cabranes sharply criticized the use of a meaningless summary order and an unsigned per curiam decision[15], as a "perfunctory disposition" of a case being reviewed en banc.

37. However, judges can resolve themselves to consider district courts en banc as a mutual assistance mechanism to evaluate their own decisions before they run the risk that a party takes them to the appeals court and it reverses them. That

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[14] *Ricci v. DeStefano*, aff'd per curiam, including Judge Sotomayor, 530 F.3d 87 (2d Cir., 9 June 2008); http://Judicial-Discipline-Reform.org/docs/Ricci_v_DeStefano_CA2.pdf.

[15] Id. >R:2.

is embarrassing. An appeal can be even riskier if it provides the opportunity for finding fault with the appealed-from judge's legal knowledge, reasoning, and competence or even her honesty and motives.

7. Two tenets that district courts en banc can defend

38. District judges can ensure through their courts en banc that they contribute to realizing the tenet: "Justice must satisfy the appearance of justice"[16]. A chief district judge with superior leadership skills and a level of integrity that commands respect and deference can establish a durable and firm foundation for a wider and wise use of courts en banc in her and other district courts so that it becomes her legacy.

39. Such chief judge and her fellow judges can work cooperatively to uphold another tenet:

> Justice should not only be done, but should manifestly and undoubtedly be seen to be done.[17]

40. District judges en banc can set in motion the elevation of those two tenets as the standard of evaluation of the action of all judges in the district, the state, and far beyond for the benefit of all parties and the public at large. They can motivate themselves and all judges to pursue the aspirational goal that is inscribed in the marble frieze of the Supreme Court building: Equal Justice Under Law.

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[16] *Aetna Life Ins. v. Lavoie et al.*, 475 U.S. 813; 106 S. Ct. 1580; 89 L. Ed. 2d 823 (1986)

[17] *Ex parte McCarthy*, [1924] 1 K. B. 256, 259 (1923).

AFFIDAVIT

41. I, Dr. Richard Cordero, Esq., the plaintiff in this action, declare under penalty of perjury that this statement is true and correct to the best of my knowledge and belief:

E. The suspect handling of this case has "the appearance of impropriety"

42. Questions presented for answers en banc:

a. Did Judge Vargas neglect for a month and a half the assignment of this case to her within a week of its filing, so that she resented that Plaintiff had with his repeated calls to the court complaining about no procedural progress in his case caused Chief Judge Swain to call her out and instruct her to move this case along, after which Judge Vargas could not remain concentrated on her case opposing 19 attorneys general to President Trump and his administration[18], where she would attract national attention and write an opinion likely to be commented upon by the media and in law reviews, and included in a casebook, so that she retaliated by reducing this case to its bare minimum, for which she:

1) applied the sovereign and judicial immunity doctrines, which she had not done to her attention-grabbing case and

2) without discussion of the facts of this case jumped to characterize Plaintiff's claims as "frivolous";

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[18] *State of New York and 18 other states, et al., v. Donald J. Trump, in his official capacity as President of the U.S., the Treasury Department, DOGE, et al.;* docket no. 25-cv-01144-JAV, filed on 21 February 2025.

3) terminated 27 out of 29 defendants named by Plaintiff, as opposed to the three required named by law;

4) ensured that she could give short shrift to this case without being concerned with reversal on appeal by slapping on any potential appeal by Plaintiff the characterization of "not in good faith" in order to take away his IFP status, thus making any appeal unaffordable;

5) granted by fiat in one day the motion of AUSA for an extension of months to the time to answer, thus condoning another execution of Defendants' abusive "delay, deny, defend" tactics; whereby she

6) deprived Plaintiff of his right to time and opportunity to oppose the motion as filed with her; and

7) failed discuss Plaintiff's grounds for not consenting to the extension of time[19], whereby she

8) demonstrated that she has treated and will continue to treat this case, not fairly and impartially, but rather arbitrarily, capriciously, and perfunctorily, without diligent attention to the facts, and with blatantly inconsistent application of the law, so that she has

9) denied and will continue to deny Plaintiff due process of law and equal protection of the law?

a. If you had gone through Plaintiff's experience in this court, could you

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19 5 >SDNY:191

reasonably have come to the conclude that Judge Jeannett Vargas would not afford you a fair and impartial trial so that you would feel justified in petitioning that this case, which is in such an early stage that it has not received a single answer, should be reassigned to another judge or, given its nature as a test case in the public interest, to a panel of judges?

43. In answering those two questions, the court en banc may use the following aphorisms as a guide to reading and analyzing this statement of facts:

The devil is in the detail;
whose corollary actor Denzel Washington expressed
in the movie *The Little Things* thus:
"It is the little things, Jimmy, that..that get you caught".

44. I filed my complaint in person with the assistance of Supervisor Lourdes Aquino on Monday, 16 December 2024, as well as the IFP, e-filing, and service papers, among others (docket entries no. 1-5, 7; a copy of the docket is in the Exhibits hereunder).

45. When I checked the docket of my newly filed case, the entry after the first one, which concerned my complaint, was this:

12/16/2024	2	REQUEST TO PROCEED IN FORMA PAUPERIS. Document filed by Richard Cordero.(anc) (Entered: 12/20/2024)

46. I downloaded this document. Its blue document-identifying banner running across and atop each of its two pages looked like this:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Dr. Richard Cordero, Esq.

(full name of the plaintiff or petitioner applying (each person must submit a separate application))

-against-

_____ CV _____ ( ) ( )

(Provide docket number, if available; if filing this with your complaint, you will not yet have a docket number.)

The Secretary of Health & Human Services; Health Insurance Plan of Greater NY EmblemHealth, its Grievance &Appeals Dept, its Supervisor Sean Hillegass; Maximus Federal Services; Legal Assistant Denise Elosh and ALJ Dean Yanohira, OMHA Phoenix Field Office, AZ; ALJ Loranzo Fleming, OMHA Atlanta Field Office, GA; John Doe and Jane Doe, who are employees in the OMHA Phoenix and Atlanta Offices and the HHS who participated in the coordinated disregard of plaintiff's phone calls, voice mail, and over 11,000 emails, and in filing a complaint against plaintiff with the Federal Protective Services; John Doe and Jane Doe, who are Emblem officers who interacted or failed to interact with Emblem employees in The Philippines and in the U.S. to plaintiff's detriment.

APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS

47. "UA" meant that my case was still 'UnAssigned'.

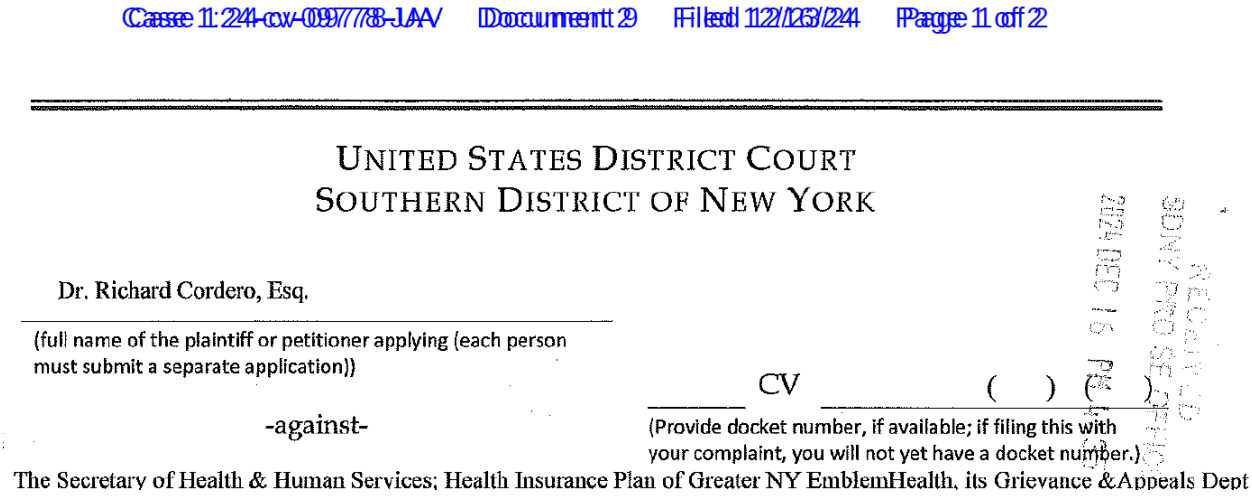
48. When I checked page two, I noticed that the IFP application form that had been entered was the sample that I had filled out for a filing clerk to revise and confirm that it was properly filled out; it was unsigned.

49. I tried to e-file the signed IFP application. The two instructors of the Court's CM/ECF Introduction Course that I had taken on December 19, namely, Mr. Nick of the Pro Se In-take Office and Ms. Vanessa of the Attorney Help Desk, had said that each attendee would receive a code to enable each to e-file. I had not received that code, although I had received the certificate of course completion. Since I could not e-file it, I emailed it.

50. When the signed IFP application was entered subsequently, it bore docket entry no. 9:

12/23/2024	9	APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS. Document filed by Richard Cordero.(tg) (Entered: 12/27/2024)

51. When I downloaded it to check it, this is how the document-identifying banner looked like:


Case 1:24-cv-09778-JAV Document 2 Filed 12/23/24 Page 1 of 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Dr. Richard Cordero, Esq.

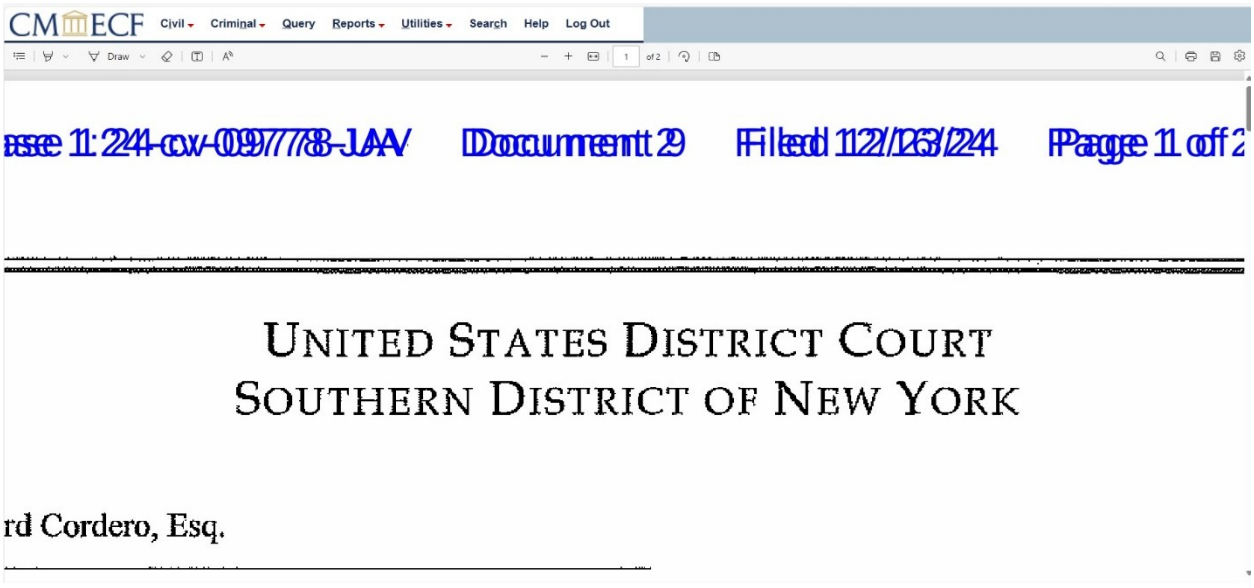
(full name of the plaintiff or petitioner applying (each person must submit a separate application))

-against-

_____ CV _____ ( ) ( )
(Provide docket number, if available; if filing this with your complaint, you will not yet have a docket number.)

The Secretary of Health & Human Services; Health Insurance Plan of Greater NY EmblemHealth, its Grievance &Appeals Dept

52. When that banner is greatly enlarged, it looks like this:



53. I called the clerks to find out why the banner looked like that. But they could not provide any explanation, let alone state the reason for the superimposed

banner stating "JAV" given that no judge had been assigned to the case, which accounted for no docket entry to the contrary. I have come to learn that "JAV" stands for Jeannette A. Vargas, a judge in this court. This indicates that even before or on December 23, she had been assigned to my case. Yet, no action was taken to move it along.

54. In fact, days and weeks went by without the IFP application being granted or denied or a judge assigned and his or her name announced by a docket entry. No entry indicated that any defendant had been or would be served.

55. Likewise, no code was sent to me to allow me to e-file. No button appeared on the webpage of my docket to allow me to e-file. The clerks could not explain why I was having so many problems e-filing. They even stated that 'if you are finding e-filing too difficult, you should switch to in person or by mail filing'. I found that to be a cop-out that demeaned my competence. I protested. The clerks sent me to the court technical support office, and when that did not work, to PACER. The latter told me that my account there was working normally, as it has for years. I escalated my call. PACER supervisors were astonished that the clerks of this court should have assumed that PACER would know why a party to a case in their court was having problems e-filing.

56. All these problems appeared more baffling to everybody because as of the date of complaint filing on December 16, and the date of completing the e-filing course on December 19, my docket carried these entries:

12/16/2024		Case Designated ECF. (anc) (Entered: 12/20/2024)
12/16/2024	3	PRO SE CONSENT TO RECEIVE ELECTRONIC SERVICE. The following party: Richard Cordero consents to receive electronic service via the ECF system. Document filed by Richard Cordero.(anc) (Entered: 12/20/2024)
12/19/2024	6	MOTION for Permission for Richard Cordero to participate in electronic case filing in this case. Document filed by Richard Cordero. (sac) (Entered: 12/23/2024)

57. Actually, those entries explain why I was having so many problems e-filing: because nobody had acted upon my case. The case was 'dead on its tracks'.

58. I kept calling, but no clerk had an explanation for the case not making procedural progress or for my e-filing problems. The clerks are likely to remember me since they kept transferring me between one another and to outsiders. As a result, our calls became ever more tense.

59. Then one day, a month and a half after filing on December 16; 2024, docket entry no. 12 appeared on the docket:

01/28/2025	12	ORDER GRANTING IFP APPLICATION: Leave to proceed in this Court without prepayment of fees is authorized. 28 U.S.C. § 1915. SO ORDERED. (Signed by Judge Laura Taylor Swain on 1/28/2025) (ar) (Entered: 01/29/2025)

60. The following day, January 29, 2025, the case was reassigned (docket entry between 12 and 13)

01/29/2025		NOTICE OF CASE REASSIGNMENT to Judge Jeannette A. Vargas. Judge Unassigned is no longer assigned to the case..(kgo) (Entered: 01/29/2025)

61. How does it come to happen generally that an entry lacks a number and how did that happen in this particular case? What does it mean?

62. Normally, a judge is assigned randomly, within two days of the case being filed,

and by a clerk as a ministerial task. The reassignment was supposed to be performed "promptly and efficiently" as part of 'the handling that Chief Judge Swain wants to ensure for' "all cases".

12/26/2024	8	STANDING ORDER IN RE CASES FILED BY PRO SE PLAINTIFFS (See 24-MISC-127 Standing Order filed March 18, 2024). To ensure that all cases heard in the Southern District of New York are handled promptly and efficiently, all parties must keep the court
...		
		matter that is classified as pro se in the court's records. (Signed by Chief Judge Laura Taylor Swain on 3/18/2024) (anc) (Entered: 12/26/2024)

63. As discussed above(¶¶50-53), it appears that the reassignment took place "promptly" in the week when the case was filed…perhaps "efficiently", but certainly not effectively.

64. Only two days later, on January 31, Judge Vargas took action with a vengeance in her ORDER OF SERVICE (docket entry no. 13):

01/31/2025	13	ORDER OF SERVICE: The Court dismisses Plaintiff's claims against ALJs Yanohira and Fleming because they seek monetary relief against a defendant who is immune from such
…		
		an amended complaint. The Court grants Plaintiff's motion for permission to file documents electronically (ECF 6).The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444-45
		terminated. Motions terminated: 6 MOTION for Permission for Richard Cordero to participate in electronic case filing in this case. filed by Richard Cordero. (Signed by Judge Jeannette A. Vargas on 1/312025) (mml) Transmission to Pro Se Assistants for processing. (Entered: 02/03/2025)

65. This entry shows that the e-filing problems that I had encountered were the result of Judge Vargas's failure to take action on "Plaintiff's motion for permission to file documents electronically" and on "6 MOTION for Permission for Richard Cordero to participate in electronic case filing in this case".

66. Moreover, based on the same and only pleading at the time, to wit, my complaint,

Judge Vargas took away the IFP status that Chief Judge Swain had granted me only two days earlier. This creates a conflict between two judges of this court. It provides justification for this case to be reviewed by this court en banc.

67. More than a month and a half later, Judge Vargas issued this order (docket entry no. 30):

03/19/2025	30	ORDER terminating 9 Motion for Leave to Proceed in forma pauperis. (HEREBYORDERED by Judge Jeannette A. Vargas)(Text Only Order) (Yin-Olowu, Tammy)(Entered: 03/19/2025)

68. If in this order Judge Vargas only takes away my IFP status as she already had in her Order of Service of January 31 (docket entry no. 13; ¶64), what was the need for her to repeat herself at all? If by contrast, that second order introduces anything new by referring to my IFP application (docket entry no. 9)itself , what are its practical consequences?

69. What unspecified event motivated Judge Vargas to issue it 1½ months after the first order?

70. Is this another instance of procrastination or rather another manifestation of her having concentrated all her effort and time on her national attention-grabbing case, i.e., *19 Attorneys General v. Trump*[18]?

71. The fact is that Judge Vargas did a quick job by conclusorily characterizing my claims as "frivolous" and any appeal by me as "not in good faith" to *ex*terminate 27 of my 29 defendants and take away my IFP status.

72. Picking out convenient quotations and citing a string of cases to be slapped as

labels are no substitute for a fair and impartial, critical application of the law to the facts of the case. One can always find judges who since the creation of the Federal Judiciary in 1789 have said one thing and others who have said the opposite.

F. J. Vargas granted AUSA's motion overnight, giving me no time to respond

73. Another perfunctory handing of my case is Judge Vargas's failure to even acknowledge receipt of my statement declining the AUSA's request emailed to me to consent to an extension by months to its time to answer my complaint. I emailed the AUSA, e-filed, and even filed as a letter to Judge Vargas a detailed statement[20] debunking its allegation that "we requested a certified copy of the Administrative Record and have been told that it will not be ready until May 21, 2025."

74. In brief, I showed what the requirements for an extension of time were and how AUSA had not met them. Moreover, I showed that the Administrative Record was readily able as recently at October 17, 2024, when the Medicare Appeals Council used it to decide my appeal to it of the decision of the ALJ who presided over the fair hearing.

75. The Council stated in its decision by when I could appeal its own decision to a district court. Hence it knew that it had to keep the Administrative Record readily available for submission to the AUSA in case its decision was appealed. Since I timely appealed it, the Council had notice that it would have to submit its Record to the AUSA. There was no justification whatsoever for the pretense that it would

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20 5 >SDNY:191

take over two months to send its Record to the AUSA. This is yet another instance of the pattern of conduct underlying this case: abusive coordinated claim evasive "delay, deny, defend" tactics.

76. In addition, I requested the AUSA to prove its allegation by producing its request to the Council; the contact information of its addressee and of the impersonal entity that supposedly "told [whom?] that it will not be ready until May 21, 2025"; and a copy of what whomever was told. Judge Vargas did not wait for the AUSA to produce this proof, let alone ask for it. Instead, she approved the request from AUSA for an extension of time to answer my complaint the day after the AUSA filed it.

03/31/2025	32	LETTER MOTION for Extension of Time to File Answer addressed to Judge Jeannette A. Vargas from Rebecca Salk dated 3/31/2025. Document filed by The Secretary of Health and Human Services..(Salk, Rebecca) (Entered: 03/31/2025)
04/01/2025	33	ORDER granting 32 Letter Motion for Extension of Time to Answer re 22 Amended Complaint. The Government Defendants' request for an extension of time to respond to the Complaint is GRANTED. The Government Defendants' response shall be filed no later than July 21, 2025. The Clerk of court is respectfully directed to terminate ECF No. 32. SO ORDERED. The Secretary of Health and Human Services answer due 7/21/2025. (Signed by Judge Jeannette A. Vargas on 4/1/2025) (sgz) (Entered: 04/01/2025)

77. The above docket entries are understandable. By contrast, entry 31 that by its date must be deemed to refer to my statement declining consent to the AUSA's time extension request is meaningless:

03/24/2025	31	PROPOSED BRIEF re: 1 Complaint, . Document filed by Richard Cordero..(Cordero, Richard) (Entered: 03/24/2025)

78. What category of filable paper is called "proposed brief"? Proposed for what? To whom is it proposed? Conveniently, this docket entry does not contain the initials between parenthesis of the clerk who composed and/or entered it?

79. There was nothing that even hinted that I was proposing anything in the email that I sent on March 24[21] to Salk, Rebecca (USANYS) <rebecca.salk@usdoj.gov>, Acting U.S. Attorney <Matthew.Podolsky@usdoj.gov>, prose@nysd.uscourts.gov, NYSD_ECF_Pool@nysd.uscourts.gov, help_desk@nysd.uscourts.gov, temporary_Pro_se_Filing@NYSD.uscourts.gov, Dr.Richard.Cordero_Esq@verizon.net,

80. My email conspicuously stated:

> Re: Attachment and brief docket statement for filing in Cordero v. Secretary of Health and Human Services, 24-cv-09778 (JAV),
>
> For the reasons stated in his memorandum, attached hereto for filing, Plaintiff Dr. Richard Cordero, Esq., does not consent to the request of AUSA Rebecca Salk for the extension of time for her office to respond to his complaint.

81. Therefore, with actual and imputed knowledge of my reasons for declining consent to AUSA's time extension request, and disregarding my request that AUSA produce proof of its alleged reason for it, Judge Vargas rushed to grant it overnight.

    a. If Judge Vargas did not even read my statement, she engaged in willful ignorance, neglect, and dereliction of duty despite my notice that I had provided reasons for declining consent.

    b. She deprived me of the opportunity to exercise my right to oppose the request as phrased and filed with her.

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[21] 5 >SDNY:191

c. She disregarded my demand to AUSA to prove its allegation that it had to wait months for the arrival of the "Administrative Record". Judge Vargas showed contempt for my reasons and my rights.

d. She showed willingness to countenance a violation by AUSA of FRCP 11(b)(1), which prohibits 'the presentation of any paper for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation'.

MEMORANDUM OF LAW

G. What is frivolous and what is bad faith

82. Black's Law Dictionary, in its several editions, states that:

> Lacking in high purpose; trifling, trivial, and silly. 2. Lacking a legal basis or legal merit; manifestly insufficient as a matter of law.
>
> A claim is frivolous if it has no legal basis or merit, esp. one brought for an unreasonable purpose such as harassment.
>
> An appeal is frivolous if it has no legal basis, usu. filed for delay to induce a judgment creditor to settle or to avoid payment of a judgment

83. The article "Understanding Bad Faith Laws in New York"[22] states the following:

> When an insurance company is responsible for settling a claim, it will often attempt to limit the amount that it must pay out. Insurance policies are promises that the company makes to the insured, and when that promise is broken, the insurance company is considered to be acting in "bad faith."
>
> Bad faith laws are designed to hold insurance companies

[22] Leav & Steinberg, LLP; https://www.nyaccidentlawyer.com/understanding-bad-faith-laws-protect-your-rights-in-personal-injury-claims/

> accountable for acting unfairly or dishonestly when handling claims. When policyholders conduct business with an insurance company, they do so with the reasonable expectation that the insurance company will honor its promise to pay on claims. Bad faith laws exist to ensure that insurers fulfill their contractual obligations to the insured and deal with claimants in good faith.
>
> While New York does not have a specific statute on bad faith,…an insurer's conduct is regulated under New York Insurance Law §2601: Unfair Claims Settlement Practices. Also, relevant cases have established legal precedents. These cases hold that if an insurer is aware of the facts and the facts clearly support a settlement within the insurance limits, but the insurer refuses to settle and exposes its policyholder to potential excess liability, the insurance company may be acting in bad faith.

84. Does the statement of claims in the amended complaint[23] give you probable cause to believe that Plaintiff's claims have "legal basis or merit" or rather that they are "frivolous"?

85. Do you believe it reasonable to consider that Plaintiff has good faith claims against the Defendants so that they would survive a FRCP 12(b)(6) motion because they are capable "to state a claim on which relief may be granted"?

86. By pretending that Plaintiff had failed to state such claims, Judge Vargas disregarded:

> FRCP 8. General Rules of Pleading
>
> a) CLAIM FOR RELIEF. A pleading that states a claim for relief **must** contain:…

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23 5 >SDNY:122

(2) a short and plain statement of the claim [bold emphasis added][24]

87. Judge Vargas based her rash action on who the Defendants were rather than on what they had done. She put two classes of people, to wit, government employees and employees of healthcare insurers, above the law, regardless of their conduct. She elevated them into unaccountability and consequent impunity by simply holding them unequally protected by the self-serving doctrines of judicial and sovereign immunity. Taking the easy way out, she skipped discussing Plaintiff's constitutional, statutory, and regulatory arguments against those doctrines.[25]

88. Thereby Judge Vargas spared the 27 terminated Defendants the treatment accorded everybody else: to be held accountable and liable for their actions. Hers was not a judicial decision guided by a responsible application of legal concepts to the facts of the case. She forfeited her role as a fair and impartial judicial officer; and usurped the fact-finding role of the jury.

89. FRCP 1 provides that one of the purposes of the Rules is "to secure the speedy [not the expedient] determination of every action". Moreover, the determination must be "just". By contrast, Judge Vargas's Orders (docket entries no. 13 and 27) are arrogant fiats that abusively slapped labels one after the other to do a quick job. She unjustly denied Plaintiff "due process of law" and "equal protection of the laws".

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[24] The sufficiency of the claims as stated is the only issue dealt with in the amended complaint. See [5] >SDNY:131§§a-c.

[25] [5] >SDNY:82§F

90. In a system that guarantees "equal protection of the law" and that strives to ensure "Equal Justice Under Law", plaintiffs have rights corresponding to those of defendants. Judge Vargas deprived Plaintiff of his right to confront 27 of the 29 defendants whom he had accused of coordinated abusive claim evasive "delay, deny, defend" tactics.

91. She deprived Plaintiff of the opportunity to deal, e.g., in a reply and at trial, with any defense alleged by Defendants, if they were permitted to mount any.

92. They could have offered to settle rather than incur the expense of litigating against a plaintiff who since 2021 has proven his determination, stamina, and knowledge.

93. Also, the Defendants could have realized that it was in their interest to avoid providing evidence through disclosure and discovery of their abusive "delay, deny, defend" tactics executed in this case.

94. Those abusive tactics are the same as those that that drove Luigi Mangione allegedly to kill UnitedHealthcare CEO Brian Thompson. Mangione will face in this court federal criminal charges seeking the death penalty. His trial will be covered by a national slew of journalists. The latter will also be able to cover this case. They will provoke with their revelations of Defendants' tactics ever more public outrage. This will incriminate the Defendants. But it will support the call to the national public to join class actions and donate to a coalition of lawyers engaged in multistate litigation in the public interest of holding healthcare insurers and those who cover for them accountable and liable.

H. Judge Vargas was wrong in holding the ALJ immune to suits

95. The Code of Conduct for U.S. Judges provides as follows:

> **Canon 2:** A Judge Should Avoid Impropriety and the Appearance of Impropriety in all Activities[26]
>
> (A) *Respect for Law*. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
>
> Commentary
>
> [2.2][2A] …The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

96. It was sufficient for Dr. Cordero's claims against ALJ Dean Yanohira and Loranzo Fleming to elicit "the Appearance of Impropriety in [any] Activities". So appeared the activities that they engaged in:

a. Plaintiff moved to recuse ALJ Dean Yanohira. By a rubberstamped form the ALJ denied the motion. Plaintiff complained to the Medicare Appeals Council[27]. ALJ Yanohira issued another rubberstamped form vacating the first one and recusing himself from this case.

b. ALJ Loranzo Fleming denied Plaintiff the right to present his case and limited the fair hearing to arguing with Plaintiff Emblem's and Maximus's position as their advocate…although Maximus neither appeared at the

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[26] https://www.uscourts.gov/administration-policies/judiciary-policies/ethics-policies/code-conduct-united-states-judges#c

[27] http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Medicare_Appeals.pdf

hearing nor filed a brief for it.

97. When judges take their oath of office (¶35; 28 U.S.C. §453, they swear that they will discharge their constitutional and statutory duties. They are not exonerated from those duties by the self-serving doctrines and statements that some justices or judges may concoct to immunize themselves from any lawsuit and thereby place themselves in a position that nobody in a democracy governed by the rule of law has the right to be: Above the Law.

98. On the contrary, a law of the United States provides for the suability of judges:

> **28.U.S.C. §463. Expenses of litigation**
>
> Whenever a Chief Justice, justice, judge, officer, or employee of any United States court is sued in his official capacity, or is otherwise required to defend acts taken or omissions made in his official capacity, and the services of an attorney for the Government are not reasonably available pursuant to chapter 31 of this title, the Director of the Administrative Office of the United States Courts may pay the costs of his defense. The Director shall prescribe regulations for such payments subject to the approval of the Judicial Conference of the United States.

RELIEF REQUESTED

99. Therefore, plaintiff Dr. Cordero respectfully requests Chief Judge Swain to convene this district court en banc and submit to it this case so that the court en banc may:

a. vacate Judge Vargas' Order of Service of 31 January 2025[28] (docket entry

[28] SDNY:89

no. 13);

b. reinstate the 27 Defendants that Judge Vargas terminated in her January 31 order; and order that pursuant to 28 U.S.C. §1915 they be served by the U.S. Marshall with the summons and complaint;

1) if denied, state the deadline for appealing to the Court of Appeals for the Second Circuit, taking into account that the amended complaint of 3 March has not yet been commented upon by Judge Vargas, and the provisions of FRCP 19 on required joinder of parties and FRCP 20 on permissive joinder of parties;

c. restore the IFP status that Chief Judge Swain had granted Plaintiff but that Judge Vargas deprived him of;

d. declare that Judge Vargas's statement:

> any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal

constitutes an express deprivation of Plaintiff's IFP status in connection with any appeal by him to the Court of Appeals. It works an unwarranted practical deterrence to his exercise of his right to appeal by making it unaffordable. That statement and her conclusory characterization of his claims as "frivolous" have the "appearance of impropriety"[26] of an intimidatory warning in the self-interest of preventing her decision from being reviewed on appeal;

e. hold and issue a declaratory judgement stating that Plaintiff's claims exposing Defendants' execution on him of their claim evasive "delay, deny,

defend" tactics; and his demand for compensation for the injury in fact that they have caused him since his claim of 8 September 2021, are neither "malicious" nor "frivolous" and his pursuit of them here and on appeal to the Court of Appeals is in good faith;

f. grant Plaintiff's default judgment against the Defendants for:

1) failing their duty to disclose;

2) failing to produce any materials requested in discovery;

3) failing to respond to any of the emails sent daily to more than 30 Defendants[29], including individuals and entities, over more than two years, which in the aggregate were more than 11,000 emails!, to which must be added all the Plaintiff's calls that they did not pick up and his voicemails left on their answering machines which they did not return. This could only have occurred if they were…

4) …acting in coordination not to communicate with Plaintiff so as to wear him down until they rendered his effort futile and exhausted him, causing him to abandon his claims. Thereby they would evade their duties to him and deprive him of his rights;

5) engaging in ex parte communications with the Office of Medicare Hearings and Appeals (OMHA), Phoenix, AZ, Field Office;

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29 5 >SDNY:129fn7

6) failing to serve on Plaintiff a "Record" that they filed with ALJ Dean Yanohira in the OMHA Pheonix;

7) failing to file a brief for the fair hearing and the appeal to the Medicare Appeals Council;

8) failing even to appear at the fair hearing, as Maximus did;

g. otherwise, grant Plaintiff's motion for judgment on the pleadings and summary judgment;

h. hold and inform all the Defendants that they have forfeited their right to defend and;

1) cannot use in their defense, which includes an attack on Plaintiff, any papers that they sent ex parte to the ALJs or the Medicare Appeals Council, for they failed to serve them on Plaintiff;

2) so that to allow them in this court to file a brief or argue orally would condone their unfairly surprising Plaintiff with contentions that they never considered worth bringing to the attention of Plaintiff, the ALJs, or the Council, and that Plaintiff was not enabled to take into consideration when writing his appeal briefs;

i. hold that Defendants are deemed to have admitted all of Plaintiff's statements of facts and arguments of law; and waived all objections to them; and are barred by laches from filing or arguing in this court;

j. recognize this case as a lawful and socially acceptable way of channeling the public's outrage at the healthcare industry's coordinated claim evasive

"delay, deny, defend" tactics, which explains the public's support of Luigi Mangione after he allegedly killed UnitedHealthcare CEO Brian Thompson; and:

1) recognize the nature of this case as a test case, in general, in the public interest and, in particular, in the interest of the scores of millions of old, disabled, sick, and law-ignorant people insured by Medicare, Emblem, Maximus, and similar medical services and equipment providers, who abuse those people's lack of physical and emotional energy, means, and knowledge needed to survive the four levels of administrative appeals in order to climb to the fifth level of judicial review in a U.S. district court like the instant one; and, consequently,…

2) provide the widest latitude for the presentation of this as a test case in the public interest, including the widest media coverage;

3) accord Plaintiff the "solicitude" that Judge Vargas expressly denied him as a pro se despite the obviously enormous burden of effort, time, and expense that he has carried and is carrying to prosecute this case in his and the public interest;

k. hold judicial immunity and sovereign immunity unconstitutional on the grounds argued in the motion for reconsideration[30] and as inapplicable to this case as the district courts have implicitly or explicitly done in the more

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30 5 >SDNY:82§F

than 50 cases and counting so far filed against President Trump and officers and entities of his administration since his inauguration on 21 January 2025;

l. allow several supervisors of Defendant EmblemHealth listed on SDNY:12§3[5], namely, Susan S., Tamika Simpson, Thomas Gray, and the supervisor of their NY State Health Insurance Program (NY SHIP) to be included among the Defendants and served by the U.S. Marshall;

m. reassign this case from Judge Vargas to another or other judges;

n. reverse the grant of the motion of AUSA, SDNY, for an extension of time to answer; and order AUSA to provide proof of its alleged reasons for its request, as Plaintiff did in his statement declining consent[31] (docket entry no. 31;

o. issue a subpoena ordering the production of a certified copy of the complaint filed by Deniese Elosh, law clerk to ALJ Denis Yanohira in the OMHA Phoenix, AZ, Field Office, with the Federal Protective Services of Homeland Security in May 2022, and investigated by Inspector Cory Hogan (tel. (602)514-7130)[32];

p. issue an order to the Defendants to pay Plaintiff jointly and severally:

1) damages in the amount of $1,000,000; if the court orders to proceed to trial and to that end to engage in discovery, this amount may be

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31 5 >SDNY:207§G

32 5 >SDNY:149§I

revised upward in light of the nature, extent, and gravity of Defendants' abuse of power and process, and other forms of illegality that may be revealed, and further damages and costs caused; the amount may also be revised upward if there is a need to appeal to the U.S. Court of Appeals for the Second Circuit or this appeal is removed in whole or in part to a state court;

2) punitive damages;

3) treble damages;

4) damages for pain and suffering;

5) reasonable attorney's fee for his work prosecuting this case for years since 8 September 2021;

6) reimbursement of Plaintiff's expenses and court costs;

q. grant all other relief that the court en banc may deem proper and just.

CERTIFICATE OF COMPLIANCE WITH THE WORD-COUNT LIMITATIONS

100. This motion was prepared using the Microsoft Word processor, which counted its words at 8,746, including those in the footnotes, but not in the caption and the Tables of Contents and Authorities. Hence, it complies with the Local Civil Rule 7.1(c) length limitation to 8,750 words.

Dated: 10 April 2025

/s/ Dr. Richard Cordero, Esq.

Dr. Richard Cordero, Esq.
2165 Bruckner Blvd.
Bronx, NY City 10472-6505

tel. (718) 827-9521
Dr.Richard.Cordero_Esq@verizon.net, CorderoRic@yahoo.com,
DrRCordero@Judicial-Discipine-Reform.org

When judicial candidates are confirmed by the Senate, the Senate does not turn them into incorruptible saints, rather, the candidates grab unaccountability for riskless abuse of power.

Exhibits

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO, ESQ.,

Plaintiff,

-against-

THE SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.,

Defendants.

24-CV-9778 (UA)

ORDER GRANTING IFP APPLICATION

LAURA TAYLOR SWAIN, Chief United States District Judge:

Leave to proceed in this Court without prepayment of fees is authorized. *See* 28 U.S.C. § 1915.

SO ORDERED.

Dated: January 28, 2025
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge

Director's Annual Report

As required by statute, the Director of the Administrative Office of the U.S. Courts shall submit to Congress and the Judicial Conference a report of the activities of the Administrative Office and the state of the business of the courts.

Annual Report 2024

Read the most recent Director's Annual Report which reports on activities of the Administrative Office of the United States Courts.

Statistical Tables for the Federal Judiciary

Published twice each year, this is a collection of the most frequently requested tables of statistics on the workload of the U.S. courts and the federal probation and pretrial services system. Covers 12-month periods ending June 30 and December 31.

- Detailed statistical tables address the work of the U.S. courts of appeals, district courts and bankruptcy courts, as well as the federal probation and pretrial services system.
- The Judicial Caseload Indicators table compares data for the current 12-month period to that for the same period 1, 5, and 10 years earlier.
- Publications dating back to 2001 are available online.

2024: December | June

2023: December | June

2022: December | June

2021: December | June

2020: December | June

2019: December | June

2018: December | June

2017: December | June

2016: December | June

U.S. Court of Appeals Summary -- 12 -Month Period Ending December 31, 2024

			DC	1ST	2ND	3RD	4TH	5TH	6TH	7TH	8TH	9TH	10TH	11TH
	Number of Judgeships/ Number of Panels		11 / 3.7	6 / 2.0	13 / 4.3	14 / 4.7	15 / 5.0	17 / 5.7	16 / 5.3	11 / 3.7	11 / 3.7	29 / 9.7	12 / 4.0	12 / 4.0
	Number of Sitting Senior Judges		5	5	14	10	4	8	12	5	3	22	7	8
	Number of Vacant Judgeship Months [2]		0.0	6.6	0.0	5.9	2.6	0.0	0.0	1.0	0.0	0.0	0.0	0.0
Actions per Panel [1]	Appeals Filed	Total	302	599	802	528	676	947	652	664	731	839	442	1,139
		Prisoner	11	59	110	114	169	179	138	209	162	164	102	310
		All Other Civil	134	305	408	273	251	325	274	275	226	346	195	487
		Criminal	51	173	153	105	217	379	208	164	306	95	122	293
		Administrative	106	63	130	37	39	64	31	16	38	233	22	50
	Appeals Terminated	Total	302	557	794	536	702	942	617	636	676	839	441	1,161
		Consolidations & Cross Appeals [3]	57	34	44	22	31	87	20	23	24	19	6	34
		Procedural	106	176	324	188	206	349	204	287	147	321	166	539
		On The Merits: Total	139	348	425	326	464	506	392	326	505	500	269	588
		On The Merits: Prisoner	7	39	63	83	116	67	78	85	122	128	57	124
		On The Merits: Other	85	178	193	160	165	178	165	143	155	192	117	263
		On The Merits: Criminal	21	96	103	61	157	232	123	88	211	71	80	177
		On The Merits: Administrative	25	36	66	22	26	29	26	10	17	109	15	24
	Pending Appeals		417	776	884	395	535	587	516	533	465	731	286	815
Median Time			13.0	13.6	13.4	9.3	8.9	8.1	8.7	9.2	4.5	12.4	9.4	9.4
Other Caseload per Judgeship	Applications for Interlocutory Appeals		-	1	2	2	1	1	1	2	1	3	1	1
	Petitions for Rehearing		17	37	29	68	53	33	37	21	80	41	28	57

[1] See "Explanation of the Judicial Caseload Profiles."

[2] See "Explanation of Selected Terms."

[3] Prior to December 2011, cases disposed of by consolidation and cross appeals were counted separately. From December 2011 forward, they are counted as a subset of procedural and merit terminations to reflect the manner in which the appeal was disposed.

Table 1.1

Total Judicial Officers—U.S. Courts of Appeals, District Courts, and Bankruptcy Courts

During the 12-Month Periods Ending June 30, 1990 and September 30, 1995 Through 2023

	Courts of Appeals			District Courts							Bankruptcy Courts		
				District Court Judges			Magistrate Judges						
							Authorized Positions						
Fiscal Year	Authorized Judgeships	Active Judges	Senior Judges[1]	Authorized Judgeships[2]	Active Judges	Senior Judges[3]	Full Time	Part Time	Clerk/ Magistrate Judge	Recalled Judges	Authorized Judgeships	Active Judges	Recalled Judges
2023	179	172	110	677	617	404	562	25	2	94	345	298	26
2022	179	171	96	677	605	407	562	25	2	96	342	310	27
2021	179	179	100	677	605	394	551	25	2	85	345	345	24
2020	179	179	99	677	621	419	555	27	3	95	345	307	27
2019	179	175	100	677	585	423	549	29	3	90	347	316	28
2015	179	170	84	677	619	396	536	34	3	68	349	330	44
2010	179	158	95	678	590	356	527	41	3	67	352	338	29
2005	179	156	106	678	642	300	503	45	3	34	324	315	32
1995	179	168	81	649	603	255	416	78	3	16	326	315	23
1990[4]	168	158	63	575	541	201	329	146	8	4	291	289	13
Percent Change 2016 over 1990[5]													
	-6.1	-2.3	-42.7	-15.1	-12.3	-50.2	-41.5	484.0	-	-	-15.7	-3.0	-50.0

=2,308

Note: This table includes data for the U.S. Court of Appeals for the Federal Circuit.

[1] Sitting senior judges who participated in appeals dispositions.

[2] Positions in the Districts of the Virgin Islands, Guam, and Northern Mariana Islands are included.

[3] Senior judges with staff.

[4] Twelve-month period ending June 30.

[5] Percent change not computed when the total for the previous period is less than 10.

Source: Text narrative and tables, *Annual Report of the Director: Judicial Business of the United States Courts.*

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:24-cv-09778-JAV

Cordero v. The Secretary of Health and Human Services et al
Assigned to: Judge Jeannette A. Vargas
Cause: 42:1395w-21 Medicare Act (Eligibility, Election, and Enrollment)

Date Filed: 12/16/2024
Jury Demand: Plaintiff
Nature of Suit: 151 Contract: Recovery Medicare
Jurisdiction: Federal Question

Plaintiff

Richard Cordero

represented by **Richard Cordero**
Richard Cordero
2165 Bruckner Blvd.
Bronx, NY 10472-6506
718-827-9521
Email: dr.richard.cordero_esq@verizon.net
PRO SE

V.

Defendant

The Secretary of Health and Human Services

represented by **Rebecca Lynn Salk**
DOJ-USAO
86 Chambers Street
3rd Floor
New York, NY 10007
212-637-2614
Email: rebecca.salk@usdoj.gov
ATTORNEY TO BE NOTICED

Defendant

Health Insurance Plan of Greater New York
TERMINATED: 01/31/2025

Defendant

HHS Department of Appeals Board, MS 6127
The Director
TERMINATED: 01/31/2025

Defendant

Emblem Health

Defendant

Medicare Operations Division - Departmental Appeals Board

The Director
TERMINATED: 01/31/2025

Defendant

Karen Ignagni
President and CEO
TERMINATED: 01/31/2025

Defendant

Medicare Appeals Council (MAC)
TERMINATED: 01/31/2025

Defendant

Grievance and Appeals Department
The Director

Defendant

Office of Medicare Hearings and Appeals (OMHA) Headquarters
The Director
TERMINATED: 01/31/2025

Defendant

Sean Hillegrass
Supervisor, Grievance and Appeals Department
TERMINATED: 01/31/2025

Defendant

OMHA Centralized Docketing
The Director
TERMINATED: 01/31/2025

Defendant

Stefanie Macialek
Specialist, Grievance and Appeals Department
TERMINATED: 01/31/2025

Defendant

David Eng, Esq.
Lead Attorney Advisor
TERMINATED: 01/31/2025

Defendant

Melissa Cipolla
Senior Specialist, Grievance and Appeals Department
TERMINATED: 01/31/2025

Defendant

John Colter
Supervisor of Legal Administrative Specialists
TERMINATED: 01/31/2025

Defendant

Shelly Bergstrom
Quality Risk Management
TERMINATED: 01/31/2025

Defendant

Jon Dorman
Director
TERMINATED: 01/31/2025

Defendant

Sandra Rivera-Luciano
Medical Director
TERMINATED: 01/31/2025

Defendant

Sherese Warren
Director, Central Operations
TERMINATED: 01/31/2025

Defendant

The Director, Quality Risk Management
TERMINATED: 01/31/2025

Defendant

Erin Brown
Senior Legal Supervisor
TERMINATED: 01/31/2025

Defendant

Maximus Federal Services represented by **Sam Matthew Koch**
Foley & Lardner LLP
90 Park Avenue
New York, NY 10016
212-338-3472
Email: skoch@foley.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Sabrina Bryan
Foley & Lardner LLP
90 Park Avenue
New York, NY 10016
607-280-4645
Email: sbryan@foley.com
ATTORNEY TO BE NOTICED

Defendant

Andrenna Taylor Jones
Senior Attorney Advisor
TERMINATED: 01/31/2025

Defendant

The President
TERMINATED: 01/31/2025

Defendant

The CEO
TERMINATED: 01/31/2025

Defendant

James "Jim" Griepentrog
Legal Administrative Specialist
TERMINATED: 01/31/2025

Defendant

The Director
TERMINATED: 01/31/2025

Defendant

ALJ Dean Yanohira
TERMINATED: 01/31/2025

Defendant

Denise Elosh
Legal Assisant
TERMINATED: 01/31/2025

Defendant

John and Jane Doe
Employees of OMHA Phoenix and Atlanta Offices and/or in the HHS Departments and Offices who participated in the coordinated disregard of Plaintiff's phone calls and mail

Defendant

ALJ Loranzo Fleming
TERMINATED: 01/31/2025

Defendant

John and Jane Doe
HIP and/or Emblem Health Officers who interacted or failed to interact with Emblem Health employees in the Philippines and the US

Defendant

Attorney General of The United States

Defendant

HHS Departmental Appeals Board

Defendant

HHS Medicare Operations Division

Defendant

HHS Medicare Appeals Council

Defendant

U.S. Attorney for SDNY
Civil Division

Defendant

Stephanie Macialek

Defendant

The Director of the Medical Managed Care & PACE Reconsideration Project at Maximus Federal Services

Defendant

Susan S.
Emblems New York SHIP (State Health Insurance Program)

Defendant

Tamika Simpson
Emblem's New York SHIP

Defendant

Thomas Gray
Emblem's New York SHIP

Defendant

The Director of NY SHIP

Date Filed	#	Docket Text
12/16/2024	1	COMPLAINT against Emblem Health, Grievance and Appeals Department, HHS Department of Appeals Board, MS 6127, Health Insurance Plan of Greater New York, Karen Ignagni, Medicare Appeals Council (MAC), Medicare Operations Division - Departmental Appeals Board, The Secretary of Health and Human Services. Document filed by Richard Cordero.(anc) (Entered: 12/20/2024)
12/16/2024	2	REQUEST TO PROCEED IN FORMA PAUPERIS. Document filed by Richard Cordero. (anc) (Entered: 12/20/2024)
12/16/2024		Case Designated ECF. (anc) (Entered: 12/20/2024)
12/16/2024	3	PRO SE CONSENT TO RECEIVE ELECTRONIC SERVICE. The following party: Richard Cordero consents to receive electronic service via the ECF system. Document filed by Richard Cordero.(anc) (Entered: 12/20/2024)

12/16/2024	4	CIVIL COVER SHEET filed. (anc) (Entered: 12/20/2024)
12/16/2024	5	REQUEST FOR WAIVER OF SERVICE. Document filed by Richard Cordero. (anc) (Entered: 12/20/2024)
12/16/2024	7	WAIVER OF SERVICE OF SUMMONS. Document filed by Richard Cordero. (anc) (Entered: 12/26/2024)
12/19/2024	6	MOTION for Permission for Richard Cordero to participate in electronic case filing in this case. Document filed by Richard Cordero. (sac) (Entered: 12/23/2024)
12/23/2024	9	APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS. Document filed by Richard Cordero.(tg) (Entered: 12/27/2024)
12/26/2024	8	STANDING ORDER IN RE CASES FILED BY PRO SE PLAINTIFFS (See 24-MISC-127 Standing Order filed March 18, 2024). To ensure that all cases heard in the Southern District of New York are handled promptly and efficiently, all parties must keep the court apprised of any new contact information. It is a party's obligation to provide an address for service; service of court orders cannot be accomplished if a party does not update the court when a change of address occurs. Accordingly, all self-represented litigants are hereby ORDERED to inform the court of each change in their address or electronic contact information. Parties may consent to electronic service to receive notifications of court filings by email, rather than relying on regular mail delivery. Parties may also ask the court for permission to file documents electronically. Forms, including instructions for consenting to electronic service and requesting permission to file documents electronically, may be found by clicking on the hyperlinks in this order, or by accessing the forms on the courts website, nysd.uscourts.gov/forms. The procedures that follow apply only to cases filed by pro se plaintiffs. If the court receives notice from the United States Postal Service that an order has been returned to the court, or otherwise receives information that the address of record for a self-represented plaintiff is no longer valid, the court may issue an Order to Show Cause why the case should not be dismissed without prejudice for failure to comply with this order. Such order will be sent to the plaintiffs last known address and will also be viewable on the court's electronic docket. A notice directing the parties' attention to this order shall be docketed (and mailed to any self-represented party that has appeared and has not consented to electronic service) upon the opening of each case or miscellaneous matter that is classified as pro se in the court's records. (Signed by Chief Judge Laura Taylor Swain on 3/18/2024) (anc) (Entered: 12/26/2024)
12/26/2024		CASE MANAGEMENT NOTE: For each electronic filing made in a case involving a self-represented party who has not consented to electronic service, the filing party must serve the document on such self-represented party in a manner permitted by Fed. R. Civ. P. 5(b)(2) (other than through the ECF system) and file proof of service for each document so served. Please see Rule 9.2 of the courts ECF Rules & Instructions for further information.. (anc) (Entered: 12/26/2024)
01/13/2025	10	LETTER from Richard Cordero dated 1/12/2025 re: Request to remove mistaken filing of certificate from complaint and docket.. Document filed by Richard Cordero. (ar) (Entered: 01/15/2025)
01/28/2025	12	ORDER GRANTING IFP APPLICATION: Leave to proceed in this Court without prepayment of fees is authorized. 28 U.S.C. § 1915. SO ORDERED. (Signed by Judge Laura Taylor Swain on 1/28/2025) (ar) (Entered: 01/29/2025)
01/29/2025		NOTICE OF CASE REASSIGNMENT to Judge Jeannette A. Vargas. Judge Unassigned is no longer assigned to the case..(kgo) (Entered: 01/29/2025)
01/31/2025	13	ORDER OF SERVICE: The Court dismisses Plaintiff's claims against ALJs Yanohira and Fleming because they seek monetary relief against a defendant who is immune from such

		relief, 28 U.S.C. § 1915(e)(2)(B)(iii), and, consequently, as frivolous, 28 U.S.C. § 1915(e)(2)(B)(i). The Court dismisses Plaintiff's claims against the "directors/heads/top officers" of the HHS Department Appeals Board, the HHS Medicare Operations Division, the HHS Medicare Appeals Council, the Office of Medicare Hearings and Appeals ("OMHA") Headquarters, the OMHA Centralized Docketing, as well as HHS and OMHA employees David Eng, John Colter, Jon Dorman, Sherese Warren, Erin Brown, Andrenna Taylor Jones, James Griepentrog, and Denise Elosh, under the doctrine of sovereign immunity, see 28 U.S.C. § 1915(e)(2)(iii), and consequently, for lack of subject matter jurisdiction, see Fed. R. Civ. P. 12(h)(3).The Court dismisses Plaintiff's claims against the Health Insurance Plan of Greater New York, Karen Ignagni, the "Director of EmblemHealth Grievance and Appeals Department," Sean Hillegass, Stefanie Macialek, Melissa Cipolla, Shelly Bergstrom, Dr. Sandra Rivera-Luciano, the "Director of Quality Risk Management" at EmblemHealth, the President of Maximus Federal Services, the CEO of Maximus, and the Director of Medicare Managed Care & PACE Reconsideration Project at Maximus, for failure to state a claim on which relief may be granted. See 28 U.S.C. § 1915(e)(2)(B)(ii). The Court grants Plaintiff 30 days' leave to replead his claims against these defendants in an amended complaint. The Court grants Plaintiff's motion for permission to file documents electronically (ECF 6).The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).The Clerk of Court is directed to mail an information package to Plaintiff.SO ORDERED. Melissa Cipolla (Senior Specialist, Grievance and Appeals Department), John Colter (Supervisor of Legal Administrative Specialists), ALJ Dean Yanohira, Jon Dorman (Director), Denise Elosh (Legal Assisant), David Eng, Esq. (Lead Attorney Advisor), ALJ Loranzo Fleming, James "Jim" Griepentrog (Legal Administrative Specialist), HHS Department of Appeals Board, MS 6127 (The Director), Health Insurance Plan of Greater New York, Sean Hillegrass (Supervisor, Grievance and Appeals Department), Karen Ignagni (President and CEO), Stefanie Macialek (Specialist, Grievance and Appeals Department), Medicare Appeals Council (MAC), Medicare Operations Division - Departmental Appeals Board (The Director), OMHA Centralized Docketing (The Director), Office of Medicare Hearings and Appeals (OMHA) Headquarters (The Director), Sandra Rivera-Luciano (Medical Director), Andrenna Taylor Jones (Senior Attorney Advisor), The CEO, The Director, The Director, Quality Risk Management, The President, Sherese Warren (Director, Central Operations), Shelly Bergstrom (Quality Risk Management) and Erin Brown (Senior Legal Supervisor) terminated. Motions terminated: 6 MOTION for Permission for Richard Cordero to participate in electronic case filing in this case. filed by Richard Cordero. (Signed by Judge Jeannette A. Vargas on 1/312025) (mml) Transmission to Pro Se Assistants for processing. (Entered: 02/03/2025)
02/03/2025	14	SUMMONS ISSUED as to Emblem Health, Maximus Federal Services, The Secretary of Health and Human Services, U.S. Attorney and U.S. Attorney General. (nb) (Entered: 02/03/2025)
02/03/2025		FRCP 4 SERVICE PACKAGE HAND DELIVERED TO U.S.M.: on 2/3/2025 Re: Judge Jeannette A. Vargas 13 Order of Service. The following document(s) were enclosed in the Service Package: Complaint, Summons, IFP, Order of Service, Completed U.S.M. form(s) for defendant(s)Emblem Health, Maximus Federal Services, The Secretary of Health and Human Services, U.S. Attorney and U.S. Attorney General. (nb) (Entered: 02/03/2025)
02/03/2025	15	INFORMATION PACKAGE MAILED to Richard Cordero, at, on 2/3/2025 Re: 13 Order of Service. The following document(s) were enclosed in the Service Package: a copy of the order of service or order to answer and other orders entered to date, the individual practices of the district judge and magistrate judge assigned to your case, Instructions for Litigants

		Who Do Not Have Attorneys, Notice Regarding Privacy and Public Access to Electronic Case Files, a Motions guide, a notice that the Pro Se Manual has been discontinued, a Notice of Change of Address form to use if your contact information changes, a handout explaining matters handled by magistrate judges and consent form to complete if all parties agree to proceed for all purposes before the magistrate judge. (nb) (Entered: 02/03/2025)
02/14/2025	16	Motion for reconsideration of the order of service of 31 January 2025 and other relief re; 13 Order of Service. Document filed by Richard Cordero. (jjc) (Entered: 02/14/2025)
02/21/2025	19	MARSHAL'S PROCESS RECEIPT AND RETURN OF SERVICE EXECUTED Summons and Complaint, served. Attorney General of The United States served on 2/11/2025, answer due 3/4/2025. Service was made by Mail. Document filed by Richard Cordero. (ar) (Entered: 02/25/2025)
02/21/2025	20	MARSHAL'S PROCESS RECEIPT AND RETURN OF SERVICE EXECUTED Summons and Complaint, served. The Secretary of Health and Human Services served on 2/10/2025, answer due 3/3/2025. Service was made by Mail. Document filed by Richard Cordero. (ar) (Entered: 02/25/2025)
02/24/2025	17	NOTICE OF APPEARANCE by Rebecca Lynn Salk on behalf of The Secretary of Health and Human Services..(Salk, Rebecca) (Entered: 02/24/2025)
02/24/2025	18	LETTER addressed to Judge Jeannette A. Vargas from Rebecca Salk dated 2/24/2025 re: Recusal Rule. Document filed by The Secretary of Health and Human Services..(Salk, Rebecca) (Entered: 02/24/2025)
02/28/2025	21	WAIVER OF SERVICE RETURNED EXECUTED. Emblem Health waiver sent on 2/25/2025, answer due 4/28/2025. Document filed by Richard Cordero. (jjc) (Entered: 03/04/2025)
03/03/2025	22	AMENDED COMPLAINT amending 1 Complaint, against Attorney General of The United States, Shelly Bergstrom, Erin Brown, Melissa Cipolla, John Colter, ALJ Dean Yanohira, John and Jane Doe(HIP and/or Emblem Health Officers who interacted or failed to interact with Emblem Health employees in the Philippines and the US), John and Jane Doe(Employees of OMHA Phoenix and Atlanta Offices and/or in the HHS Departments and Offices who participated in the coordinated disregard of Plaintiff's phone calls and mail), Jon Dorman, Denise Elosh, Emblem Health, David Eng, Esq., ALJ Loranzo Fleming, James "Jim" Griepentrog, Grievance and Appeals Department, Sean Hillegrass, Karen Ignagni, Maximus Federal Services, OMHA Centralized Docketing, Office of Medicare Hearings and Appeals (OMHA) Headquarters, Sandra Rivera-Luciano, Andrenna Taylor Jones, The CEO, The Director, The President, The Secretary of Health and Human Services, Sherese Warren, HHS Departmental Appeals Board, HHS Medicare Operations Division, HHS Medicare Appeals Council, U.S. Attorney for SDNY, Stephanie Macialek, The Director of the Medical Managed Care & PACE Reconsideration Project at Maximus Federal Services, Susan S., Tamika Simpson, Thomas Gray, The Director of NY SHIP with JURY DEMAND.Document filed by Richard Cordero. Related document: 1 Complaint. (jjc) (Entered: 03/05/2025)
03/11/2025	24	LETTER addressed to Judge Jeannette A. Vargas from Dr. Richard Cordero dated 3/11/2025 re: This is to confirm, as I did on the phone to Att. Erina Casheba for Maximus, that the Court directed the U.S. Marshall to serve the request for waiver of the service of summons, and a copy of the complaint on Maximus. See entry 14 on docket 24-cv-9778.. Document filed by Richard Cordero..(nd) (Entered: 03/12/2025)
03/12/2025	23	FIRST LETTER addressed to Judge Jeannette A. Vargas from Dr. Richard Cordero, Esq. dated March 11, 2025 re: No consent to extension of time to Maximus Federal Services. Document filed by Richard Cordero..(Cordero, Richard) (Entered: 03/12/2025)

03/12/2025	25	NOTICE OF APPEARANCE by Sam Matthew Koch on behalf of Maximus Federal Services..(Koch, Sam) (Entered: 03/12/2025)
03/12/2025	26	NOTICE OF APPEARANCE by Sabrina Bryan on behalf of Maximus Federal Services.. (Bryan, Sabrina) (Entered: 03/12/2025)
03/13/2025	27	ORDER denying 16 Motion for Reconsideration. Seeing that Plaintiff has not pointed to any clear error in the interpretation of the judicial immunity doctrine nor provided any case law in support of his argument, the Court does not find that Plaintiff has satisfied the standard for reconsideration. Accordingly, Plaintiff's motion for reconsideration is DENIED. The Clerk of Court is directed to terminate ECF No. 16. SO ORDERED. (Signed by Judge Jeannette A. Vargas on 3/13/2025) (sgz) (Entered: 03/13/2025)
03/14/2025	28	MARSHAL'S PROCESS RECEIPT AND RETURN OF SERVICE EXECUTED Summons and Complaint, served. The Secretary of Health and Human Services served on 3/11/2025, answer due 4/1/2025. Service was made by EMAIL. Document filed by Richard Cordero. (yv) (Entered: 03/18/2025)
03/14/2025	29	MARSHAL'S PROCESS RECEIPT AND RETURN OF SERVICE EXECUTED Summons and Amended Complaint served. Maximus Federal Services served on 3/11/2025, answer due 5/12/2025. Service was accepted by Irina Kashcheveva. FOLEY & LARDNER LLP. Document filed by Richard Cordero. (ar) (Entered: 03/18/2025)
03/19/2025	30	ORDER terminating 9 Motion for Leave to Proceed in forma pauperis. (HEREBY ORDERED by Judge Jeannette A. Vargas)(Text Only Order) (Yin-Olowu, Tammy) (Entered: 03/19/2025)
03/24/2025	31	PROPOSED BRIEF re: 1 Complaint, . Document filed by Richard Cordero..(Cordero, Richard) (Entered: 03/24/2025)
03/31/2025	32	LETTER MOTION for Extension of Time to File Answer addressed to Judge Jeannette A. Vargas from Rebecca Salk dated 3/31/2025. Document filed by The Secretary of Health and Human Services..(Salk, Rebecca) (Entered: 03/31/2025)
04/01/2025	33	ORDER granting 32 Letter Motion for Extension of Time to Answer re 22 Amended Complaint. The Government Defendants' request for an extension of time to respond to the Complaint is GRANTED. The Government Defendants' response shall be filed no later than July 21, 2025. The Clerk of court is respectfully directed to terminate ECF No. 32. SO ORDERED. The Secretary of Health and Human Services answer due 7/21/2025. (Signed by Judge Jeannette A. Vargas on 4/1/2025) (sgz) (Entered: 04/01/2025)

PACER Service Center

Transaction Receipt

04/07/2025 08:32:06

PACER Login:	DrCordero	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	1:24-cv-09778-JAV
Billable Pages:	7	**Cost:**	0.70

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Daniel Patrick Moynihan U.S Courthouse
500 Pearl Street, New York, NY 10007
tel.: (212) 805-0136
https://www.nysd.uscourts.gov/

2 May 2025

Docket No. 24-cv-09778-JAV Jury trial requested

Dr. Richard Cordero, Esq.
Appellant/Plaintiff

-vs-

The Secretary of HHS,

Medicare; EmblemHealth;

Maximus Federal Services, et al

Respondents/Defendants

REPLY

to Defendants' answer and

failure to answer the motion for

Chief Judge Laura Taylor Swain

to submit this case to

this district court *en banc* to:

a. reinstate the 27 out of 29 defendants that Judge Jeannette Vargas terminated, and have them served them by the U.S. Marshall;

b. restore the IFP status that CJ Swain had granted Plaintiff but that J. Vargas took away, creating a conflict that needs resolving;

c. grant Plaintiff's motion for default judgment; otherwise, judgment on the pleadings or summary judgment;

d. provide a more definite statement of the order taking away Plaintiff's IFP status;

e. reverse the order granting AUSA's request for an extension of time to answer;

f. reassign this case to another or other judges

INTRODUCTION

1. Dr. Richard Cordero, Esq., Plaintiff, respectfully proceeds under Local Civil Rule 7.1 to provide a reply in his motion‡ dated April 10, 2025, and filed on April 11

‡ http://Judicial-Discipline-Reform.org/ALJ/25-4-10DrRCordero_motion_for_en_banc.pdf

-hereinafter referred to as "this, his, or the motion"-.[1] Its title is incorporated in that of this reply.

2. This reply takes into account:

   a. those Defendants who answered his motion, namely, EmblemHealth -hereinafter Emblem-; and Maximus Federal Services -hereinafter Maximus-, which only concurred in Emblem's answer without adding anything else -both of whom are also referred to hereinafter as Emblem/Maximus-; and

   b. those Defendants who did not even answer it, to wit, the Secretary of Health and Human Services, the U.S. Attorney General, and the Assistant U.S. Attorney for the Southern District of NY -hereinafter AUSA; they are also referred to hereinafter as HHS/AUSA-.

3. The motion is pending in the court at the address stated in the caption above.

4. This reply reiterates the request for convening this district court en banc and for the other six, a-f actions to be taken to grant Plaintiff relief.

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TABLE OF CONTENTS

[1] https://www.nysd.uscourts.gov/rules

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TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

CASES

LOCAL RULES

FEDERAL RULES

DOCKET ENTRIES

docket entry 12---------- 354

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A. The Defendants failed to raise any defense on the merits

5. Plaintiff's April motion was addressed to Chief Judge Laura Taylor Swain because she is both chief judge, hence she has supervisory authority over all judges and cases in her court; and a judge directly implicated in this case, filed on December 16, 2024, for she took the first action in it, i.e., she granted Plaintiff's IFP application on January 28, 2025 (docket entry 12).

6. Next day the notice of reassignment of this case to Judge Jeannette A. Vargas was entered. Two days later, on January 31, she took away that IFP status (docket entry no. 13) based on the same and only substantive document on the docket at the time, that is, Plaintiff's complaint (docket entry no. 1), and without any intervening event.

7. By so doing, Judge Vargas implicated Chief Judge Swain in a conflict. CJ Swain can resolve it herself by exercising her supervisory authority or convene the district court en banc to do so, as urged by Plaintiff. Thus removing the resolution of the conflict from herself and entrusting it to judges en banc would insulate her from any potential criticism that she had used her authority to resolve it in her favor. In addition, convening this court en banc would result in the benefits discussed in the motion(SDNY:260§D).

8. Regardless of who was chosen to resolve that conflict, the six other actions

requested in the motion's title would have to be resolved too.

9. However, Emblem/Maximus took up issue with only Plaintiff's request for a district court en banc.

10. Emblem/Maximus did so with full knowledge of Plaintiff's factual and legal contentions:

    a. Emblem has been dealing with this case since September 8, 2021, when the underlying medical event occurred and Plaintiff called it to claim on his health insurance provided by it(SDNY:122§E); and

    b. Maximus has been dealing with it since Emblem contacted it on or around December 30, 2021, to request that Maximus perform the review required by law of Emblem's denial of Plaintiff's claim.

11. During all the years since, Emblem has confronted four levels of appeals[2] from Plaintiff; and Maximus three, including the fair hearing and the appeal to the Medicare Appeals Council. They disregarded the discovery that Plaintiff requested. Neither answered the briefs that Plaintiff filed for those two appeals[3]; Maximus did not even show up at the fair hearing. They did not answer Plaintiff's motions for them to be held in default.[4]

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[2] http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare_Appeals_Council.pdf >alj:5§§D-H

[3] Cf. Id; and http://Judicial-Discipline-Reform.org/ALJ/22-5-21DrRCordero_Statement_on_Appeal.pdf

[4] [2]>MapCouncil:27¶74 and 50¶137a
http://Judicial-Discipline-Reform.org/OL2/DrRCordero-Medicare_Appeals.pdf

12. Plaintiff renewed that request when he filed in this court his appeal-complaint, his amended version of it(SDNY:111), his motion for reconsideration(SDNY:71), his memorandum declining the request for an extension of time to answer(SDNY:191), and this motion (SDNY:251).

13. Hence, Emblem/Maximus have had repeated notice of the actions against them requested by Plaintiff, and opportunity to object to, and defend against, them.

14. Likewise, HHS/AUSA repeatedly received such notice in the complaint that was served on them by the US Marshalls Service; and in the rest of the record built through its levels of appeal, which Plaintiff made available to HHS/AUSA in the exhibits[5] and through the links to his briefs for the administrative levels(SDNY:126§4). HHS/AUSA had opportunity to object to, and defend against, this motion. But they did not even file an answer.

B. It was foreseeable to Defendants that Plaintiff would seek to default them

15. Emblem/Maximus and HHS/AUSA could foresee that if despite repeated notice, they did not answer this motion adequately or at all, they would forfeit their opportunity to defend, and would be deemed to have both waived any objection to its factual and legal contentions, and admitted them.

16. Here applies a torts principle: "People are deemed to intend the foreseeable consequences of their actions". They intended to be defaulted and to have the

>Council:4¶g and alj:29¶178

[5] http://www.Judicial-Discipline-Reform.org/ALJ/**24-12-15**DrRCordero-v-MedAppCouncil_record.pdf

requested actions be taken against them and as relief for Plaintiff.

17. Emblem/Maximus and HHS/AUSA are imputed with knowledge of the law and the foreseeable consequences of their actions. So are the top-notch lawyers that represent them, for Defendants can afford them:

    a. Emblem is one of the largest healthcare insurers in the U.S., with more that 3 million insureds in NY City and the tristate area.

    b. Maximus chose a name calculated to elicit in the minds of third parties that it is part of, and have access to the resources of, the mighty federal government, that is, Maximus Federal Service. It brings to mind another entity involved in this case that is actually part of the federal government: Federal Protective Services of the Department of Homeland Security(SDNY:127¶¶19-21; 149:§I; 166¶152).

    c. HHS/AUSA are part of the government. HHS has the largest budget in the federal government. AUSA is part of the U.S. Department of Justice, one of the largest 'law firms' in the country. The Attorney General was served.(SDNY:306 docket entry no. 14)

C. The federal government Defendants had to respond too

18. The fact that HHS/AUSA are part of the government does not immunize them from being sued and having to answer. This is an indisputable matter of law:

    a. A Medicare Appeals Council ALJ issued the decision on appeal here. On page 2 thereof(SDNY:58), it informed Plaintiff that to appeal from it, he had to name as defendants the HHS Secretary, the Attorney General, and the

Assistant US Attorney for the district where the appeal was filed. The ALJ supported that information by citing 42 C.F.R. § 405.1136(d) and FRCP Rules 4(c) and (i) and 45 C.F.R. § 4.1.

b. If an appellant must name these top federal officers, then he can also name their assistants, who are the ones with whom the appellant dealt and did so most likely exclusively. They know the case first-hand. This statement is unassailable, for it also rests on:

> FRCP Rule 55. Default; Default Judgment
>
> (d) JUDGMENT AGAINST THE UNITED STATES. A default judgment may be entered against the United States, its officers, or its agencies only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

19. The suability of the federal government and its officers is established by the Constitution itself and its First Amendment, thus:

> Congress shall make no law…abridging…the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

20. The most direct and potentially effective way of petitioning the government is, not by lobbying Congress, but rather by suing the government in court. For proof, there are the more than 186 lawsuits filed to object to the executive orders issued and actions taken by President Trump, the members of his cabinet, and their agencies.[6] Where Congress cannot legislate to abridge the right to petition

[6] *Courts' Actions Against the Trump Administration;* David Nevins; The Fulcrum; 22 April

the government, a judge cannot rush in to arrogate to herself the power to take that right away.

21. Knowledge of these provisions is imputed to Judge Vargas because she is a lawyer; a former AUSA; and was nominated by the President and confirmed by the Senate to her judgeship. She too is deemed to be a top-notch lawyer.

22. Nevertheless, Judge Vargas on her own initiative and as her first act in this case(SDNY:305 docket entry no. 13) disregarded all those provisions and pretended that the self-serving judge-made sovereign and judicial immunity doctrines empowered her to dismiss from this case all the federal agencies and officers named by Plaintiff, as opposed to those named by law: the HHS Secretary, the AG, and the AUSA.

23. The fact that she did not dismiss those three government Defendants contradicts her arbitrary and capricious application of those doctrines to immunize all the other government Defendants named by Plaintiff while not immunizing and terminating similarly situated government officers in a case before her[7]. What she applied to that case and Plaintiff's is a double standard. She even dismissed from the case all private entities and officers of Emblem/Maximus. She proceeded ultra vires.

2025; https://thefulcrum.us/rule-of-law/trump-lawsuits-2025; Table of 186 actions: https://www.justsecurity.org/107087/tracker-litigation-legal-challenges-trump-administration/ . See also the Exhibits attached hereto.

[7] *State of New York and 18 other states, et al., v. Donald J. Trump, in his official capacity as President of the U.S., the Treasury Department, DOGE, et al.;* docket no. 25-cv-01144-JAV.

24. Judge Vargas dismissed 27 of Plaintiff's 29 Defendants, decimating his case. As deus ex machina, she spared them service of the complaint and the summons, and the need to answer the complaint. But she did not and could not exempt Emblem/Maximus or HHS/AUSA from either the need to answer this motion or the consequences of failing to do so.

D. Judgment against Defendants for failure to appear, plead, or defend

25. These Defendants and their lawyers cannot pretend that they did not have notice and opportunity to defend or ignored that they would lose that opportunity if they failed to use it to answer Plaintiff's briefs and motions. They "took with notice" when they failed to answer this motion in part or in whole. They knew that they would be facing an entry of judgment by default or judgment on the pleadings.

26. The clerk's Certificate of Default is not necessary for the court to enter default judgment:

> Local Civil Rule 55.1. Certificate of Default
>
> (b) The court, on its own initiative, may enter default or direct the clerk to enter default.

27. The principle of 'object or be deemed to have admitted' is enunciated in:

> FRCP Rule 55. Default; Default Judgment
>
> (a) ENTERING A DEFAULT. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk **must** enter the party's default. [emphasis added]

28. That principle underlies summary judgment, which Plaintiff has also repeatedly requested. Its expression in Local Civil Rule[1] 56.1. Statements of Material Facts on Motion for Summary Judgment points to the consequences for a party of failing to object:

> (c) Each numbered paragraph in the statement of material facts set forth in the statement required to be served by the moving party will be deemed to be admitted for purposes of the motion unless specifically denied and controverted by a correspondingly numbered paragraph in the statement required to be served by the opposing party.

E. The pretense that Plaintiff smeared J. Vargas: 'void for vagueness'

29. Emblem/Maximus pretend that Plaintiff "smeared" Judge Vargas.

30. The first thought that jumps to mind is 'in what conceivable way is that criticism an answer on the merits to the charges brought by Plaintiff against Emblem/Maximus, such as:

    a. Emblem, Maximus, and the other Defendants have with the complicity of Medicare coordinated plotting and committing their abusive healthcare insurance claim evasive "delay, deny, defend" tactics. They are so routinely committed that they have become their modus operandi;

    b. Emblem/Maximus failed to produce any materials requested in discovery;

    c. Emblem/Maximus did not file any answer to Plaintiff's briefs for the fair hearing or the appeal to the Medicare Appeals Council, despite Plaintiff's repeated objection that by not giving notice in advance of their position on the issues, they could spring whatever allegation suited them, for the

handling of which Plaintiff would not have been able to prepare. Thereby they would inflict on him an unfair surprise.

d. Maximus did not even appear at the fair hearing. However, while trying to set the date for the hearing, the legal assistant to ALJ Dean Yanohira in the Field Office of Medicare Hearings and Appeals (OMHA) in Phoenix, AZ, Deniese Elosh, blurted that it had submitted a "record" to the ALJ. But Maximus never served a copy of it on Plaintiff. Now both Maximus and Emblem are precluded from using it in their defense, for neither is allowed to proceed by ambush or benefit from their disregard of due process.

e. Emblem spent months from September 8, 2021, delaying the decision on whether Plaintiff's claim was covered by its Medicare Advantage Plan, which it advertised as broader in coverage than Original Medicare. When Emblem could not wear down Plaintiff and cause him to abandon his claim, it denied the claim, alleging for the first time that the claim was not covered by the Medicare rules, although it had never even mentioned those rules while pretending that it was trying to determine coverage under its own broader Plan. Thereby Emblem committed intentional delay to evade the claim; denial of the claim on a pretense; false advertisement; unfair surprise; acting in bad faith; etc.

f. Emblem and Maximus withheld the latter's decision upon its reconsideration of Emblem's claim denial in a coordinated effort to make Plaintiff miss the deadline for requesting a fair hearing to appeal the denial-confirming decision. They proceeded in bad faith, committing fraud on Plaintiff by

stating that he had nothing to do but wait for the decision…until they could evade a fair hearing.

g. Emblem contacted ex parte the office of ALJ Yanohira to inquire about the ALJ's decision on the hearing, although not even its date had yet been fixed. Emblem failed its duty to inform Plaintiff of such ex parte communication; etc.

31. It is quite suspicious that despite the multiple grave charges brought against Emblem/Maximus, they failed to address even one. By contrast, they repeated their criticism that Plaintiff had "smeared" Judge Vargas. Did they try to curry favor with her by appearing as her defenders? Did they contact her office ex parte as they did that of ALJ Yanohira?

32. By failing to defend, Emblem/Maximus have waived any defense and admitted Plaintiff's factual and legal contentions. They must be found liable to either judgment by default or judgment on the pleadings.

33. Emblem failed to give even one example of whatever it referred to as Plaintiff having "smeared" Judge Vargas. It left Plaintiff and this court unable to ascertain whether any alleged "smear" is actually "the appearance of impropriety" or even judicial misconduct on her part. Hence, Emblem/Maximus's "smear" criticism is "void for vagueness".

34. Given their ineffectual answer, did Emblem/Maximus intend to be defaulted to avoid having to produce in discovery the very materials that they contemptuously failed to produce for the fair hearing and the appeal to the Medicare Appeals

Council? Those materials can prove devastating if they lay the foundation for a class action against Emblem/Maximus and those with whom they have coordinated their claim evasive "delay, deny, defend" tactics.

F. An appeal is inopportune absent a decision on the amended complaint

35. In her Service Order terminating 27 out of 29 Defendants, Judge Vargas wrote "The Court grants Plaintiff 30 days' leave to replead his claims against these defendants in an amended complaint"(**Error! Bookmark not defined.** >SDNY:111) to substantiate the claims that she had deemed "frivolous". Plaintiff filed his amended complaint timely on March 3, 2025.(**Error! Bookmark not defined.** >SDNY:111).

36. No decision has been made on whether the amended complaint repleaded the claims satisfactorily and the 27 Defendants are ordered reinstated.

    a. Emblem/Maximus failed to even mention Judge Vargas's leave to amend; Plaintiff's timely amendment; and the lack of its adjudication.

    b. There is no time requirement to appeal from a denial of a reconsideration motion.

    c. It is reasonable to move for the conflict between the granting and the taking away of the IFP status to be resolved internally, and for it to be done en banc

37. These circumstances render Emblem/Maximus's last paragraph of their answer wrong on the facts and the law…and just as irrelevant as a defense on the merits as the rest of the answer.

38. Before the amended complaint is adjudicated, the issue of the termination of 27 Defendants and the frivolousness of claims against them is not ripe for appeal. At any time, CA2 could dismiss the appeal on the grounds that Judge Vargas's order was conditional, subject to modification in light of an amended complaint.

39. If Judge Vargas or any of her fellow district judges declared that the claims were not frivolous or that determining whether they were constituted a genuine issue of material fact for the jury to decide, and the Defendants were reinstated, the appeal would be rendered moot.

40. Was there an intent to lure Plaintiff into an appeal to CA2, assuming that he could afford it after having his IFP status taken away, only to cause him more "delay", deplete his resources, and upon managing a "deny" to proceed by CA2's, end back in this court to "defend"?

G. Relief requested

41. Therefore, Plaintiff respectfully requests that the relief requested in his amended complaint and this motion be granted; and that as part of that relief it be held as follows and the following actions be taken:

    a. Chief Judge Swain convene this district court en banc to review this case and grant such relief; otherwise, she grant such relief;

    b. the conflict between CJ Swain's grant of IFP status to Plaintiff and J. Vargas's taking that status away be resolved by restoring his IFP status;

    c. if IFP status is not restored, provide a more definitive statement of how

even before service of the complaint on the Defendants, their answers, disclosure, discovery, examination and cross-examination of witnesses at trial, and a verdict with answers J. Vargas decided genuine issues of material fact, thus usurping the jury's role, and held that Plaintiff's claims were "frivolous" and an appeal to CA2 "not in good faith", which she pretended justified her taking away of his IFP status, generally, and for any appeal, especially, whereby she denied Plaintiff due process of law and affordable access to justice;

d. Plaintiff's amended complaint cured any alleged defect of "frivolousness" and of acting "not in good faith";

e. Judge Vargas' January 31 and March 13 decisions(SDNY:305 docket entries no. 13 and 27) be vacated;

f. Judge Vargas abused her power when she arbitrarily and capriciously applied the sovereign and judicial immunity doctrines to all of Plaintiff's government Defendants but not to three others or to any of the government defendants in a case before her[7], thereby denying Plaintiff the equal protection of the laws to 'petition a redress of his grievances against his government Defendants';

g. the 27 out of 29 Defendants dismissed by Judge Vargas be reinstated and the Marshalls Service be instructed to serve them with the summons and the amended complaint;

h. this case be reassigned to another or other judges;

i. Emblem/Maximus be held to have failed to present any defense on the merits in their answer; waived any defense; admitted Plaintiff's factual and legal contentions; and be defaulted or judgment on the pleadings be entered against them and in Plaintiff's favor;

j. HHS/AUSA be held to have waived any defense and admitted Plaintiff's factual and legal contentions; and be defaulted or judgment on the pleadings be entered against them and in Plaintiff's favor;

k. Emblem/Maximus and HHS/AUSA are jointly and severally liable for the compensatory, punitive, and treble damages, and attorney's fees that Plaintiff requested;

l. vacate the grant of the request of AUSA, Emblem, and Maximus for an extension of time to answer the complaint;

m. if Emblem/Maximus and HHS/AUSA are allowed to defend despite their waiver and admission, hold them to the normal deadline[8] for answering the complaint;

n. if Defendants are not held liable and are given yet another opportunity to defend, take notice that Plaintiff reserves his objection for appeal at an opportune time; and

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[8] The amended complaint does not raise new charges or substantive matters. Rather, it only adds SDNY:131§5a-c, which simply shows that under FRCP 8, Plaintiff was required to provide only "a short and plain statement of his claim"; and that during the four administrative levels of appeal below, which lasted over three years, Plaintiff had more than enough repeatedly informed Defendants of the claims against them.

o. grant all other relief that to the Court may appear just and proper.

CERTIFICATE OF COMPLIANCE WITH THE WORD-COUNT LIMITATIONS

42. This motion was prepared using the Microsoft Word processor, whose word counter returned 3,498 as its word count, including those in the headings and footnotes, but not in the caption, the Tables of Contents and Authorities; the signature block, and this certificate. Hence, it complies with the Local Civil Rule 7.1(c) 3,500 words length limitation.

Dated: 2 May 2025

/s/ Dr. Richard Cordero, Esq.

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Exhibits

top attorneys suing the president, department secretaries, and other top government officers

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK, et al.,	:	
Plaintiffs,	:	25-CV-01144 (JAV)
-v-	:	OPINION AND ORDER
DONALD J. TRUMP, *in his official capacity as President of the United States*, et al.,	:	
Defendants.	:	

JEANNETTE A. VARGAS, United States District Judge:

This is one of many lawsuits brought in recent weeks challenging aspects of the work of the newly established Department of Government Efficiency ("DOGE"). In this particular case, nineteen states (collectively, the "States" or "Plaintiffs") represented by their respective Attorneys General, challenge the access to information provided to members of the DOGE team established at the U.S. Department of Treasury. Currently pending before this Court is Plaintiffs' motion for a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure. Specifically, Plaintiffs seek to enjoin Defendants "from taking any action to develop, facilitate, or implement any process, whether automated or manual, for Treasury Department payment systems to flag and pause payment instructions for reasons other than the statutorily-authorized business of the Treasury Department"; and to restrain any Treasury Department employee (other than those in Senate-confirmed positions) from accessing any Treasury Department system that contained personally identifiable information ("PII") or financial

systems; (iv) setting forth the legal authority pursuant to which each DOGE Team member was employed by or detailed to the Treasury Department; and (v) explaining the reporting chains that govern the relationship between the DOGE Team members, USDS/DOGE, and Treasury leadership (with reference, if applicable, to any Memorandum of Understanding setting forth that relationship).

Upon receipt of the above submissions from the Department of the Treasury, the Court will schedule prompt briefing to address whether the Treasury Department has adequately redressed the violations of the APA found herein, so as to justify the termination or modification of the preliminary injunction.

The Court hereby defers setting deadlines for the filing of a proposed case management plan or motions to amend the Complaint, and stays any deadlines for filing dispositive motions. The Court will take up such matters after determining whether, and if so to what extent, a preliminary injunction remains warranted after the Treasury Department's forthcoming submission.

CONCLUSION

For the foregoing reasons, Plaintiffs' motion for a preliminary injunction is GRANTED.

SO ORDERED.

Dated: February 21, 2025
New York, New York

JEANNETTE A. VARGAS
United States District Judge

SDNY:371

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK; STATE OF ARIZONA, STATE OF CALIFORNIA, STATE OF COLORADO, STATE OF CONNECTICUT, STATE OF DELAWARE, STATE OF HAWAII, STATE OF ILLINOIS, STATE OF MAINE, STATE OF MARYLAND, COMMONWEALTH OF MASSACHUSETTS, STATE OF MINNESOTA, STATE OF NEVADA, STATE OF NEW JERSEY, STATE OF NORTH CAROLINA, STATE OF OREGON, STATE OF RHODE ISLAND, STATE OF VERMONT, and STATE OF WISCONSIN, Plaintiffs, v. DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES; U.S. DEPARTMENT OF THE TREASURY; and SCOTT BESSENT, IN HIS OFFICIAL CAPACITY AS SECRETARY OF U.S. DEPARTMENT OF THE TREASURY, Defendants.	C.A. No. 25-CV-1144 **REQUEST FOR EMERGENCY TEMPORARY RESTRAINING ORDER UNDER FEDERAL RULE OF CIVIL PROCEDURE 65(B)**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. The U.S. Treasury Department maintains and safeguards our nation's central bank account. Treasury's Bureau of Fiscal Services ("BFS") receives coded payment instructions in the form of payment files from a host of federal agencies to disburse funds to tens of millions of Americans every year – money they depend on to live. These funds include social security

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILMER CUTLER PICKERING HALE AND DORR LLP,

Plaintiff,

v.

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1600 Pennsylvania Avenue NW
Washington, DC 20500

U.S. DEPARTMENT OF JUSTICE,
950 Pennsylvania Avenue NW
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U.S. DEPARTMENT OF DEFENSE,
1000 Defense Pentagon
Washington, DC 20301

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES,
200 Independence Avenue SW
Washington, DC 20201

U.S. DEPARTMENT OF EDUCATION
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Washington, DC 20202

U.S. DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue NW
Washington, DC 20420

OFFICE OF MANAGEMENT AND BUDGET,
725 17th Street NW
Washington, DC 20503

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE,
Office of General Counsel
Washington, DC 20511

CENTRAL INTELLIGENCE AGENCY
Litigation Division, Office of General Counsel
Central Intelligence Agency
Washington, DC 20505

Civil Case No. _____

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DEPARTMENT OF ENERGY
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DEPARTMENT OF THE TREASURY
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DEPARTMENT OF LABOR
200 Constitution Avenue NW
Washington, DC 20210

DEPARTMENT OF AGRICULTURE
1400 Independence Avenue SW
Washington, DC 20250

DEPARTMENT OF COMMERCE
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DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT
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SMALL BUSINESS ADMINISTRATION
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Washington, DC 20416

OFFICE OF THE UNITED STATES
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DEPARTMENT OF THE INTERIOR
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DEPARTMENT OF TRANSPORTATION
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Washington, DC 20590

SECURITIES AND EXCHANGE COMMISSION
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Washington, DC 20549

FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue NW
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UNITED STATES PATENT AND TRADEMARK OFFICE
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Alexandria, VA 22314

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1401 Constitution Avenue NW
Washington, DC 20230

SCOTT TURNER, in his official capacity as Secretary of Housing and Urban Development
451 Seventh Street SW
Washington, DC 20410

KELLY LOEFFLER, in her official capacity as Administrator of the U.S. Small Business Administration
409 Third Street SW
Washington, DC 20416

JAMIESON GREER, in his official capacity as United States Trade Representative
600 17th Street NW
Washington, DC 20508

DOUG BURGUM, in his official capacity as Secretary of the Interior
1849 C Street NW
Washington, DC 20240

SEAN DUFFY, in his official capacity as Secretary of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

MARK T. UYEDA, in his official capacity as Acting Chairman of the Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

ANDREW N. FERGUSON, in his official capacity as Chairman of the Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

COKE MORGAN STEWART, in her official capacity as Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office
600 Dulany Street
Alexandria, VA 22314

ANDREA R. LUCAS, in her official capacity as Acting Chair of the Equal Employment Opportunity Commission
131 M Street NE
Washington, DC 20507I

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PERKINS COIE LLP,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE, FEDERAL COMMUNICATIONS COMMISSION, OFFICE OF MANAGEMENT AND BUDGET, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, OFFICE OF PERSONNEL MANAGEMENT, GENERAL SERVICES ADMINISTRATION, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, THE UNITED STATES OF AMERICA, and, in their official capacities, PAMELA J. BONDI, BRENDAN CARR, RUSSELL T. VOUGHT, ANDREA R. LUCAS, CHARLES EZELL, STEPHEN EHEKIAN, and TULSI GABBARD,

Defendants.

Case No. _____

COMPLAINT

Plaintiff, the law firm of Perkins Coie LLP, brings this case against the U.S. Department of Justice, the Federal Communications Commission, the Office of Management & Budget, the Equal Employment Opportunity Commission, the Office of Personnel Management, the General Services Administration, the Office of the Director of National Intelligence, the United States of America, and, in their respective official capacities, Pamela J. Bondi, Brendan Carr, Russell T. Vought, Andrea R. Lucas, Charles Ezell, Stephen Ehekian, and Tulsi Gabbard, and states as follows:

currently representing over five hundred clients in over 5,000 pending patent applications before the USPTO and dozens more in active post-grant proceedings (i.e., administrative trial proceedings) before the PTAB before the International Trade Commission (ITC). Perkins Coie lawyers are also representing clients in trademark and copyright matters before agencies, including over 60 matters before the Trademark Trial and Appeal Board (TTAB), almost 2,000 pending trademark matters before the USPTO, and approximately 145 pending copyright matters before the Copyright Office. Many of those patent and trademark clients also are known to have contracts with the federal government. And many of the firm's practice areas, such as its White Collar & Investigations group, rely almost exclusively on interacting with the federal government.

Defendants

22. The U.S. Department of Justice is a federal agency headquartered in Washington, D.C.

23. Pamela J. Bondi is the Attorney General of the United States. She is sued in her official capacity.

24. The Federal Communications Commission is a federal agency headquartered in Washington, D.C.

25. Brendan Carr is Chairman of the Federal Communications Commission. He is sued in his official capacity.

26. The U.S. Office of Management & Budget is a federal agency headquartered in Washington, D.C.

27. Russell T. Vought is Director of the U.S. Office of Management & Budget. He is sued in his official capacity.

28. The Equal Employment Opportunity Commission is a federal agency headquartered in Washington, D.C.

29. Andrea R. Lucas is Acting Chair of the Equal Employment Opportunity Commission. She is sued in her official capacity.

30. The Office of Personnel Management is a federal agency headquartered in Washington, D.C.

31. Charles Ezell is Acting Director of the Office of Personnel Management. He is sued in his official capacity.

32. The General Services Administration is a federal agency headquartered in Washington, D.C.

33. Stephen Ehikian is the Acting Director of the General Services Administration. He is sued in his official capacity.

34. The Office of the Director of National Intelligence is a federal agency headquartered in Washington, D.C.

35. Tulsi Gabbard is U.S. Director of National Intelligence. She is sued in her official capacity.

36. The United States of America is responsible for the exercise of executive action by the named Defendants and all other agencies that are directed by the Order to take action respecting Perkins Coie. In light of the fact that Perkins Coie's attorneys interact with and appear before more than 90 different federal agencies, and the Order at issue is directed generally to "all agencies," the United States of America is included as a defendant to ensure that the relief ordered by the Court will apply on a government-wide basis, including to federal agencies that are not specifically listed as defendants.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SUSMAN GODFREY LLP
1000 Louisiana, Suite 5100
Houston, TX 77002

Plaintiff,

v.

EXECUTIVE OFFICE OF THE PRESIDENT
1600 Pennsylvania Avenue NW
Washington, DC 20500

U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue NW
Washington, DC 20530

OFFICE OF MANAGEMENT AND BUDGET
725 17th Street NW
Washington, DC 20503

SECURITIES AND EXCHANGE COMMISSION
100 F Street NE
Washington, DC 20549

UNITED STATES INTERNATIONAL TRADE COMMISSION
500 E St SW
Washington, DC 20436

FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue NW
Washington, DC 20580

UNITED STATES PATENT AND TRADEMARK OFFICE
600 Dulany Street
Alexandria, VA 22314

Civil Case No. _____

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
131 M Street NE
Washington, DC 20507

DEPARTMENT OF THE TREASURY
1500 Pennsylvania Avenue NW
Washington, DC 20220

U.S. DEPARTMENT OF DEFENSE
1000 Defense Pentagon
Washington, DC 20301

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES
200 Independence Avenue SW
Washington, DC 20201

U.S. DEPARTMENT OF EDUCATION
400 Maryland Avenue SW
Washington, DC 20202

U.S. DEPARTMENT OF VETERANS
AFFAIRS
810 Vermont Avenue NW
Washington, DC 20420

OFFICE OF THE DIRECTOR OF
NATIONAL INTELLIGENCE
Office of General Counsel
Washington, DC 20511

CENTRAL INTELLIGENCE AGENCY
Litigation Division, Office of General
Counsel
Washington, DC 20505

ENVIRONMENTAL PROTECTION
AGENCY
1200 Pennsylvania Avenue NW
Washington, DC 20460

DEPARTMENT OF HOMELAND SECURITY
2707 Martin Luther King Jr. Avenue SW
Mail Stop 0485
Washington, DC 20528

DEPARTMENT OF STATE
Suite 5.600, 600 19th Street NW
Washington, DC 20522

DEPARTMENT OF ENERGY
1000 Independence Avenue SW
Washington, DC 20585

DEPARTMENT OF LABOR
200 Constitution Avenue NW
Washington, DC 20210

DEPARTMENT OF AGRICULTURE
1400 Independence Avenue SW
Washington, DC 20250

DEPARTMENT OF COMMERCE
1401 Constitution Avenue NW
Washington, DC 20230

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
451 Seventh Street NW
Washington, DC 20410

SMALL BUSINESS ADMINISTRATION
409 Third Street SW
Washington, DC 20416

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
600 17th Street NW
Washington, DC 20508

DEPARTMENT OF THE INTERIOR
1849 C Street NW
Washington, DC 20240

DEPARTMENT OF TRANSPORTATION
1200 New Jersey Avenue SE
Washington, DC 20590

THE UNITED STATES OF AMERICA
U.S. Attorney's Office for the District of Columbia
601 D Street NW
Washington, DC 20530

PAMELA J. BONDI, in her official capacity as Attorney General of the United States
950 Pennsylvania Avenue NW
Washington, DC 20530

RUSSELL T. VOUGHT, in his official capacity as Director of the U.S. Office of Management and Budget
725 17th Street NW
Washington, DC 20503

MARK T. UYEDA, in his official capacity as Acting Chairman of the Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

AMY A. KARPEL, in her official capacity as Chair of the U.S. International Trade Commission
500 E Street SW
Washington, DC 20436

ANDREW N. FERGUSON, in his official capacity as Chairman of the Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

COKE MORGAN STEWART, in her official capacity as Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office
600 Dulany Street
Alexandria, VA 22314

ANDREA R. LUCAS, in her official capacity as Acting Chair of the Equal Employment Opportunity Commission
131 M Street NE
Washington, DC 20507

SCOTT BESSENT, in his official capacity as Secretary of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

PETER B. HEGSETH, in his official capacity as the Secretary of Defense
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301

ROBERT F. KENNEDY, JR., in his official capacity as Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

LINDA M. MCMAHON, in her official capacity as Secretary of Education
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

DOUGLAS A. COLLINS, in his official capacity as Secretary of Veterans Affairs
Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20420

TULSI GABBARD, in her official capacity as U.S. Director of National Intelligence
Office of the Director of National Intelligence
Office of General Counsel
Washington, DC 20511

JOHN L. RATCLIFFE, in his official capacity as Director of the Central Intelligence Agency
Litigation Division, Office of General Counsel
Central Intelligence Agency
Washington, DC 20505

LEE M. ZELDIN, in his official capacity as Administrator of the Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

KRISTI NOEM, in her official capacity as Secretary of Homeland Security
2707 Martin Luther King Jr. Avenue SW
Mail Stop 0485
Washington, DC 20528

MARCO RUBIO, in his official capacity as Secretary of State
Suite 5.600, 600 19th Street NW
Washington DC 20522

CHRIS WRIGHT, in his official capacity as Secretary of Energy
1000 Independence Avenue SW
Washington, DC 20585

LORI CHAVEZ-DEREMER, in her official capacity as Secretary of Labor
200 Constitution Avenue NW
Washington, DC 20210

BROOKE L. ROLLINS, in her official capacity as Secretary of Agriculture
1400 Independence Avenue SW
Washington, DC 20250

HOWARD LUTNICK, in his official capacity as Secretary of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

SCOTT TURNER, in his official capacity as Secretary of Housing and Urban Development
451 Seventh Street SW
Washington, DC 20410

KELLY LOEFFLER, in her official capacity as Administrator of the U.S. Small Business Administration
409 Third Street SW
Washington, DC 20416

JAMIESON GREER, in his official capacity as United States Trade Representative
600 17th Street NW
Washington, DC 20508

DOUG BURGUM, in his official capacity as Secretary of the Interior
1849 C Street NW
Washington, DC 20240

SEAN DUFFY, in his official capacity as Secretary of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JENNER & BLOCK LLP
1099 New York Avenue, NW
Suite 900
Washington, DC 20001

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, NW
Washington, DC 20530

FEDERAL COMMUNICATIONS COMMISSION
45 L Street, NE
Washington, DC 20554

OFFICE OF MANAGEMENT AND BUDGET
725 17th Street, NW
Washington, DC 20503

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
131 M Street, NE
Washington, DC 20507

OFFICE OF PERSONNEL MANAGEMENT
1900 E Street, NW
Washington, DC 20415

GENERAL SERVICES ADMINISTRATION
1800 F Street, NW
Washington, DC 20405

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
1500 Tysons McLean Drive
McLean, VA 22102

Civil Case No. _____

COMPLAINT

CONSUMER FINANCIAL PROTECTION BUREAU
1700 G Street, NW
Washington, DC 20552

DEPARTMENT OF DEFENSE
1000 Defense Pentagon
Washington, DC 20301

ENVIRONMENTAL PROTECTION AGENCY
1200 Pennsylvania Avenue, NW
Washington, DC 20460

FEDERAL ENERGY REGULATORY COMMISSION
888 First Street, NE
Washington, DC 20426

FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, NW
Washington, DC 20580

SECURITIES AND EXCHANGE COMMISSION
100 F Street, NE
Washington, DC 20549

DEPARTMENT OF THE INTERIOR
1849 C Street, NW
Washington DC 20240

DEPARTMENT OF THE TREASURY
1500 Pennsylvania Avenue, NW
Washington, DC 20220

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza SW
Washington DC 20260

DEPARTMENT OF HEALTH AND HUMAN SERVICES
200 Independence Avenue, SW
Washington, DC 20201

DEPARTMENT OF HOMELAND SECURITY
2707 Martin Luther King Jr Avenue, SE
Washington, DC 20528

DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Avenue, NW
Washington, DC 20420

OTHER AGENCIES SUBJECT TO EXECUTIVE ORDER "ADDRESSING RISKS FROM JENNER & BLOCK"

THE UNITED STATES OF AMERICA
U.S. Attorney's Office for DC
601 D Street, NW
Washington, DC 20530

PAMELA J. BONDI, in her official capacity as Attorney General
950 Pennsylvania Avenue, NW
Washington, DC 20530

BRENDAN CARR, in his official capacity as the Chairman of the Federal Communications Commission
45 L Street, NE
Washington, DC 20554

GEOFFREY STARKS, in his official capacity as the Commissioner of the Federal Communications Commission
45 L Street, NE
Washington, DC 20554

NATHAN SIMINGTON, in his official capacity as the Commissioner of the Federal Communications Commission
45 L Street, NE
Washington, DC 20554

ANNA M. GOMEZ, in her official capacity as the Commissioner of the Federal Communications Commission
45 L Street, NE
Washington, DC 20554

RUSSELL T. VOUGHT, in his official capacity as Director of the U.S. Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

ANDREA LUCAS, in her official capacity as Acting Chair of the Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

CHARLES EZELL, in his official capacity as Acting Director of the Office of Personnel Management
1900 E Street, NW
Washington, DC 20415

STEPHEN EHEKIAN, in his official capacity as Acting Administrator of the General Services Administration
1800 F Street, NW
Washington, DC 20405

TULSI GABBARD, in her official capacity as U.S. Director of National Intelligence,
Office of the Director of National Intelligence
1500 Tysons McLean Drive
McLean, VA 22102

SCOTT BESSENT, in his official capacity as Acting Director of the Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

PETE HEGSETH, in his official capacity as Secretary of the Department of Defense
1000 Defense Pentagon
Washington, DC 20301

LEE ZELDIN, in his official capacity as Administrator of the Environmental Protection Agency
1200 Pennsylvania Avenue, NW

Washington, DC 20460

MARK C. CHRISTIE, in his official capacity as Chairman of the Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

WILLIE L. PHILLIPS, in his official capacity as Commissioner of the Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

DAVID ROSNER, in his official capacity as Commissioner of the Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

LINDSAY S. SEE, in her official capacity as Commissioner of the Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

JUDY W. CHANG, in her official capacity as Commissioner of the Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

ANDREW N. FERGUSON, in his official capacity as Chairman, Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

MELISSA HOLYOAK, in her official capacity as Commissioner, Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

MARK T. UYEDA, in his official capacity as Acting Chairman, Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

HESTER M. PEIRCE, in her official capacity as Commissioner, Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

CAROLINE A. CRENSHAW, in her official capacity as Commissioner, Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

DOUG BURGUM, in his official capacity as Secretary of the Interior
1849 C Street, NW
Washington DC 20240

SCOTT BESSENT, in his official capacity as Secretary of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

DOUG TULINO, in his official capacity as Postmaster General and Chief Executive Officer of the United States Postal Service
475 L'Enfant Plaza SW
Washington DC 20260

ROBERT F. KENNEDY JR, in his official capacity as Secretary of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

KRISTI NOEM, in her official capacity as Secretary of the Department of Homeland Security
2707 Martin Luther King Jr Avenue, SE
Washington, DC 20528

DOUGLAS A. COLLINS, in his official capacity as Secretary of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Defendants.

COMPLAINT

Plaintiff, the law firm of Jenner & Block LLP, brings this case against the U.S. Department of Justice, the Federal Communications Commission, the Office of Management and Budget, the Equal Employment Opportunity Commission, the Office of Personnel Management, the General Services Administration, the Office of the Director of National Intelligence, the Consumer Financial Protection Bureau, the Department of Defense, the Environmental Protection Agency, the Federal Energy Regulatory Commission, the Federal Trade Commission, the Securities and Exchange Commission, the Department of the Interior, the Department of the Treasury, the Department of Health and Human Services, the Department of Homeland Security, the Department of Veterans Affairs, the United States Postal Service, the United States of America, and, in their respective official capacities, Pamela J. Bondi, Brendan Carr, Geoffrey Starks, Nathan Simington, Anna M. Gomez, Russell T. Vought, Andrea Lucas, Charles Ezell, Stephen Ehekian, Tulsi Gabbard, Scott Bessent, Pete Hegseth, Lee Zeldin, Mark C. Christie, Willie L. Phillips, David Rosner, Lindsay S. See, Judy W. Chang, Andrew N. Ferguson, Melissa Holyoak, Mark T. Uyeda, Hester M. Peirce, Caroline A. Crenshaw, Doug Burgum, Scott Bessent, Robert F. Kennedy, Jr., Kristie Noem, Douglas A. Collins, and Doug Tulino, and states as follows:

INTRODUCTION

1. The March 25, 2025 Executive Order—entitled "Addressing Risks from Jenner & Block" (the "Order")—is an unconstitutional abuse of power against lawyers, their clients, and the legal system. It is intended to hamper the ability of individuals and businesses to have the lawyers

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

PRESIDENT AND FELLOWS OF HARVARD COLLEGE,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; NATIONAL INSTITUTES OF HEALTH; ROBERT F. KENNEDY, JR., in his official capacity as Secretary of the United States Department of Health and Human Services; UNITED STATES DEPARTMENT OF JUSTICE; PAMELA J. BONDI, in her official capacity as Attorney General of the United States; UNITED STATES DEPARTMENT OF EDUCATION; LINDA M. MCMAHON, in her official capacity as Secretary of the United States Department of Education; UNITED STATES GENERAL SERVICES ADMINISTRATION; STEPHEN EHIKIAN, in his official capacity as Acting Administrator of the United States General Services Administration; UNITED STATES DEPARTMENT OF ENERGY; CHRISTOPHER A. WRIGHT, in his official capacity as Secretary of the United States Department of Energy; UNITED STATES NATIONAL SCIENCE FOUNDATION; SETHURAMAN PANCHANATHAN, in his official capacity as Director of the United States National Science Foundation; UNITED STATES DEPARTMENT OF DEFENSE; PETER B. HEGSETH, in his official capacity as Secretary of the United States Department of Defense; NATIONAL AERONAUTICS AND SPACE ADMINISTRATION; and JANET E. PETRO, in her official capacity as Acting Administrator of the National Aeronautics and Space Administration,

Defendants.

Case No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Dated: April 21, 2025

Respectfully submitted,

/s/ Steven P. Lehotsky

Steven P. Lehotsky (BBO # 655908)
Scott A. Keller*
Jonathan F. Cohn*
Mary Elizabeth Miller* (BBO # 696864)
Shannon G. Denmark*
Jacob B. Richards (BBO # 712103)
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Washington, DC 20005
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1700 Pennsylvania Ave. NW, Suite 900
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Joshua S. Levy (BBO #563017)
Mark Barnes (BBO #568529)*
John P. Bueker (BBO #636435)
Elena W. Davis (BBO #695956)
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Douglas Hallward-Driemeier (BBO #627643)
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Denver, CO 80206
katie@lkcfirm.com

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Austin, TX 78701
josh@lkcfirm.com

Danielle K. Goldstein*
LEHOTSKY KELLER COHN LLP
3280 Peachtree Road NE
Atlanta, GA 30305
danielle@lkcfirm.com

**Pro Hac Vice Applications Forthcoming*

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD CORDERO, Plaintiff, -v- THE SECRETARY OF HEALTH AND HUMAN SERVICES, EMBLEMHEALTH, MAXIMUS FEDERAL SERVICES, *et al.*, Defendants.	:	24-CV-9778 (JAV) ORDER

JEANNETTE A. VARGAS, United States District Judge:

On January 31, 2025, the Court issued an Order directing service on the United States Secretary of Health and Human Services, EmblemHealth, and Maximus Federal Services, and dismissing Plaintiff's claims against the remaining federal defendants. ECF No. 13. On February 14, 2025, Plaintiff submitted a motion for reconsideration of that Order. ECF No. 16. The Court denied that motion for reconsideration. ECF No. 27.

Plaintiff now seeks leave to "submit this case to this district court *en banc*." ECF Nos. 38, 41. Among other things, Plaintiff asks the *en banc* court to 1) reinstate the claims against the dismissed defendants and have them served by the U.S. Marshal; 2) "restore the IFP status that CJ Swain had granted Plaintiff but that [Judge] Vargas took away"; 3) grant Plaintiff's motion for default judgment; 4) reverse the order granting requests for an extension of time to answer; and 5) reassign this case to another judge. ECF Nos. 38, 41. This motion is DENIED.

"[N]either the Local Rules nor the Federal Rules of Civil Procedure provides for an 'en banc' review in the district courts." *Crossman v. Astrue*, 714 F. Supp. 2d 284, 286 (D. Conn.

2009). Even in the appellate courts, where *en banc* review is authorized, it is granted only in rare circumstances, such as when there is a conflict between panel opinions, with a Supreme Court opinion, or a Circuit split of opinions. Fed. R. App. P. 40. Nothing in Plaintiff's submission, which primarily concerns his disagreement with binding authority from the Supreme Court and Second Circuit regarding immunity and criticism of the manner in which this Court has managed this case, warrants such extraordinary relief.[1]

With respect to the substance of Plaintiff's requests, the Court previously denied Plaintiff's motion for reconsideration of its January 31 Order. The Court will not revisit that decision again as Plaintiff merely rehashes the arguments previously set forth in his motion for reconsideration. Plaintiff also seeks default judgment, but Plaintiff cannot meet the requirements of Federal Rule of Civil Procedure 55. No defendant is currently in default. With respect to the three defendants that have been served with process, the Court has extended their time to respond to the Complaint until July 21, 2025. ECF Nos. 33, 39, 40.

As to Plaintiff's *in forma pauperis* status, Plaintiff is under the misapprehension that his status has in some way been revoked. It has not. Plaintiff was granted "leave to proceed in this Court without prepayment of fees." ECF No. 12. He was in fact permitted to proceed in this Court without the payment of a filing fee, and Plaintiff retains his IFP status in the district court. But by its terms, the order issued by Chief Judge Swain was limited to proceedings in "this Court," that is, the district court. Chief Judge Swain did not grant him IFP status with respect to any appeal.

[1] Plaintiff directed his motion to Chief Judge Swain, under the misapprehension that she has "supervisory authority" over "all cases" in the District. ECF No. 44 ¶ 4. But Chief Judges are district court judges, and as such "lack[] the power of appellate review over [their] fellow district court judges." *In re McBryde*, 117 F.3d 208, 223 (5th Cir. 1997); *see also* 28 U.S.C. § 137. Only appellate courts have the authority to review and reverse the orders of the district court judge assigned to a case.

To the extent that Plaintiff complains that this Court's certification that any appeal from its January 31 or March 13 Orders would not be taken in good faith deprives him of a meaningful right of appeal, ECF No. 41 ¶ 71, such certifications are authorized by statute. *See* 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith."). Moreover, it is well established that, in civil cases, the merits of an appeal can be considered in determining whether a party is entitled to proceed *in forma pauperis*. *United States v. Kosic*, 944 F.3d 448, 449 (2d Cir. 2019).

Plaintiff also erroneously believes that, because ECF No. 30 indicates that his IFP motion was "terminated," this means that his motion for IFP status was denied. ECF No. 41 ¶¶ 67-69. It does not. On the ECF system, the notation on a docket that a motion is "terminated" simply means that the motion is no longer pending a decision. This could be because the motion was granted, denied, withdrawn, or for some other reason. In this case, the motion to proceed *in forma pauperis* was terminated because it had previously been granted by ECF No. 12.

Finally, the Court addresses Plaintiff's request that this case be reassigned to another judge. "Parties cannot pick and choose a judge to hear their case, and there is no process by which a party can request 'reassignment' based on a preference, a dislike of a particular judge, or a disappointment with a judge's rulings." *James v. State Univ. of New York*, No. 22-CV-4856 (JHR)(KHP), 2023 WL 3006104, at *2 (S.D.N.Y. Mar. 3, 2023). The Court therefore construes Plaintiff's request to reassign this case to another judge as raising a motion for recusal pursuant to 28 U.S.C. § 455. "[T]here is a strong presumption that a judge is impartial, and the movant bears the 'substantial' burden of overcoming that presumption." *James*, 2023 WL 3006104, at *2. Plaintiff has not met his burden to demonstrate that recusal is warranted, as he has pointed to no evidence that would reasonably call into question the Court's impartiality. "Generally, claims

of judicial bias must be based on extrajudicial matters, and adverse rulings, without more, will rarely suffice to provide a reasonable basis for questioning a judge's impartiality." *Chen v. Chen Qualified Settlement Fund*, 552 F.3d 218, 227 (2d Cir. 2009); *see also Liteky v. United States*, 510 U.S. 540, 555 (1994) ("[J]udicial rulings alone almost never constitute [a] valid basis for a bias or partiality recusal motion."). Plaintiff, who takes issue with orders issued by the Court and the Court's administration of this case, including its decision on routine extension requests, has not pointed to any such extrajudicial matters that would suggest bias. *Watkins v. Smith*, 561 F. App'x 46, 47 (2d Cir. 2014) ("[T]he fact that Plaintiff–Appellant and Appellants were unhappy with the district court's legal rulings and other case management decisions is not a basis for recusal.").

The Court has considered the remaining arguments raised in Plaintiff's papers and determined that they are without merit. The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

CONCLUSION

Plaintiff's motion is DENIED. The Clerk of Court is directed to terminate ECF Nos. 38 and 41.

SO ORDERED.

Dated: May 5, 2025
New York, New York

JEANNETTE A. VARGAS
United States District Judge

End Page

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Dr. Richard Cordero, Esq.

(List the full name(s) of the plaintiff(s)/petitioner(s).)

24 CV 09778 (JAV)( )

-against-

NOTICE OF APPEAL

HHS Secretary, Dept Appeals Board; Medicare Operations Division; Medicare Appeals Council; Office of Medicare Hearings & Appeals: Headquarters & Centralized Docketing; David Eng; John Colter; Jon Dorman; Dr. Sherese Warren; Erin Brown; Andrenna Taylor Jones; James "Jim" Griepentrog; ALJ Loranzo Fleming; Health Insurance Plan of Greater NY; EmblemHealth and its President....see the attachment

(List the full name(s) of the defendant(s)/respondent(s).)

Notice is hereby given that the following parties: Dr. Richard Cordero, Esq.

(list the names of all parties who are filing an appeal)

in the above-named case appeal to the United States Court of Appeals for the Second Circuit

from the ☐ judgment ☒ order entered on: 5 May 2025

(date that judgment or order was entered on docket)

that:

27 of 29 parties named by plaintiff are dismissed by application of the judicial and sovereign immunity doctrines; plaintiff's claims are "frivolous" and the appeal to CA2 would "not be in good faith"; defendants' petition for an extension of time to answer was granted despite its being based on a reason unsubstantiated and contrary to fact.

(If the appeal is from an order, provide a brief description above of the decision in the order.)

30 June 2025

Dated

Dr. Richard Cordero, Esq.

Signature*

Cordero, Dr. Richard

Name (Last, First, MI)

2165 Bruckner Blvd. | Bronx | NY | 10472-6506

Address | City | State | Zip Code

(718)827-9521

Telephone Number

Dr.Richard.Cordero_Esq@verizon.net

E-mail Address (if available)

* Each party filing the appeal must date and sign the Notice of Appeal and provide his or her mailing address and telephone number, EXCEPT that a signer of a pro se notice of appeal may sign for his or her spouse and minor children if they are parties to the case. Fed. R. App. P. 3(c)(2). Attach additional sheets of paper as necessary.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Daniel Patrick Moynihan U.S Courthouse
500 Pearl Street, New York, NY 10007
tel.: (212) 805-0136
https://www.nysd.uscourts.gov/

SDNY Docket No. 24-cv-09778-JAV

Appellant/Plaintiff

Dr. Richard Cordero, Esq.

-vs-

Respondents/defendants in their official and individual capacities

1A. The Secretary of Health and Human Services (HHS); the respective directors/heads/top officers of:	1B. Health Insurance Plan of Greater New York (HIP);
2A. the HHS Departmental Appeals Board	2B. EmblemHealth;
3A. the HHS Medicare Operations Division	3B. EmblemHealth President and CEO Karen Ignagni;
4A. the HHS Medicare Appeals Council	4B. the Director of EmblemHealth Grievance and Appeals Department HIP and/or EmblemHealth officers
5A. the Office of Medicare Hearings and Appeals (OMHA) Headquarters	5B. Sean Hillegass;
6A. the OMHA Centralized Docketing	6B. Stephanie Macialek;
7A. David Eng, Esq.;	7B. Melissa Cipolla.
8A. John Colter;	8B. Shelly Bergstrom;
9A. Jon Dorman;	9B. Dr. Sandra Rivera-Luciano,
10A. Dr. Sherese Warren;	10B. The Director of EmblemHealth Quality Risk Management Department
11A. Erin Brown;	11B. Maximus Federal Services
12A. Andrenna Taylor Jones;	12B. The President of Maximus Federal Services
13A. James "Jim" Griepentrog;	13B. The CEO of Maximus Federal Services
14A. ALJ Dean Yanohira and	14B. The Director of the Medical Managed Care & PACE Reconsideration Project at Maximus Federal Services
15A. Legal Assistant Deniese Elosh, both in OMHA Phoenix Field Office, AZ	15B. John Doe and Jane Doe, who are employees in the OMHA Phoenix and Atlanta Offices and/or in the HHS

	Departments and offices who participated in the coordinated disregard of Plaintiff's phone calls, voice mail, and over 11,000 emails for two years, and in filing a complaint with the Federal Protective Services against Plaintiff for alleged threatening behavior
16A. ALJ Loranzo Fleming, OMHA Atlanta Field Office, GA	16B. John Doe and Jane Doe, who are HIP and/or EmblemHealth officers who interacted or failed to interact with EmblemHealth employees in The Philippines and the U.S., such as those listed in SDNY:11§3 below to Plaintiff's detriment.
17A. Mr. Merrick Garland U.S. Attorney General	17B. Damian Williams, Esq. United States Attorney for SDNY Civil Division
	The following officers were referred to in the complaint, e.g., SDNY:126¶¶9-11, and should be added to this list of defendants:
	18B. Susan S., Emblem's NY SHIP
	19B. Thomas Gray, Emblem's NY SHIP
	20B. Tamika Simpson, Emblem's New York SHIP
	21B. The Director of Emblem's NY SHIP

Proof of Service

This constitute proof of service by the undersigned, plaintiff Dr. Richard Cordero, Esq., to certify that I have

served on the clerk of the U.S. District Court, SDNY, and

counsel for defendants

the required papers, including the Notice of Appeal, to appeal

to the U.S. Circuit Court for the Second Circuit

in *Cordero v HHS Secretary, Medicare, EmblemHealth, et al*;

docket no. 24-cv-09778-JAV,

for which service I used the SDNY electronic-filing system

and their respective email addresses, namely:

pro_se_filing@nysd.uscourts.gov, prose@nysd.uscourts.gov,
NYSD_ECF_Pool@nysd.uscourts.gov, help_desk@nysd.uscourts.gov,
temporary_Pro_se_Filing@NYSD.uscourts.gov, CaseView.ECF@usdoj.gov;

for the U.S. Department of Justice Assistant Attorney Office for the
Southern District of New York, Matthew Podolsky,
Matthew.Podolsky@usdoj.gov, and Rebecca Salk, rebecca.salk@usdoj.gov;

for EmblemHealth, Carlos Manalansan, cmanalansan@emblemhealth.com;

for Maximus Federal Services,
Sam Matthew Kock, skoch@foley.com, koch-sam-1138@ecf.pacerpro.com,
Irina N. Kashcheyeva, ikashcheyeva@foley.com,
Sabrina Bryan, sbryan@foley.com,
yhoward@foley.com, litigation-5766@ecf.pacerpro.com,

Dated: 30 June 2025

Dr. Richard Cordero, Esq.

Dr. Richard Cordero, Esq.
2165 Bruckner Blvd.
Bronx, NY City 10472-6505
tel. (718) 827-9521

Dr.Richard.Cordero_Esq@verizon.net, CorderoRic@yahoo.com,
DrRCordero@Judicial-Discipine-Reform.org

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Dr. Richard Cordero, Esq.

24 CV 09778 (JAV)( )

(List the full name(s) of the plaintiff(s)/petitioner(s).)

-against-

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL

HHS Secretary, U.S. Attorney General, DoJ for SDNY,

Medicare Appeals Council, EmblemHealth, see attachment

(List the full name(s) of the defendant(s)/respondent(s).)

I move under Federal Rule of Appellate Procedure 24(a)(1) for leave to proceed *in forma pauperis* on appeal. This motion is supported by the attached affidavit.

4 July 2025
Dated

Dr. Richard Cordero, Esq.
Signature

Cordero, Dr. Richard
Name (Last, First, MI)

2165 Bruckner Blvd.	Bronx	NY	10472-6506
Address	City	State	Zip Code

(718)827-9521
Telephone Number

Dr.Richard.Cordero_Esq@verizon.net
E-mail Address (if available)

The link to this individual file is:
http://Judicial-Discipline-Reform.org/ALJ/25-7-4DrRCordero_SDNY_IFP_motion_issues_affidavit.pdf
This file is included in the record file holding all the files in this case, whose link is:
http://Judicial-Discipline-Reform.org/ALJ/24-12-15DrRCordero-v-Medicare_EmblemHealth_et_al.pdf

Rev. 12/23/13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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7A. David Eng, Esq.;	7B. Melissa Cipolla.
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15A. Legal Assistant Deniese Elosh, both in OMHA Phoenix Field Office, AZ	15B. John Doe and Jane Doe, who are employees in the OMHA Phoenix and Atlanta Offices and/or in the HHS

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	19B. Thomas Gray, Emblem's NY SHIP
	20B. Tamika Simpson, Emblem's New York SHIP
	21B. The Director of Emblem's NY SHIP

A. Contact information about Defendants and other served officers

	A	B
1.	The Secretary U.S. Department of Health and Human Services c/o: General Counsel 200 Independence Avenue, S.W Washington, D.C. 20201 [by registered or certified mail]	Health Insurance Plan of Greater New York 55 Water Street New York, NY 10041-8190 press@emblemhealth.com
2.	The Director HHS Departmental Appeals Board, MS 6127 330 Independence Avenue Cohen Building Room G-644 Washington, DC 20201 tel. (202)565-0100; (866)365-8204	EmblemHealth 55 Water Street New York, NY 10041-8190 press@emblemhealth.com
3.	The Director Medicare Operations Division - Departmental Appeals Board U.S. Dept. of Health and Human Services 330 Independence Ave., S.W. Washington, D.C. 20201 OS DAB MOD Hotline (HHS/DAB) tel.: (202)565-0100; (866)365-8204 fax: (202)565-0227 DABMODHotline@hhs.gov	Ms. Karen Ignagni President and CEO EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (877)344-7364 press@emblemhealth.com
4.	The Director Medicare Appeals Council (MAC) 330 Independence Avenue Cohen Building Room G-644 Washington, DC 20201 tel. (202)565-0100 toll free: (866)365-8204	The Director Grievance and Appeals Department EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (646)447-0617
5.	The Director Office of Medicare Hearings and Appeals (OMHA) Headquarters 2550 S. Clark Street, Suite 2001 Arlington, VA 22202 Phone (703)235-0635 Medicare.Appeals@hhs.gov	Mr. Sean Hillegass Supervisor, Grievance and Appeals Department EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (646)447-0617 SHillegass@EmblemHealth.com

6.	The Director OMHA Centralized Docketing 1001 Lakeside Avenue, Suite 930 Cleveland, OH 44114-2316 tel. (866)236-5089 Medicare.Appeals@hhs.gov	Ms. Stefanie Macialek Specialist, Grievance and Appeals Department EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (646)447-6109 Stefanie.Macialek@emblemhealth.com
7.	David Eng, Esq. Lead Attorney Advisor Medicare Operations Division - Program Operations Branch U.S. Dept. of Health and Human Services - Departmental Appeals Board 330 Independence Ave., S.W. Washington, D.C. 20201 OS DAB MOD Hotline (HHS/DAB) tel.: (202)565-0100; (866)365-8204 fax: (202)565-0227 DABMODHotline@hhs.gov	Ms. Melissa Cipolla Senior Specialist, Grievance and Appeals Department EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (646)447-7026 M_Cipolla@emblemhealth.com
8.	Mr. John Colter, ARL FO Supervisor of Legal Administrative Specialists U.S. Dept. of Health and Human Services Departmental Appeals Board 330 Independence Ave., S.W. Washington, D.C. 20201 tel. (571)457-7290 John.Colter@hhs.gov	Ms. Shelly Bergstrom Quality Risk Management EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (631)844-2691 SBergstrom@emblemhealth.com
9.	Mr. Jon Dorman Director Appeals Policy and Operations Division Office of Medicare Hearings and Appeals Arlington Field Office Presidential Tower 2550 S Clark St, Suite 3001 Arlington, VA 22202-3926 Jon.Dorman@hhs.gov	Dr. Sandra Rivera-Luciano Medical Director EmblemHealth 55 Water Street New York, NY 10041-8190 tel. (631)844-2691 SBergstrom@emblemhealth.com
10.	Dr. Sherese Warren, DrPH, MPA Director, Central Operations Office of Medicare Hearings and Appeals 1001 Lakeside Avenue, Suite 930 Cleveland, OH 44114-2316	The Director Quality Risk Management EmblemHealth 55 Water Street New York, NY 10041-8190

	Office Phone: (216)462.4090 Work Cell: (216)401.6648 Sherese.Warren@hhs.gov	tel. (646)447-7026
11.	Ms. Erin Brown Senior Legal Supervisor OMHA Headquarters 2550 S. Clark Street, Suite 2001 Arlington, VA 22202 Phone (703)235-0635 Erin.Brown@hhs.gov	Maximus Federal Services 3750 Monroe Avenue, Suite 702 Pittsford, NY 14534-1302 tel. (585)348-3300 medicareappeal@maximus.com
12.	Ms. Andrenna Taylor Jones Senior Attorney Advisor Appeals Operations Branch Appeals Policy and Operations Division, Headquarters Office of Medicare Hearings and Appeals 2550 S. Clark Street, Suite 2001 Arlington, VA 22202 Phone (703)235-0635 Medicare.Appeals@hhs.gov	The President Maximus Federal Services 3750 Monroe Avenue, Suite 702 Pittsford, NY 14534-1302 tel. (585)348-3300 medicareappeal@maximus.com
13.	Mr. James "Jim" Griepentrog Legal Administrative Specialist US Dept. of Health and Human Services Office of Medicare Hearings and Appeals Arlington Field Office Presidential Tower 2550 S Clark St, Suite 3001 Arlington, VA 22202-3926 tel. (571)457-7200 (Main) toll free (866)231-3087, Desk Phone: (571)457-7262 "CU-04" or (571)457-7290 (JC) fax (703)603-1812 "Attn Jim G or SLAS/Pool" James.Griepentrog@hhs.gov	The CEO Maximus Federal Services 3750 Monroe Avenue, Suite 702 Pittsford, NY 14534-1302 tel. (585)348-3300 medicareappeal@maximus.com
14.	ALJ Dean Yanohira OMHA Phoenix Field Office 230 N. 1st Avenue, Suite 302 Phoenix, AZ 85003-1706 tel.: (833)636-1476 tel. (602)603-8609 fax (602)379-3038 and -3039	The Director Office of the Project Director Medicare Managed Care & PACE Reconsideration Project Maximus Federal Services 3750 Monroe Avenue, Suite 702 Pittsford, NY 14534-1302 tel. (585)348-3300

		medicareappeal@maximus.com
15.	Legal Assistant Deniese Elosh OMHA Phoenix Field Office 230 N. 1st Avenue, Suite 302 Phoenix, AZ 85003-1706 tel.: (833)636-1476 tel. (602)603-8609 fax (602)379-3038 and -3039	John Doe and Jane Doe, who are employees in the OMHA Phoenix and Atlanta Offices and/or in the HHS Departments and offices who participated in the coordinated disregard of Plaintiff's phone calls, voice mail, and over 11,000 emails for two years, and in filing a complaint with the Federal Protective Services against Plaintiff for alleged threatening behavior.
16.	ALJ Loranzo Fleming OMHA Atlanta Field Office, GA Atlanta Field Office, 2nd Floor 77 Forsyth Street SW Atlanta, GA 30303 tel.: (470)633-3500 direct tel.: (470)633-3424 fax: (404)332-9566 toll free: (833)636-1474	John Doe and Jane Doe, who are HIP and/or EmblemHealth officers who interacted or failed to interact with EmblemHealth employees in The Philippines and the U.S., such as those listed in SDNY:11§3 below to Plaintiff's detriment.
17.	Mr. Merrick Garland U.S. Attorney General U.S. Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530-0001 tel. (202)514-2000	Damian Williams, Esq. United States Attorney for SDNY Civil Division 86 Chambers Street, 3rd Floor New York, NY 10007 tel. (212)637-2800 https://www.justice.gov/usao-sdny U.S. Attorney's Office for SDNY Main Office 26 Federal Plaza, 37th Floor New York, NY 10278 tel. (212)637-2200
18.		16B. Susan S., Emblem's NY SHIP (State Health Insurance Program); tel. (800)447-8255
19.		17B. Thomas Gray, Emblem's NY SHIP; tel. (800)447-8255
20.		18B. Tamika Simpson, Emblem's New York SHIP; tel. (800)447-8255
21.		19B. The Director of Emblem's NY SHIP

UNITED STATES DISTRICT COURT

for the

DISTRICT OF Southern New York

Dr. Richard Cordero, Esq.

Plaintiff

v.

HHS Secretary, U.S. Attorney General, DoJ for SDNY, Medicare Appeals Council, EmblemHealth, see attachment

Defendant

Case No. 24-cv-09778-JAV

AFFIDAVIT ACCOMPANYING MOTION FOR PERMISSION TO APPEAL IN FORMA PAUPERIS

Affidavit in Support of Motion

I swear or affirm under penalty of perjury that, because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United States laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)

Signed: Dr. Richard Cordero, Esq. Date: 4 July 2025

Instructions

Complete all questions in this application and then sign it. Do not leave any blanks: if the answer to a question is "0," "none," or "not applicable (N/A)," write that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.

Table of Contents

Table of Authorities

CASES

CONSTITUTIONAL PROVISIONS

STATUTES

RULES

CODE OF CONDUCT FOR U.S. JUDGES

ARTICLES

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A. My issues on appeal are:

1. Procedural background in the U.S. District Court, SDNY

1. A judge is assigned to a case within a couple of days of its filing. I filed my complaint on 16 December 2024 in the U.S. District Court, SDNY, together with my motions for, e.g., IFP status and e-filing(SDNY:1). But for weeks, no docket entry was made naming any judge assigned to my case or granting any of my motions. Without a judge issuing the summons, the defendants could not be served either by the U.S. Marshals Service or me, and the case could not progress procedurally.

a. As a matter of fact, I could not even access the Court's e-filing system. The clerks sent me to PACER to try to fix the problem. I called PACER at (800)676-6856. After researching the problem, a PACER supervisor told me that PACER had nothing to do with it.(SDNY:274¶¶54-58) The problem resided in the district court.

2. I complained to the SDNY clerks, and sent emails[1] about these problems to Attorney Services Helpdesk/Pro Se Unit Supervisor Lourdes Aquino, to no avail.

3. Those clerks were the same ones who disregarded my conspicuous "Jury trial requested" notice on the caption page of my complaint. They entered on the docket "Jury Demand: None".(early docket page1) When I asked, they said it was a 'mistake'. Did they make that 'mistake' on their own or were they instructed to make it in order to take the right to a jury trial, in general, from yet another pro se party, or in particular, from me?

4. Consequently, I complained to SDNY Chief Judge Laura Taylor Swain about the failure to assign a judge to my case and the resulting lack of progress in it. She granted my IFP motion(SDNY:67) on 28 January 2025(docket entry 12; SDNY:69). The following day, a notice was entered on the docket naming Judge Jeannette A. Vargas (JAV) as the assigned judge.(docket entry 13; id.)

a. Once I learned that JAV stands for Judge Jeannette A. Vargas, I examined the docket. I found out that she had been assigned to my case at the latest

[1] helpdesk@nysd.uscourts.gov, pro_se_filing@nysd.uscourts.gov, NYSD_ECF_Pool@nysd.uscourts.gov

on 23 December 2024, if not before, as described in detail at SDNY:269§E.

b. So, why did J. Vargas fail to take action for a month and a half until I complained to Chief Judge Swain?

c. Were the clerks and J. Vargas working in coordination to deprive my case of procedural progress and disregard my demand for a jury trial?

d. What other actions will be taken to prejudice my case and ensure that it is defeated, such as inflicting upon me financial hardship through the denial of IFP status to appeal to CA2 or some de minimis filing error despite FRCP 1. Scope and Purpose stating that the purpose of the Rules is "to secure the just, speedy, and inexpensive determination of every action"; and FRAP 2. Suspension of Rules, which confers on a circuit court the power to suspend rules for a particular case and in other circumstances?

5. Only two days later, after most likely Judge Vargas had been called out by Chief Judge Swain for her inaction in my case, and based on the same and sole party-filed paper, i.e., my complaint(SDNY:1), on which the Chief Judge had granted my IFP application, J. Vargas on her own motion, with no other motion having been filed or being pending, dashed out an "Order of Service"(SDNY:89). Therein she;

a. dismissed 27 of my 29 defendants;

b. characterized my claims as "frivolous"; and

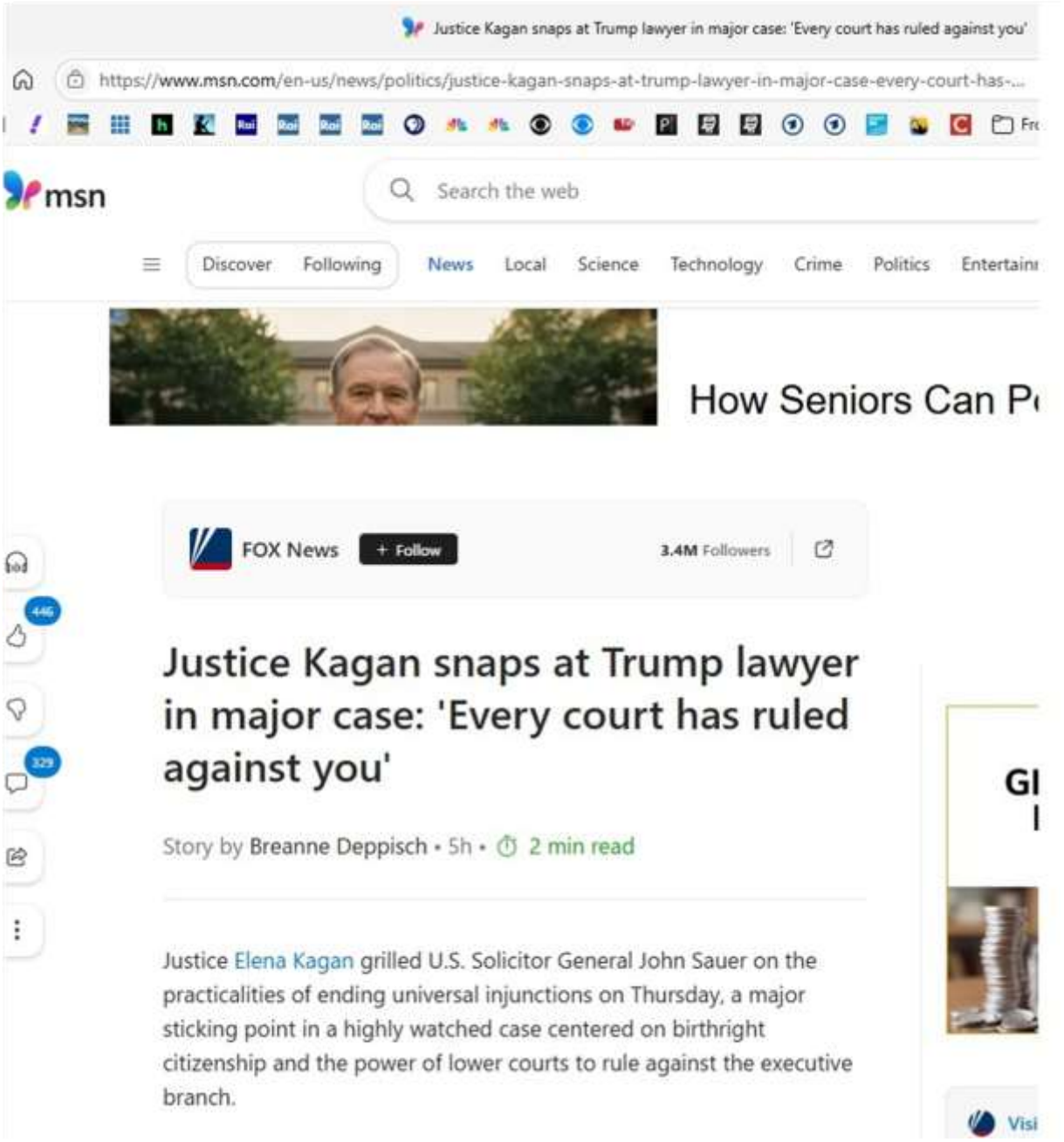
c. certified that any appeal by me to the U.S. Court of Appeals for the Second Circuit (CA2) would be "not in good faith" and expressly denied me the

certification for an IFP appeal.

6. Judge Vargas applied the judicial and sovereign immunity doctrines to dismiss on her own motion the public officers that I had named as defendants. However, she did not apply those doctrines to the public officers sued in a case before her, including President Trump himself and officers in his administration[2]. Thereby she showed inconsistency and discrimination.

7. She alleged that my claims had not been properly pled against private and public officers, characterizing them as "frivolous". By so doing, she disregarded the fact that during the previous more than three years since the triggering healthcare event on 8 September 2021, and through the four Medicare administrative levels

[2] *State of New York and 18 other states, et al., v. Donald J. Trump, in his official capacity as President of the U.S., the Treasury Department, DOGE, et al.;* docket no. 25-cv-01144-JAV. That case was filed on 7 February 2025. That very same day Judge Vargas was assigned to that case.(second entry after docket entry 5) She took her first action in that case on 9 February, only two days later!(docket entry 14) But it took a month and a half for a judge to be assigned to my case and for action that moved it forward procedurally to be taken.



15may25; https://www.msn.com/en-us/news/politics/justice-kagan-snaps-at-trump-lawyer-in-major-case-every-court-has-ruled-against-you/ar-AA1EQkDX?ocid=msedgntp&pc=HCTS&cvid=1bddaf4fa1fc4898800a94855d17fa5c&ei=8

of appeals, namely, redetermination, reconsideration, fair hearing before a Medicare administrative law judge, and appeal to the Medicare Appeals Council, I had given the defendant officers repeatedly in scores of recorded phone calls, emails, and briefs sufficient and unambiguous notice of my claims against them.

8. Judge Vargas disregarded the fact that such notice is all that due process requires at the stage of complaint-filing.

9. In the same vein, she disregarded notice pleading: FRCP 8. General Rules of Pleading, only requires "(a)(2) a short and plain statement of the claim showing that the pleader is entitled to relief", rather than that the defendant is at fault and liable.

10. Judge Vargas had no basis in law for requiring in essence that I prove, not even that I argue, my case in my complaint, never mind for dismissing my defendants on her conclusory allegation that I had failed to "plead them properly", whatever that self-concocted, undefined term means.

11. Nevertheless, I had additionally provided in my complaint:

    a. the contact information of 19 *supervisors* of EmblemHealth who had passed me from one to the other as they implemented their "delay, deny, defend" tactics against me(SDNY:125§3) and who announced that they were recording our conversations;

    b. the links to the collected emails and letters exchanged between the defendants and me, and to my briefs(SDNY:125§4), and the references to our phone calls; and

    c. a description of how officers of Medicare and Maximus Federal Services had joined EmblemHealth in those tactics with no regard for my worsening health condition(SDNY:127§5).

12. The Medicare Appeals Council found no deficiency in my claims in its final decision of October 17, 2024(SDNY:57), which is the subject of this appeal in SDNY,

the fifth level of appeal under Medicare law. I was not beginning litigation with the defendants. Far from it, we were continuing litigation at its higher, judicial review level. They have known for years what my claims against them are.

13. Given that the defendants had received due process notice of the claims pending against them, Judge Vargas had no justification for alleging that an appeal by me to CA2 would be "not in good faith", and thereupon denying me certification of IFP status to appeal from her decision.

14. Consequently, there is probable cause to believe that Judge Vargas abused her decisional power to retaliate against me for having complained to Chief Judge Swain about the inaction in my case.

15. Judge Vargas proceeded as if she were an attorney writing an *Anders*[3] brief for leave to be removed from a criminal case where the defendant was urging "frivolous" defenses "not in good faith". Actually, she wanted the defendants removed from the case. To that end, she conclusorily so characterized my claims, as if as a matter of law they had no merits apt to be determined through judicial process, including disclosure, discovery, witness and expert testimony, cross-examination, etc., and were claims upon which no relief could be granted.(SDNY:281§G)

16. Judge Vargas inexplicably pretended to ignore that money damages is by no means the only relief that can be requested from a public servant, such as an

[3] *Anders v. California*, 386 U.S. 738, 744 (1967); https://supreme.justia.com/cases/federal/us/386/738/

administrative law judge (ALJ. There is also declaratory judgment; investigation and removal from office; vacation of her decisions on a finding of bias and "even the appearance of impropriety"[7 below], etc.

a. She disregarded the fact that the first ALJ assigned to my fair hearing, who sat in the Phoenix, AZ, Field Office of the Office of Medicare Hearings and Appeals (OMHA), rubberstamped or had somebody rubberstamp his signature on a no-recusal form denying my motion for his recusal for consenting to, allowing, or ordering, the filing by his legal assistant of a complaint about me with the Federal Protective Services of Homeland Security, as if I were a terrorist!(SDNY:149§I)

a. I complained to the Medicare Appeals Council, which did not even acknowledge receipt of my complaint. But thereafter the ALJ rubberstamped another form recusing himself from my fair hearing.

b. What is more, at my instigation, the fair hearing was transferred to the OMHA Field Office in Atlanta, GA. There the assigned fellow ALJ conducted a biased and disrespectful hearing as if he wanted to teach me *the lesson* on behalf of his Phoenix colleague: "Don't you ever mess with us judges!" His conduct was not in the interest of justice.

c. Neither has been Judge Vargas's. Why did she disingenuously dismiss both ALJs as defendants and extend their alleged judicial immunity to the legal assistant as if I had only asked for monetary relief from them or it were by definition frivolous to argue against a judicial doctrine or even a

law despite the provision to the contrary under FRCP 11(b)(2)on page 414 below? (Cf. SDNY:82§F. The unconstitutionality of the self-serving doctrine of judicial immunity) I am still experiencing injury in fact as a consequence of that complaint about me to Homeland Security.

17. Along the same line, Judge Vargas left out what CA2 in its instructions[4] for filing an *Anders* brief has stated against her own interest:

> An *Anders* brief must set forth a "conscientious examination" of the appellant's case and explain fully why there are no non-frivolous issues. This Court has set a high standard for determining what constitutes a satisfactory *Anders* brief. See *Anders v. California*, 386 U.S. 738, 744 (1967); *Nell v. James*, 811 F.2d 100, 104 (2d Cir. 1987).

18. CA2 has also stated in its instructions as follows:

> The Court may also elect to appoint new counsel when the submitted *Anders* brief is ruled insufficient. See *United States v. Burnett*, 989 F.2d 100, 105 (2d Cir. 1993).

19. In this case, what the district court and CA2 should elect to do is assign to this case a new judge or judges en banc(¶24 below).

20. On what generally accepted standards of medical care or torts principles are healthcare claims considered prima facie "frivolous" and "not in good faith"?

21. Judge Vargas made decisions contrary to the weight of available clear and convincing evidence that my healthcare claims are grave and justiciable.

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[4] *Anders* brief instructions and checklist combined 10-11.pdf; https://ww3.ca2.uscourts.gov/clerk/case_filing/appealing_a_case/pdf/Anders%20brief%20instructions%20and%20checklist%20combined%2010-11.pdf

22. In that Order of Service of 31 January 2025(SDNY:89) of summons and complaint, Judge Vargas provided 30 days' leave for me to replead the claims against the defendants.

23. I filed a motion for reconsideration(SDNY:71) on 13 February 25; and an amended complaint(SDNY:111) on 2 March. She denied the reconsideration motion on 13 March(SDNY:181). However, she did not state whether the amendment to my complaint had satisfied her repleading requirement.

24. Hence, on 10 April, I filed a motion(SDNY:251; [5]) for submission of this case to an SDNY court en banc to take six other actions, listed next. This motion was founded on Cornell Law Professor Maggie Gardner's article "*District Court en bancs*"[6]. I added reasons for convening such courts and explained their broad applicability.

25. EmblemHealth answered my en banc motion on 25 April(SDNY:341), with Maximus Federal Services joining its answer. Their answer is an admission against self-interest because they limited themselves to challenging my request for convening the district court en banc, that is, the means of implementing the motion, but raised no objection whatsoever to any of the requested six actions, in other words, the substantive issues of the motion, namely:

    a. reinstate the 27 out of 29 defendants that Judge Vargas had dismissed

[5] http://Judicial-Discipline-Reform.org/ALJ/25-4-10DrRCordero_motion_for_en_banc.pdf

[6] https://fordhamlawreview.org/wp-content/uploads/2022/03/Gardner_March.pdf at

on her own motion, and have them served by the U.S. Marshalls Service;

b. restore the IFP status that Chief Judge Swain had granted to me but that Judge Vargas took away from me for purposes of appealing to CA2 from her decision;

c. grant my motion for default judgment; otherwise, judgment on the pleadings or summary judgment;

d. provide a more definite statement of the order taking away my IFP status, for it is inconsistent to maintain my IFP status in the district court, but deprive me of it for any appeal to CA2, a deprivation that will have a damning prejudicial impact on the jury, which will consider that my claims have already been adjudged "frivolous" and "not in good faith";

e. reverse the order granting AUSA's request for an extension of time to answer;

f. reassign this case to another or other judges sitting en banc.

26. The defendants EmblemHealth and Maximus Federal Services did not object to the entry of judgment by default against them! That is precisely what I had moved the administrative law judge and the Medicare Appeals Council to do below. In fact, neither of those two defendants file any brief below; Maximus did not even appear at the fair hearing. They have forfeited their right to object to my default motion in the district and the circuit courts. They no longer have the right to "defend".

27. The U.S. Attorney General, the U.S. Assistant Office for SDNY, and the HHS

Secretary did not even answer my motion. Whatever defense they may try to mount in an answer that they may yet file to my complaint will be untimely. They together with Emblem and Maximus must be deemed to have admitted my contentions in my motion(SDNY:251).

28. It was not until 5 May when Judge Vargas finally took a decision on the amended complaint.(SDNY:399) The previous decisions merged into that decision. The appeal to CA2 is ripe. The following are some of the issues that I will be presenting on appeal:

2. Issues on appeal

29. **Whether** Judge Vargas retaliated against me for complaining to Chief Judge Swain about the inaction in my case; and having embarrassed J. Vargas with my finding that she had been assigned to the case at the latest on 23 December, if not earlier(SDNY:271¶¶44-53), but did nothing until I complained to the Chief Judge, who most likely inquired of J. Vargas about her inaction in the case for a month and a half! This raises "the appearance of impropriety"[7] of her conduct.

30. **Whether** Judge Vargas erred and if so, whether she did it intentionally, when on the first page of her first paper in this case, to wit, her Order of Service(docket entry # 13; SDNY:89), which merged into her final decision of May 5(SDNY:399), and proceeding on her own motion without any party having petitioned her to

[7] Code of Conduct for United States Judges, Canon 2. "A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities"; www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges

do so, she held my claims to be "frivolous" and "certifie[d] under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal"(SDNY:97), which she did at a time so premature to be thinking of any appeal that no defendant had even been served! She wrote(SDNY:89):

> The Court must dismiss an IFP complaint, or portion thereof, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); see *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998)."[8]

a. However, 28 U.S.C. §1915, attached hereto, only applies to prisoners, to whom it refers 17 times and defines thus: "(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility…". Those prisoners may petition for leave to proceed IFP in pursuit of their civil or criminal claims. Whatever the scope of applicability of §1915 when *Livingston* was decided 27 years ago in 1998, today that section is on its face inapplicable to this case, which does not deal with any prisoner at all. Nevertheless, I assume arguendo that §1915 applies to non-prisoners too. Thereby the same principles apply to non-prisoners as they do to prisoners. They contradict Judge Vargas's characterization by fiat rather than "conscientious examination"(¶15 above) of my claims as "frivolous" and an appeal as "not in good faith".

[8] https://www.casemine.com/judgement/us/591480e3add7b0493447acc3; see this case also in the attachment.

b. Indeed, Judge Vargas cited *Livingston*, but that CA2 case deprives her of authority to dismiss 27 of 29 defendants sua sponte by characterizing my claims as “frivolous”:

> A district court must dismiss an in forma pauperis action if the action is "frivolous or malicious." See 28 U.S.C. §1915(e)(2)(B)(I). An action is "frivolous" when either: (1) "the `factual contentions are clearly baseless,' such as when allegations are the product of delusion or fantasy;" or (2) "the claim is `based on an indisputably meritless legal theory.'" *Nance v. Kelly*, 912 F.2d 605, 606 (2d Cir. 1990) (per curiam) (quoting *Neitzke v. Williams*, 490 U.S. 319, 327 (1989)). A claim is based on an "indisputably meritless legal theory" when either the claim lacks an arguable basis in law, *Benitez v. Wolff*, 907 F.2d 1293, 1295 (2d Cir. 1990) (per curiam), or a dispositive defense clearly exists on the face of the complaint. See *Pino v. Ryan*, 49 F.3d 51, 53 (2d Cir. 1995)…
>
> As the Supreme Court clearly stated in *Denton*, a sua sponte dismissal for frivolousness is not a vehicle for resolving factual questions [especially when no question at all has been raised by any defendant since even at present none has filed a brief]. See *Denton*, 504 U.S. at 32…
>
> A claim is frivolous not when a court doubts its validity, but rather when it lacks an arguable basis in law — for example, when a plaintiff claims an infringement of a legal interest that does not exist. See *Neitzke*, 490 U.S. at 327.
>
> Because Livingston "advanced at least a colorable claim warranting further development of the facts," sua sponte dismissal was improper. *Hemmings*, 134 F.3d at 108.

c. I have stated multiple claims against the dismissed defendants based on the facts of their conduct, e.g., their statements in recorded phone conversations and what they wrote in their advertising and billing documents.

d. Likewise, the bases in law of those claims are solid, for they sound in false advertisement; breach of contract; bad faith dealing; fraud; participation in a pattern of racketeering and enterprise corruption; intentional infliction of emotional distress on healthcare insureds given that a key principle of the law of torts provides that 'people are deemed to intend the foreseeable consequences of their actions'; such distress is the foreseeable consequence of insurers' devising, approving, and implementing through coordination and as their modus operandi their claims evasive "delay, deny, defend" tactics against their insureds; etc.

e. These claims cannot be decided as a matter of law as if they lacked any merits to be adjudicated through judicial process. They would have presented genuine issues of material fact if the defendants had raised them in a timely fashion. Here it is apposite to cite what CA2 further stated in *Livingston*:

> [W]hen an in forma pauperis plaintiff raises a cognizable claim, his complaint may not be dismissed sua sponte for frivolousness under § 1915(e)(2)(B)(I) even if the complaint fails to "flesh out all of the requisite details." Id. at 607; see *Benitez*, 907 F.2d at 1295 ("Where a colorable claim is made out, [sua sponte] dismissal is improper prior to service of process and the defendants' answer.") (citations omitted); see also *Hemmings*, 134 F.3d at 108 (sua sponte dismissal improper since plaintiff "advanced at least a colorable claim warranting further development of the facts").

f. Judge Vargas's credibility is deprecated and her motives rendered suspect enough by being contradicted by those two authorities that she herself cited in her 31 January 2025 Order of Service(SDNY:89).

g. Worse yet, they suffer a third devastating blow by the authority that she cited in support of her 5 May Order(SDNY:399). That authority is indisputably strong: the Supreme Court in *Coppedge v. United States*, 369 U.S. 438 (1962).[9]

h. To begin with, *Coppedge* deals with the IFP petition of a prisoner. The Court reversed the Court of Appeals for the District of Columbia Circuit that had denied the IFP petition, chastising it for not having afforded the prisoner "the benefits of presenting either oral argument or full briefs on the merits":

> The District Court's certificate that the IFP applicant lacks "good faith" in seeking appellate review is not conclusive, although it is, of course, entitled to weight. [I]f, from the face of the papers he has filed, it is apparent that the applicant will present issues for review not clearly frivolous, the Court of Appeals should then grant leave to appeal *in forma pauperis,* appoint counsel to represent the appellant, and proceed to consideration of the appeal on the merits in the same manner that it considers paid appeals [page 369 U. S. 446]
>
> [I]t is our duty to assure to the greatest degree possible [page 369 U.S. 447] within the statutory framework for appeals created by Congress, equal treatment for every litigant before the bar…. the burden of showing that that right has been abused through the prosecution [page 369 U.S. 448] of frivolous litigation should at all times be on the party making the suggestion of frivolity. It is not the burden of the petitioner to show that his appeal has merit. He is to be heard…if he makes a rational argument on the law or facts….[P]etitioner sought consideration of issues that it would be difficult for an appellate court to consider so patently frivolous as to require a dismissal of petitioner's case without full briefing or

[9] *Coppedge*, https://supreme.justia.com/cases/federal/us/369/438/

argument.

i. Judge Vargas was disingenuous when she hid from me and CA2 that the three authorities that she cited in support of her two Orders contradicted squarely her characterization of my claims as "frivolous" and any appeal by me to CA2 as "not in good faith".

j. Judge Vargas also disregarded the presumption of validity that my claims are entitled to, as FRCP 11 provides:

> (b) REPRESENTATIONS TO THE COURT. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
>
> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support **after a reasonable opportunity for further investigation or discovery** [emphasis added] and
>
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

k. Judge Vargas characterized my claims as "frivolous" without bothering to present any basis in fact or law to impugn their presumptive validity . She

failed to take any action apt to show that she had conducted a "conscientious examination"(¶15 above) of them. She dismissed 27 of 29 defendants who for years since the healthcare-triggering event of 8 September 2021, have abused me with their claim evasive "delay, deny, defend" tactics. She knew that they had heaped their abuse on me through the four Medicare levels of appeal. Yet, she immunized them, just like that, on her say so. She elevated them where nobody is entitled to be: Above the Law.

l. By contrast, Judge Vargas dumped me into an abyss of emotional distress. She did so intentionally, for she knew and is deemed to have known that that was be the foreseeable consequence of her arbitrary, capricious, and premature action. By so doing, she caused all my years-long effort to care for my health and assert my rights come to naught. She let her retaliatory motive(¶29 above) harm me.

m. Judge Vargas has cast aspersions on my competence and integrity. She has caused me injury in fact by forcing me to spend an enormous amount of my time and mental and emotional energy researching, writing, and filing an amended complaint(SDNY:111) and motion after motion (SDNY:71, 191, 251, 411). Just as I have refused for years to take the abuse of power of the defendants, *I will not take her abuse either!*

n. Contradicted by the authorities that she cited, J. Vargas lacks any basis in law for pretending that my claims are "frivolous" and justify her dismissing 27 of the 29 defendants named by me and denying me IFP

status for appealing to CA2. Her decision is ultra vires and should be vacated; the defendants reinstated, and my IFP application granted.

o. Moreover, both the District and the Circuit Courts should apply a tenet of the administration of justice:

> Justice should not only be done, but should manifestly and undoubtedly be seen to be done. *Ex parte McCarthy*, [1924] 1 K. B. 256, 259 (1923). Cf. "Justice must satisfy the appearance of justice", *Aetna Life Ins. v. Lavoie et al.*, 475 U.S. 813; 106 S. Ct. 1580; 89 L. Ed. 2d 823 (1986).

p. Hence, in the interest of justice, both Courts should remove Judge Vargas from, and investigate her conduct in, this case. In how many other cases has she conducted likewise and will continue to in future unless stopped now?

31. **Whether** J. Vargas's statement that I still have IFP status in SDNY, but not for any appeal to CA2(SDNY:400), means that she is abusing her power to prevent her decisions from being reviewed on appeal by self-servingly placing before me a retaliatory financial hurdle.

32. **Whether** J. Vargas usurped the jury's fact-finding role when she held my claims to be "frivolous" and any appeal by me to CA2 "not in good faith".

33. **Whether** Judge Vargas erred by disregarding the fact that:

a. none of the defendants ever filed a brief in opposition to me or otherwise, not even for the fair hearing before a Medicare administrative law judge - defendant Maximus Federal Services did not even appear at the hearing- or for the Medicare Appeals Council;

b. as a result, defendants forfeited their opportunity to appear and defend;

c. are precluded from disputing any of my statements of facts, which defendants are now deemed to have admitted;

d. are barred by laches from unfairly surprising me as well as the courts themselves with a defense leisurely concocted only after trying in bad faith for years since the triggering healthcare event on 8 September 2021 to wear me down with their "delay, deny, defend" tactics, which forced me to go through the four levels of Medicare administrative appeals, and on to the fifth, the judicial review level;

e. so that defendants should have been barred from filing an answer to my complaint or otherwise defending;

f. defendants should have been defaulted, have had judgment entered against them, and held liable for the relief that I requested below and here.

34. **Whether** the 27 dismissed defendants must be reinstated and served by the U.S. Marshalls Service to prevent thorny issues from arising later on concerning:

a. required joinder under FRCP 19;

b. a claim of waiver or forfeiture of my appellate rights by failing to appeal now against Judge Vargas's decision;

c. contribution by the dismissed parties to paying a judgment against the remaining defendants;

d. waste of scarce judicial resources if another trial is ordered where all

defendants are served and must appear and defend on their own before an impartial and fair judge;

e. in the event of such retrial, Judge Vargas's liability for the relitigation costs to the parties arising from her arbitrary and improvident decision to dismiss 27 of 29 defendants on her own motion before they had even been served, thus becoming in effect their attorney and giving "the appearance of impropriety"[7] of partiality for the rest of the trial;

f. the glaring disregard of the obvious fact that corporate entities do not commit offenses by themselves; rather, it is their officers who devise, approve, and implement their policies, abuse their power, cover up each other's abuse, and harm third parties, so that it is those officers who must be held accountable, lest they are conferred impunity and thereby given impermissibly more than what the 14th Amendment guarantees for everybody: 'the equal protection of the laws";

g. the connivance of the judiciary with the healthcare industry whose top officers the judiciary allows, and in practice encourages, to continue running their business through the modus operandi of committing unaccountably claim evasive "delay, deny, defend" tactics.

35. **Whether** Judge Vargas erred when she applied the judicial and sovereign immunity doctrines to dismiss defendants, thereby disregarding the constitutional and foundational provisions at:

a. Article III, Section 1, which provides protection against judges' removal

only “during good Behaviour”;

b. Article II, Section 4, which makes judges and all other officers of the United States liable to charges of “Treason, Bribery or other [offenses within the whole gamut of] high Crimes and Misdemeanors”;

c. the 14th Amendment, which guarantees “the equal protection of the laws” even from judges and other public officers, thus asserting the tenet that in ‘government, not of men [and women], but by the rule of law’, “Nobody is Above the Law”, be they politicians, police officers, soldiers, priests, doctors, lawyers, judges, would-be kings, etc.; and

d. the Declaration of Independence, which justifies rising up against an abusive and oppressive king and his ministers…and throwing them overboard from the bench of the court onto the bench for the defendants.

36. **Whether** Judge Vargas’s grant(SDNY:237) of defendants’ motions(SDNY:235) for an extension by months to file an answer to my complaint, which she granted:

a. within less than 24 hours of their being filed;

b. without her waiting the time allowed to an opposing party to answer a motion;

c. without even acknowledging receipt of my answer in opposition (SDNY:191) or making any reference to it;

d. without requiring that the defendants substantiate the alleged reasons for their extension request;

e. without critical examination of the facts as required by due diligence, which would have exposed the alleged need for the extension as bogus(SDNY:205§D; and ¶¶40-50 below);

shows the Judge's bias against me and lack of respect for the rules, whereby the grant of an extension of time to answer my complaint should be held null and void.

37. **Whether** Judge Vargas's discriminatory, retaliatory, and biased actions and disregard for the rules require on due process and "the appearance of impropriety"[7] grounds that another judge or other district judges sitting en banc be assigned to the case, which should be done at this most opportune time when the case has barely started given that no defendant has filed an answer and 27 of 29 of them have not even been served.

B. Income and expenses

1. *For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	$ unemployed	$ N/A I am single	$ unemployed	$ N/A I am single
Self-employment	$ none	$	$ none	$
Income from real property (such as rental income)	$ none	$	$ none	$
Interest and dividends	$ none	$	$ none	$
Gifts	$ none	$	$ none	$
Alimony	$ none	$	$ none	$
Child support	$ none	$	$ none	$
Retirement (such as social security, pensions, annuities, insurance)	$ 192 Medicare Advantage healthy food allowance	$	$ 192	$
Disability (such as social security, insurance payments)	$ none	$	$ none	$
Unemployment payments	$ none	$	$ none	$
Public-assistance (such as welfare)	$ 292 EBT	$	$ 292 EBT	$
Other (specify):	$ 200 from family	$	$ 200 from family	$
Total monthly income:	$ 684	$	$ 684	$

$ 684.00 TOTAL

2. *List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay
unemployed			$ none

3. *List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of employment	Gross monthly pay
N/A; I am single			$ none
			$
			$

4. *How much cash do you and your spouse have?* $ 44.47

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount you have	Amount your spouse has
Bank of America Dime Community Bank	savings checking	$ 600.00 $ 172.15	$ N/A
Chase Citi Bank	checking checking	$ 3,044.10 $ 540.00	$ N/A $ N/A
Citizens Bank Citizens Bank	checking savings	$ 559.61 $ 12,820.12	$ N/A $ N/A
TD Bank HSBC	savings savings	1,732.36 5,760.00	N/A N/A

5. *List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.*

Home	Other real estate	Motor vehicle #1
(Value) $ none own	(Value) $ a third of a house in Puerto Rico occupied by a sibling and her family	(Value) $ none own
		Make and year:
		Model:
		Registration #:

Rev. 12.1.2018

Motor vehicle #2	**Other assets**	**Other assets**
(Value) $	(Value) $ none	(Value) $ none
Make and year:		
Model:		
Registration #:		

6. *State every person, business, or organization owing you or your spouse money, and the amount owed.*

Person owing you or your spouse money	**Amount owed to you**	**Amount owed to your spouse**
none	$ none	$ N/A
	$	$
	$	$
	$	$

7. *State the persons who rely on you or your spouse for support.*

Name [or, if under 18, initials only]	**Relationship**	**Age**
none	N/A	N/A

8. *Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate.*

	You	Your Spouse
Rent or home-mortgage payment (including lot rented for mobile home) Are real estate taxes included? ☐ Yes ☒ No Is property insurance included? ☐ Yes ☒ No	$ 500	$ N/A
Utilities (electricity, heating fuel, water, sewer, and telephone)	$ 71.00 57.12	$ N/A
Home maintenance (repairs and upkeep) postage	$ 15.28 10.00	$ N/A
Food stationery	$ 11.00 197.40	$ N/A
Clothing; shoe repair website	$ 10.00 15.00	$ N/A
Laundry and dry-cleaning	$ 10.00	$ N/A
Medical and dental expenses; eyeglasses	$ 80.00 20.00	$ N/A
Transportation (not including motor vehicle payments)	$ 5.50	$ N/A
Recreation, entertainment, newspapers, magazines, etc. books	$ 20.00	$ N/A
Insurance (not deducted from wages or included in mortgage payments)	$ 1,022.30 TOTAL	
Homeowner's or renter's:	$ N/A	$ N/A
Life:	$ N/A	$ N/A
Health:	$ N/A	$ N/A
Motor vehicle:	$ N/A	$ N/A
Other:	$	$
Taxes (not deducted from wages or included in mortgage payments) (specify):	$ N/a	$ N/A
Installment payments		
Motor Vehicle:	$ N/A	$ N/A
Credit card (name):	$ N/A	$ N/A
Department store (name):	$ N/A	$ N/A
Other:	$	$

Alimony, maintenance, and support paid to others	$ none	$ none
Regular expenses for operation of business, profession, or farm (attach detailed statement)	$ none	$ none
Other (specify):	$	$
Total monthly expenses:	$	$

9. *Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?*

[X] Yes [ ] No If yes, describe on an attached sheet.

38. As it is, my monthly expenses of $1,022.30 exceed by far my monthly income of $684. The trend is toward fast exhaustion of my ever-diminishing savings.

39. That trend will be substantially accelerated by the impending drastic reduction of Medicare and Medicaid benefits and continued inflation, which keeps reducing the purchasing power of my allowances and savings. I am on a race toward insolvency.

1. Judge Vargas and the defendants may exhaust me financially

40. Since 8 September 2021, the two healthcare insurer defendants -EmblemHealth (Emblem) and Maximus Federal Services (Maximus)- have in connivance with Medicare abused me with their "delay, deny, defend" tactics. They will in all likelihood continue abusing me through motion practice that will tie up all of my resources. They will do so with the support of Judge Vargas.

41. Indeed, J. Vargas already extended, that is, "delayed", by months the time for them to answer my complaint. She uncritically accepted the bogus allegation of 14 March by her former colleagues, the AUSA SDNY, that "we requested a certified

copy of the Administrative Record and have been told that it will not be ready until May 21, 2025"(SDNY:191).

42. The Judge and DOJ disregarded my request that Medicare and DoJ substantiate that perfunctorily phrased allegation(SDNY:207§G) by producing a copy of that request; the name, title, and contact information of the person from whom the "Administrative Record" was requested, and of the person who "told" AUSA that it would "not be ready until May 21" and why; etc. I wanted to know whether such 'unreadiness' was a standard practice or an exceptional event.

43. I pointed out that Medicare had in its possession the "Administrative Record" when its Medicare Appeals Council was using it to decide my appeal from the decision of the administrative law judge (ALJ) of August 24, 2022. The Council was required to decide my appeal of October 28, 2022[10], within 90 days. Not only was it derelict in that duty, but also failed to answer my request that it explain its failure to abide by the law. Yet, I sent my requesting email to around 30 of its top officers daily for two years, more than 11,000 emails in the aggregate! Medicare decided my appeal only on 17 October 2024(SDNY:57).

44. That contemptuous silence on the part of top officers to my emails was not coincidental. So many people for such a long time could only have engaged in the same conduct without any defection or slip up if they were proceeding in coordination to wear me down and induce me to abandon my claims.

[10] http://Judicial-Discipline-Reform.org/ALJ/22-10-26DrRCordero-Medicare_Appeals_Council.pdf

45. Medicare knew that after its 17 October decision, I would have 60 days to appeal to a U.S. district court. It had to keep the "Administrative Record" available in case I appealed because in that event, it would have to send it as a matter of course to AUSA and to parties who requested it during discovery.

46. What is more, Medicare knew that I had gone through the four administrative levels of appeal; that I am a lawyer; and that in my emails I had both expressed my determination to appeal to a district court and informed those Medicare officers that I had in fact done so. Hence, Medicare knew that it had to send the "Administrative Record" to AUSA.

47. On 16 December 2024(SDNY:1), I timely appealed the Council's decision. Since then, I have informed thereof the 29 Medicare defendants and others by daily emails. It was blatantly bogus for Medicare and AUSA to allege that the "Administrative Record" would not be ready until May 21, 2025(SDNY:192). Judge Vargas did not even acknowledge receipt of, let alone discuss, my motion(SDNY:191) properly e-filed and requesting that DoJ and Medicare substantiate that allegation and that the extension cum "delay" not be granted.

48. I have a right to claim against those officers who have violated the law, abused judicial process, obstructed justice, and left me in pain for years, thus inflicting on me injury in fact through their coordinated "delay, deny, defend" tactics.

49. Judge Vargas has no justification in law or in fact to pretend that my claims against them are "frivolous" and my appeal to CA2 "not in good faith". She knew that and would have known it if she had proceeded with due diligence to examine critically and impartially the motion of AUSA, Emblem, and Maximus

for an extension of time to answer my complaint and my written request that she not grant it.(SDNY:191)

50. The above is precedent for Medicare and Judge Vargas's lack of qualms about disregarding the law and the facts. If they cannot wear me down through "delay, deny, defend" tactics, they will exhaust me financially, e.g., by the Judge not certifying my IFP status for appeal; by defendants claiming that an 'emergency' prevented them from showing up for a deposition set up at my expense; by demanding and granting my posting of a bond; etc.

2. A test case in the public interest should not be hindered financially

51. I respectfully submit that CA2 should facilitate my appeal in its court and the proceedings below because I am prosecuting this action, not only in my interest, but also in the public interest:

52. There are 67.3 millions of Medicare insureds who are 'old, sick, disabled, or suffering from certain chronic conditions'[11]. The overwhelming majority of them lack the physical and emotional stamina as well as the knowledge of the law and the necessary research, writing, and arguing skills to do what I have already done: litigate through the four Medicare administrative levels of appeal and keep climbing to the fifth level by appealing to a district court for judicial review and

[11] Medicare Statistics And Facts In 2025 – Forbes Advisor; https://www.forbes.com/advisor/health-insurance/medicare/medicare-statistics/#:~:text=As%20of%20April%202024%2C%20approximately%2067.3%20million%20U.S.,Centers%20for%20Medicare%20and%20Medicaid%20services%20%5B1%5D%20.

even going higher to the sixth level: a U.S. Court of Appeals.

53. Therefore, I should be, not hindered, but rather supported financially so that I can continue prosecuting this case in the public interest. The precedential rationale for this support is found in class actions: People who cannot afford to defend and assert their rights individually against entities that wield greatly superior power, are represented jointly in their collective interest.

54. This Court should faithfully abide by its members' oath of office at 28 U.S.C. §453, to "do equal right to the poor [in general, and in the healthcare and justice systems, in particular, which are ever more unaffordable and inaccessible due to their growing cost and overwhelming complexity] and to the rich [in connections and the means of getting away with abuse committed through their coordinated modus operandi based on their claim evasive "delay, deny, defend" tactics]". This is how the Supreme Court in *Anders*[3] *above* stated the issue of equality:

> Beginning with *Griffin v. Illinois,* 351 U. S. 12 (1956), where it was held that equal justice was not afforded an indigent appellant where the nature of the review "depends on the amount of money he has," at 351 U. S. 19, and continuing through *Douglas v. California,* 372 U. S. 353 (1963), this Court has consistently held invalid those procedures "where the rich man, who appeals as of right, enjoys the benefit of counsel's examination into the record, research of the law, and marshalling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is without merit, is forced to shift for himself."

55. CA2 should not allow "the rich" in judicial power to strip me of 'access to appellate justice' by abusing my lack of financial means. That is contrary to due process and its underlying "traditional notions of fair play and substantial justice"

(*International Shoe Co. v. Washington,* 326 U.S. 310, 66 S.Ct. 154 (1945)). In this case, the difficulty of access to the court is measured, not in a long geographic distance to the courthouse, but rather in small financial means to pay its fees.

56. The governing consideration should be "in the interest of justice". That interest was not protected, much less advanced, by Judge Vargas's rushing out a conclusory characterization of my claims as "frivolous". The Supreme Court in *Anders*[3] *above* put it this way:

> We believe that [the judge]'s bare conclusion, as evidenced by his "no merit" letter, was not enough. It smacks of the treatment that Eskridge received, which this Court condemned, that permitted a trial judge to withhold a transcript if he found that a defendant "has been accorded a fair and impartial trial, and, in the Court's opinion, no grave or prejudicial errors occurred therein." *Eskridge v. Washington State Board,* 357 U. S. 214, 357 U. S. 215 (1958). Such a procedure, this Court said, "cannot be an adequate substitute for the right to full appellate review available to all defendants".[386 U.S. 743]
>
> [I]n still another case in which "a state officer…" was given the power to deprive an indigent of his appeal by refusing to order a transcript merely because he thought the "appeal would be unsuccessful," we reversed, finding that such a procedure did not meet constitutional standards. *Lane v. Brown,* 372 U. S. 477 (1963).

57. Scores of millions of people have been and still are abused by Medicare and its insurers acting in coordination. The immense majority of them cannot individually protect themselves from the rich in abusive motive, opportunity, and tactics. This case affords a unique vehicle to establish a precedent that will enable those people as a class to hold the rich abusers accountable and liable. Justice requires that the progress of that vehicle towards that precedent be

facilitated and supported. That begins by granting this IFP motion. (Cf. SDNY:80§C. A defender of the public interest deserves the Court's "solicitude")

10. *Have you spent - or will you be spending - any money for expenses or attorney fees in connection with this lawsuit?* [X] Yes [ ] No

If yes, how much? $

58. I will be devastated financially if the 27 dismissed defendants of the 29 named by me are reinstated, but instead of the U.S. Marshals Service being instructed to serve them, I have to pay for printing the complaint and the summons and serving them on the defendants. In addition, I may have to pay for investigations, depositions, witness fees, expert witnesses, transcripts, transportation, etc.

11. *Provide any other information that will help explain why you cannot pay the docket fees for your appeal.*

59. Since 8 September 2021, when the triggering healthcare event occurred, I have strived to receive the care that I need. The insurers with the connivance of Medicare have subjected my claim to their evasive "delay, deny, defend" tactics.

60. As a result of not having received the needed healthcare, now I have two foci of infection. The repeated 'second opinions' of the doctors over the years is that I run the risk of having that infection travel through the blood stream to the heart and infect it. That can have fatal consequences on its own, and all the more so since I already suffer from a heart condition.

61. The healthcare that I need will cost more than $10,000, provided there are no complications, but if there are, it could end up being much more expensive and having permanent adverse consequences. At my age, I am not employed and am

unemployable. Whatever money I do not use to survive day to day, I must save for the moment when the necessary healthcare cannot be postponed anymore.

62. This situation has been substantiated in the briefs and supporting documents that I have filed at the four levels of Medicare administrative appeals and the current fifth level of appeal for judicial review at the U.S. District Court, SDNY. It can be reasonably assumed that such substantiation convinced SDNY Chief Judge Laura Taylor Swain to grant my application to proceed IFP in her court.(SDNY:69)

    a. What justification did J. Vargas have to contradict Chief Judge Swain? Both judges based their decisions on the same and sole party-filed paper at the time, to wit, my complaint.(docket entry no. 1; SDNY:1 and 111)

    b. Therein lies a conflict between judges. Its resolution warrants CA2 taking this appeal on an IFP basis.

    c. CA2 should not join J. Vargas in raising such a high financial hurdle that denies me 'access to appellate justice' while allowing the "appearance of impropriety"[7] of a retaliatory motive to go ahead to deny my IFP status for my CA2 appeal.

63. On what medical qualifications did Judge Vargas override the opinions of the doctors, i.e., that the healthcare prescribed was a matter of "medical necessity", in order to state conclusorily that my claims for its insurance coverage are "frivolous" and my appeal to CA2 would be "not in good faith" so that she decided to deny me IFP status for the purpose of any appeal to CA2 by me from her

decisions?(SDNY:89, 399)

64. On what set of "alternative facts" that J. Vargas did not disclose, let alone argue, did she rely to disregard the indisputable fact of which she could have taken judicial notice, to wit, that healthcare insurers engage as their modus operandi in abusive claim evasive "delay, deny, defend" tactics? The latter give rise to valid claims that insureds may pursue in court.

65. In fact, Luigi Mangione killed United Healthcare CEO Brian Thompson in Manhattan on 4 December 2024. Since then, it has been repeatedly reported that United, the largest healthcare insurer in the U.S., denies 1/3 of all claims! The leader of an industry sets the competitive and operational standards for the rest of its members.

66. Not surprisingly, medical debt is a leading cause of personal bankruptcy. I must not go bankrupt, for at my age and in my health condition, I will not be able to recover from it.

67. Abuse by insurers, medical services and equipment providers, and Medicare created such public outrage that Congress passed the No Surprises Act. Although it entered into effect on 1 January 2022, the Act is so poorly complied with and enforced that it has not stopped the abuse of insureds.

68. How many other parties will CA2 allow J. Vargas to harm by abusing her power before it reviews her exercise of it and her judicial temperament?

12. *State the city and state of your legal residence*
Bronx, NY

Your daytime phone number: (718)827-9521

Your age: 72 *Your years of schooling:* 22+

69. I hold a Ph.D. degree in law from the University of Cambridge in the United Kingdom; a law degree from La Sorbonne in Paris; and a Master of Business Administration from the University of Michigan in Ann Arbor, MI. What I have to show for that education is, among other things, the law and business articles that I research and write, and craft with strategic thinking. I post some of my articles on my website at http://www.Judicial-Discipline-Reform.org. They have attracted so many webvisitors -willing and able to read intellectually demanding articles, which points to their being above-average educated and influencers- and impressed them so positively that as of 4 July 2025, the number of visitors who had become subscribers was **57,088**.(next)

C. Action requested

70. Therefore, I respectfully request that the court:

a. grant this motion to proceed IFP in the Court of Appeals;

b. if this court denies this motion, submit it to the Court of Appeals;

c. acknowledge that this appeal is a test case prosecuted in my and the public interest of millions of people who are old, sick, disabled, and afflicted by certain chronic health conditions, and who lack the emotional and physical stamina and knowledge of the law to assert their healthcare

claims against multibillion dollar insurers who in coordination and as their modus operandi evade those claims through their abusive "delay, deny, defend" tactics, so that this appeal should in the interest of doing justice to such public be facilitated and afforded all support to proceed;

d. remove the taint of impropriety and "even the appearance of impropriety"[7] above by Judge Vargas recusing herself and having a different judge or district judges en banc assigned to it.

Dated: 4 July 2025

Dr. Richard Cordero, Esq.

Dr. Richard Cordero, Esq.
2165 Bruckner Blvd.
Bronx, NY City 10472-6505
tel. (718) 827-9521

Dr.Richard.Cordero_Esq@verizon.net, CorderoRic@yahoo.com,
DrRCordero@Judicial-Discipine-Reform.org

Table of Contents
of
The Exhibits

Users ‹ Judicial Discipline Reform — WordPress

https://www.judicial-discipline-reform.org/wp-admin/users.php

From Internet Explo... | Other favorites

Judicial Discipline Reform | Live | 1 | 1 | + New | Caching | Howdy, Dr. Richard Cordero, Esq.

Screen Options | Help

- Bluehost
- Dashboard
- Jetpack 226
- Posts
- Media
- Pages
- Portfolio
- Comments 1
- Feedback
- WooCommerce
- Products
- Payments
- Analytics
- Marketing
- Appearance
- Plugins
- Users
  - All Users
  - Add User
  - Profile
- Tools
- Settings
- Security 3

Users

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097754234379929	—	heoetwtm@streetwormail.com	Subscriber	0	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Daniel Patrick Moynihan U.S Courthouse
500 Pearl Street, New York, NY 10007
tel.: (212) 805-0136
https://www.nysd.uscourts.gov/

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2024 DEC 16 PM 3:35

Docket No._____Cv_____

Jury trial requested

Appellant/Plaintiff

Dr. Richard Cordero, Esq.

-vs-

Respondents/defendants in their official and individual capacities (see identifying information on page SDNY:5§D below)

1A. The Secretary of Health and Human Services (HHS);
the respective directors/heads/top officers of:

2A. the HHS Departmental Appeals Board

3A. the HHS Medicare Operations Division

4A. the HHS Medicare Appeals Council

5A. the Office of Medicare Hearings and Appeals (OMHA) Headquarters

6A. the OMHA Centralized Docketing

7A. David Eng, Esq.; 8A. John Colter; 9A. Jon Dorman; 10A. Dr. Sherese Warren; 11A. Erin Brown; 12A. Andrenna Taylor Jones; 13A. James "Jim" Griepentrog;

14A. ALJ Dean Yanohira and 15A. Legal Assistant Deniese Elosh, both in OMHA Phoenix Field Office, AZ

16A. ALJ Loranzo Fleming, OMHA Atlanta Field Office, GA

1B. Health Insurance Plan of Greater New York (HIP);

2B. EmblemHealth;

3B. EmblemHealth President and CEO Karen Ignagni;

4B. the Director of EmblemHealth Grievance and Appeals Department

HIP and/or EmblemHealth officers:

5B. Sean Hillegass; 6B. Stephanie Macialek; 7B. Melissa Cipolla. 8B. Shelly Bergstrom; 9B. Dr. Sandra Rivera-Luciano,

10B. The Director of EmblemHealth Quality Risk Management Department

COMPLAINT
and
appeal
from the final decision
of
Medicare Appeals
Council
No. M-23-386;
M-23-2791,
M-23-3216, and
M-23-32151; and

OMHA Appeal No.
3-108 1720 5455

Medicare Id. #
8G24-KQ8-WV67

ECAPE Id. E1021112;

EmblemHealth Id. #
K405 191 5001

Health Insurance Plan of Greater Newy York (HIP) and EmblemHealth cases 1063 8576 et al.
and
motions for default judgment,
judgment on the pleadings,
and summary judgment

[1] The Council stated in its decision that it has consolidated these M-# cases under M-23-386.

ECF,PRO−SE

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:24−cv−09778−UA

Cordero v. The Secretary of Health and Human Services et al
Assigned to: Judge Unassigned
Cause: 42:1395w−21 Medicare Act (Eligibility, Election, and Enrollment)

Date Filed: 12/16/2024
Jury Demand: None
Nature of Suit: 151 Contract: Recovery Medicare
Jurisdiction: Federal Question

Plaintiff

Richard Cordero

represented by **Richard Cordero**
2165 Bruckner Blvd.
Bronx, NY 10472
Email: Dr.Richard.Cordero_Esq@verizon.net
PRO SE

V.

Defendant

The Secretary of Health and Human Services

Defendant

Health Insurance Plan of Greater New York

Defendant

HHS Department of Appeals Board, MS 6127
The Director

Defendant

Emblem Health

Defendant

Medicare Operations Division − Departmental Appeals Board
The Director

Defendant

Karen Ignagni
President and CEO

Defendant

Medicare Appeals Council (MAC)

Defendant

Grievance and Appeals Department
The Director

Defendant

Office of Medicare Hearings and Appeals (OMHA) Headquarters
The Director

Defendant

Sean Hillegrass
Supervisor, Grievance and Appeals Department

Defendant

OMHA Centralized Docketing
The Director

Defendant

Stefanie Macialek
Specialist, Grievance and Appeals Department

Defendant

David Eng, Esq.
Lead Attorney Advisor

Defendant

Melissa Cipolla
Senior Specialist, Grievance and Appeals Department

Defendant

John Colter
Supervisor of Legal Administrative Specialists

Defendant

Shelly Bergstrom
Quality Risk Management

Defendant

Jon Dorman
Director

Defendant

Sandra Rivera−Luciano
Medical Director

Defendant

Sherese Warren
Director, Central Operations

Defendant

The Director, Quality Risk Management

Defendant

Erin Brown
Senior Legal Supervisor

Defendant

Maximus Federal Services

Defendant

Andrenna Taylor Jones
Senior Attorney Advisor

Defendant

The President

Defendant

The CEO

Defendant

James "Jim" Griepentrog
Legal Administrative Specialist

Defendant

The Director

Defendant

ALJ Dean Yanohira

Defendant

Denise Elosh
Legal Assisant

Defendant

John and Jane Doe
Employees of OMHA Phoenix and Atlanta Offices and/or in the HHS Departments and Offices who participated in the coordinated disregard of Plaintiff's phone calls and mail

Defendant

ALJ Loranzo Fleming

Defendant

John and Jane Doe
HIP and/or Emblem Health Officers who interacted or failed to interact with Emblem Health employees in the Philippines and the US

Defendant

Merrick Garland
US Attorney General

Defendant

Damian Wiiliams, Esq.

Date Filed	#	Docket Text
12/16/2024	1	COMPLAINT against Emblem Health, Grievance and Appeals Department, HHS Department of Appeals Board, MS 6127, Health Insurance Plan of Greater New York, Karen Ignagni, Medicare Appeals Council (MAC), Medicare Operations Division − Departmental Appeals Board, The Secretary of Health and Human Services. Document filed by Richard Cordero.(anc) (Entered: 12/20/2024)

12/16/2024	2	REQUEST TO PROCEED IN FORMA PAUPERIS. Document filed by Richard Cordero.(anc) (Entered: 12/20/2024)
12/16/2024	3	PRO SE CONSENT TO RECEIVE ELECTRONIC SERVICE. The following party: Richard Cordero consents to receive electronic service via the ECF system. Document filed by Richard Cordero.(anc) (Entered: 12/20/2024)
12/16/2024	4	CIVIL COVER SHEET filed. (anc) (Entered: 12/20/2024)
12/16/2024	5	REQUEST FOR WAIVER OF SERVICE. Document filed by Richard Cordero. (anc) (Entered: 12/20/2024)
12/16/2024	7	WAIVER OF SERVICE OF SUMMONS. Document filed by Richard Cordero. (anc) (Entered: 12/26/2024)
12/19/2024	6	MOTION for Permission for Richard Cordero to participate in electronic case filing in this case. Document filed by Richard Cordero. (sac) (Entered: 12/23/2024)
12/23/2024	9	APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS. Document filed by Richard Cordero.(tg) (Entered: 12/27/2024)
12/26/2024	8	STANDING ORDER IN RE CASES FILED BY PRO SE PLAINTIFFS (See 24−MISC−127 Standing Order filed March 18, 2024). To ensure that all cases heard in the Southern District of New York are handled promptly and efficiently, all parties must keep the court apprised of any new contact information. It is a party's obligation to provide an address for service; service of court orders cannot be accomplished if a party does not update the court when a change of address occurs. Accordingly, all self−represented litigants are hereby ORDERED to inform the court of each change in their address or electronic contact information. Parties may consent to electronic service to receive notifications of court filings by email, rather than relying on regular mail delivery. Parties may also ask the court for permission to file documents electronically. Forms, including instructions for consenting to electronic service and requesting permission to file documents electronically, may be found by clicking on the hyperlinks in this order, or by accessing the forms on the courts website, nysd.uscourts.gov/forms. The procedures that follow apply only to cases filed by pro se plaintiffs. If the court receives notice from the United States Postal Service that an order has been returned to the court, or otherwise receives information that the address of record for a self−represented plaintiff is no longer valid, the court may issue an Order to Show Cause why the case should not be dismissed without prejudice for failure to comply with this order. Such order will be sent to the plaintiffs last known address and will also be viewable on the court's electronic docket. A notice directing the parties' attention to this order shall be docketed (and mailed to any self−represented party that has appeared and has not consented to electronic service) upon the opening of each case or miscellaneous matter that is classified as pro se in the court's records. (Signed by Chief Judge Laura Taylor Swain on 3/18/2024) (anc) (Entered: 12/26/2024)

[No entry yet re judge assigned.]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RECEIVED
SDNY PRO SE OFFICE
2024 DEC 16 PM 4:30

Dr. Richard Cordero, Esq.

(full name of the plaintiff or petitioner applying (each person must submit a separate application))

-against-

_____ CV _____ ( ) ( )

(Provide docket number, if available; if filing this with your complaint, you will not yet have a docket number.)

The Secretary of Health & Human Services; Health Insurance Plan of Greater NY EmblemHealth, its Grievance &Appeals Dept, its Supervisor Sean Hillegass; Maximus Federal Services; Legal Assistant Denise Elosh and ALJ Dean Yanohira, OMHA Phoenix Field Office, AZ; ALJ Loranzo Fleming, OMHA Atlanta Field Office, GA; John Doe and Jane Doe, who are employees in the OMHA Phoenix and Atlanta Offices and the HHS who participated in the coordinated disregard of plaintiff's phone calls, voice mail, and over 11,000 emails, and in filing a complaint against plaintiff with the Federal Protective Services; John Doe and Jane Doe, who are Emblem officers who interacted or failed to interact with Emblem employees in The Philippines and in the U.S. to plaintiff's detriment.

APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS

I am a plaintiff/petitioner in this case and declare that I am unable to pay the costs of these proceedings and I believe that I am entitled to the relief requested in this action. In support of this application to proceed *in forma pauperis* (IFP) (without prepaying fees or costs), I declare that the responses below are true: who are EmblemHealth officers who interacted or failed to interact with EmblemHealth employees in The Philippines and

1. *Are you incarcerated?* ☐ Yes ☒ No (If "No," go to Question 2.)
   I am being held at: _____

   Do you receive any payment from this institution? ☐ Yes ☒ No

   Monthly amount: _____

   If I am a prisoner, *see* 28 U.S.C. § 1915(h), I have attached to this document a "Prisoner Authorization" directing the facility where I am incarcerated to deduct the filing fee from my account in installments and to send to the Court certified copies of my account statements for the past six months. *See* 28 U.S.C. § 1915(a)(2), (b). I understand that this means that I will be required to pay the full filing fee.

2. Are you presently employed? ☐ Yes ☒ No

   If "yes," my employer's name and address are:

   Gross monthly pay or wages: _____

   If "no," what was your last date of employment? _____

   Gross monthly wages at the time: _____

3. In addition to your income stated above (which you should not repeat here), have you or anyone else living at the same residence as you received more than $200 in the past 12 months from any of the following sources? Check all that apply.

   (a) Business, profession, or other self-employment ☒ Yes ☐ No
   (b) Rent payments, interest, or dividends ☐ Yes ☒ No

(c) Pension, annuity, or life insurance payments	☐ Yes	☒ No
(d) Disability or worker's compensation payments	☐ Yes	☒ No
(e) Gifts or inheritances	☐ Yes	☒ No
(f) Any other public benefits (unemployment, social security, food stamps, veteran's, etc.)	☒ Yes	☐ No
(g) Any other sources	☒ Yes	☐ No

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

EBT $292 per month; and HealthFirst Medicare Advantage Health Insurance Plan for Dual Medicare and Medicaid beneficiary allowance of $575 every three months.

If you answered "No" to all of the questions above, explain how you are paying your expenses:

4. How much money do you have in cash or in a checking, savings, or inmate account?

In cash $41; checking account $7,629; savings account $15,996.

5. Do you own any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value, including any item of value held in someone else's name? If so, describe the property and its approximate value:

I do not have anything of the above, except that I share with my siblings ownership of a home in Puerto Rico, which is occupied by my sister and her family. We do not know the value of this home, built over 65 years ago.

6. Do you have any housing, transportation, utilities, or loan payments, or other regular monthly expenses? If so, describe and provide the amount of the monthly expense:

My monthly rent is $500; groceries and household products $215; electricity $65; telephone and Internet services $47; transportation $41= $868 per month

7. List all people who are dependent on you for support, your relationship with each person, and how much you contribute to their support (only provide initials for minors under 18):

None

8. Do you have any debts or financial obligations not described above? If so, describe the amounts owed and to whom they are payable:

$19,000 Educational loan owed to Mohela.

Declaration: I declare under penalty of perjury that the above information is true. I understand that a false statement may result in a dismissal of my claims.

16 December 2024	Dr. Richard Cordero, Esq.
Dated	Signature
Cordero, Richard	
Name (Last, First, MI)	Prison Identification # (if incarcerated)
2165 Bruckner Blvd	Bronx, NY City NY 10472-6506
Address	City State Zip Code
(718)827-9521	Dr.Richard.Cordero_Esq@verizon.net
Telephone Number	E-mail Address (if available)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO, ESQ.,

Plaintiff,

-against-

THE SECRETARY OF HEALTH AND HUMAN SERVICES, ET AL.,

Defendants.

24-CV-9778 (UA)

ORDER GRANTING IFP APPLICATION

LAURA TAYLOR SWAIN, Chief United States District Judge:

Leave to proceed in this Court without prepayment of fees is authorized. *See* 28 U.S.C. § 1915.

SO ORDERED.

Dated: January 28, 2025
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge

12/23/2024	9	APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS. Document filed by Richard Cordero.(tg) (Entered: 12/27/2024)
12/26/2024	8	STANDING ORDER IN RE CASES FILED BY PRO SE PLAINTIFFS (See 24-MISC-127 Standing Order filed March 18, 2024). To ensure that all cases heard in the Southern District of New York are handled promptly and efficiently, all parties must keep the court apprised of any new contact information. It is a party's obligation to provide an address for service; service of court orders cannot be accomplished if a party does not update the court when a change of address occurs. Accordingly, all self-represented litigants are hereby ORDERED to inform the court of each change in their address or electronic contact information. Parties may consent to electronic service to receive notifications of court filings by email, rather than relying on regular mail delivery. Parties may also ask the court for permission to file documents electronically. Forms, including instructions for consenting to electronic service and requesting permission to file documents electronically, may be found by clicking on the hyperlinks in this order, or by accessing the forms on the courts website, nysd.uscourts.gov/forms. The procedures that follow apply only to cases filed by pro se plaintiffs. If the court receives notice from the United States Postal Service that an order has been returned to the court, or otherwise receives information that the address of record for a self-represented plaintiff is no longer valid, the court may issue an Order to Show Cause why the case should not be dismissed without prejudice for failure to comply with this order. Such order will be sent to the plaintiffs last known address and will also be viewable on the court's electronic docket. A notice directing the parties' attention to this order shall be docketed (and mailed to any self-represented party that has appeared and has not consented to electronic service) upon the opening of each case or miscellaneous matter that is classified as pro se in the court's records. (Signed by Chief Judge Laura Taylor Swain on 3/18/2024) (anc) (Entered: 12/26/2024)
12/26/2024		CASE MANAGEMENT NOTE: For each electronic filing made in a case involving a self-represented party who has not consented to electronic service, the filing party must serve the document on such self-represented party in a manner permitted by Fed. R. Civ. P. 5(b)(2) (other than through the ECF system) and file proof of service for each document so served. Please see Rule 9.2 of the courts ECF Rules & Instructions for further information.. (anc) (Entered: 12/26/2024)
01/13/2025	10	LETTER from Richard Cordero dated 1/12/2025 re: Request to remove mistaken filing of certificate from complaint and docket.. Document filed by Richard Cordero. (ar) (Entered: 01/15/2025)
01/28/2025	12	ORDER GRANTING IFP APPLICATION: Leave to proceed in this Court without prepayment of fees is authorized. 28 U.S.C. § 1915. SO ORDERED. (Signed by Judge Laura Taylor Swain on 1/28/2025) (ar) (Entered: 01/29/2025)
01/29/2025		NOTICE OF CASE REASSIGNMENT to Judge Jeannette A. Vargas. Judge Unassigned is no longer assigned to the case..(kgo) (Entered: 01/29/2025)
01/31/2025	13	ORDER OF SERVICE: The Court dismisses Plaintiff's claims against ALJs Yanohira and Fleming because they seek monetary relief against a defendant who is immune from such relief, 28 U.S.C. § 1915(e)(2)(B)(iii), and, consequently, as frivolous, 28 U.S.C. § 1915(e)(2)(B)(i). The Court dismisses Plaintiff's claims against the "directors/heads/top officers" of the HHS Department Appeals Board, the HHS Medicare Operations Division, the HHS Medicare Appeals Council, the Office of Medicare Hearings and Appeals ("OMHA") Headquarters, the OMHA Centralized Docketing, as well as HHS and OMHA employees David Eng, John Colter, Jon Dorman, Sherese Warren, Erin Brown, Andrenna Taylor Jones, James Griepentrog, and Denise Elosh, under the doctrine of sovereign immunity, see 28 U.S.C. § 1915(e)(2)(iii), and consequently, for lack of subject matter jurisdiction, see Fed. R. Civ. P. 12(h)(3).The Court dismisses Plaintiff's claims against the Health Insurance

		Plan of Greater New York, Karen Ignagni, the "Director of EmblemHealth Grievance and Appeals Department," Sean Hillegass, Stefanie Macialek, Melissa Cipolla, Shelly Bergstrom, Dr. Sandra Rivera-Luciano, the "Director of Quality Risk Management" at EmblemHealth, the President of Maximus Federal Services, the CEO of Maximus, and the Director of Medicare Managed Care & PACE Reconsideration Project at Maximus, for failure to state a claim on which relief may be granted. See 28 U.S.C. § 1915(e)(2)(B)(ii). The Court grants Plaintiff 30 days' leave to replead his claims against these defendants in an amended complaint. The Court grants Plaintiff's motion for permission to file documents electronically (ECF 6).The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue). The Clerk of Court is directed to mail an information package to Plaintiff.SO ORDERED. Melissa Cipolla (Senior Specialist, Grievance and Appeals Department), John Colter (Supervisor of Legal Administrative Specialists), ALJ Dean Yanohira, Jon Dorman (Director), Denise Elosh (Legal Assisant), David Eng, Esq. (Lead Attorney Advisor), ALJ Loranzo Fleming, James "Jim" Griepentrog (Legal Administrative Specialist), HHS Department of Appeals Board, MS 6127 (The Director), Health Insurance Plan of Greater New York, Sean Hillegrass (Supervisor, Grievance and Appeals Department), Karen Ignagni (President and CEO), Stefanie Macialek (Specialist, Grievance and Appeals Department), Medicare Appeals Council (MAC), Medicare Operations Division - Departmental Appeals Board (The Director), OMHA Centralized Docketing (The Director), Office of Medicare Hearings and Appeals (OMHA) Headquarters (The Director), Sandra Rivera-Luciano (Medical Director), Andrenna Taylor Jones (Senior Attorney Advisor), The CEO, The Director, The Director, Quality Risk Management, The President, Sherese Warren (Director, Central Operations), Shelly Bergstrom (Quality Risk Management) and Erin Brown (Senior Legal Supervisor) terminated. Motions terminated: 6 MOTION for Permission for Richard Cordero to participate in electronic case filing in this case. filed by Richard Cordero. (Signed by Judge Jeannette A. Vargas on 1/31/2025) (mml) Transmission to Pro Se Assistants for processing. (Entered: 02/03/2025)
02/03/2025	14	SUMMONS ISSUED as to Emblem Health, Maximus Federal Services, The Secretary of Health and Human Services, U.S. Attorney and U.S. Attorney General. (nb) (Entered: 02/03/2025)
02/03/2025		FRCP 4 SERVICE PACKAGE HAND DELIVERED TO U.S.M.: on 2/3/2025 Re: Judge Jeannette A. Vargas 13 Order of Service. The following document(s) were enclosed in the Service Package: Complaint, Summons, IFP, Order of Service, Completed U.S.M. form(s) for defendant(s)Emblem Health, Maximus Federal Services, The Secretary of Health and Human Services, U.S. Attorney and U.S. Attorney General. (nb) (Entered: 02/03/2025)
02/03/2025	15	INFORMATION PACKAGE MAILED to Richard Cordero, at, on 2/3/2025 Re: 13 Order of Service. The following document(s) were enclosed in the Service Package: a copy of the order of service or order to answer and other orders entered to date, the individual practices of the district judge and magistrate judge assigned to your case, Instructions for Litigants Who Do Not Have Attorneys, Notice Regarding Privacy and Public Access to Electronic Case Files, a Motions guide, a notice that the Pro Se Manual has been discontinued, a Notice of Change of Address form to use if your contact information changes, a handout explaining matters handled by magistrate judges and consent form to complete if all parties agree to proceed for all purposes before the magistrate judge. (nb) (Entered: 02/03/2025)

PACER Service Center

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DR. RICHARD CORDERO, ESQ.,

Plaintiff,

-against-

THE SECRETARY OF HEALTH AND HUMAN SERVICES (HHS), ET AL.,

Defendants.

24-CV-9778 (JAV)

ORDER OF SERVICE

JEANNETTE A. VARGAS, United States District Judge:

Plaintiff, who is a licensed attorney proceeding *pro se*, brings this action under the court's federal question jurisdiction, seeking review of the Council of Medicare Appeals' denial of his requested medical coverage pursuant to 42 U.S.C. § 405(g), as well as claims for money damages. Named as Defendants are the United States Secretary of Health and Human Services ("HHS"), as well as dozens of other named and unnamed defendants, including, among others, two Administrative Law Judges ("ALJ"), the heads of various federal entities and other federal employees, and private insurance companies and their executives and other employees. By order dated January 28, 2025, the Court granted Plaintiff's request to proceed *in forma pauperis* ("IFP"), that is, without prepayment of fees. For the reasons set forth below, the Court directs service on the Secretary of HHS, EmblemHealth, and Maximus Federal Services; dismisses Plaintiff's claims against the remaining federal defendants; and dismisses with 30 days' leave to replead Plaintiff's claims against the remaining defendants.

STANDARD OF REVIEW

The Court must dismiss an IFP complaint, or portion thereof, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v.*

Adirondack Beverage Co., 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3). While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they *suggest*," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original). Because Plaintiff is an attorney, however, he is not entitled to the solicitude generally given to *pro se* litigants. *See Tracy v. Freshwater*, 623 F.3d 90, 102 (2d Cir. 2010) ("[A] lawyer representing himself ordinarily receives no such solicitude at all.").

DISCUSSION

A. Judicial immunity

Plaintiff attempts to sue ALJs Dean Yanohira and Loranzo Fleming for actions they allegedly took in the course of reviewing the denial of insurance coverage for Plaintiff's requested medical procedure. Judges are absolutely immune from suit for damages for any actions taken within the scope of their judicial responsibilities. *Mireles v. Waco*, 502 U.S. 9, 11 (1991). Generally, "acts arising out of, or related to, individual cases before the judge are considered judicial in nature." *Bliven v. Hunt*, 579 F.3d 204, 210 (2d Cir. 2009). "Even allegations of bad faith or malice cannot overcome judicial immunity." *Id.* (citations omitted). This is because, "[w]ithout insulation from liability, judges would be subject to harassment and intimidation . . . ." *Young v. Selsky*, 41 F.3d 47, 51 (2d Cir. 1994). Judicial immunity has been extended to others who perform functions closely associated with the judicial process. *Cleavinger v. Saxner*, 474 U.S. 193, 200 (1985). This immunity "extends to administrative officials performing functions closely associated with the judicial process because the role of the 'hearing examiner or administrative law judge . . . is functionally comparable to that of a judge.'"

Montero v. Travis, 171 F.3d 757, 760 (2d Cir. 1999) (quoting *Butz v. Economou*, 438 U.S. 478, 513 (1978)). Instead of suing an administrative law judge for damages, "[t]hose who complain of error in [administrative] proceedings must seek agency or judicial review." *Butz*, 438 U.S. at 514.

Judicial immunity does not apply when the judge takes action "outside" his judicial capacity, or when the judge takes action that, although judicial in nature, is taken "in absence of jurisdiction." *Mireles,* 502 U.S. at 9-10; *see also Bliven,* 579 F.3d at 209-10 (describing actions that are judicial in nature). But "the scope of [a] judge's jurisdiction must be construed broadly where the issue is the immunity of the judge." *Stump v. Sparkman,* 435 U.S. 349, 356 (1978).

Plaintiff does not allege any facts showing that ALJs Yanohira and Fleming acted beyond the scope of their judicial responsibilities or outside their jurisdiction. *See Mireles*, 509 U.S. at 11-12. Because Plaintiff sues ALJs Yanohira and Fleming for "acts arising out of, or related to, individual cases before [them]," they are immune from suit for such claims. *Bliven*, 579 F.3d at 210. The Court therefore dismisses Plaintiff's claims against ALJs Yanohira and Fleming because they seek monetary relief against a defendant who is immune from such relief, 28 U.S.C. § 1915(e)(2)(B)(iii), and, consequently, as frivolous, 28 U.S.C. § 1915(e)(2)(B)(i). *See Mills v. Fischer*, 645 F.3d 176, 177 (2d Cir. 2011) ("Any claim dismissed on the ground of absolute judicial immunity is 'frivolous' for purposes of [the in forma pauperis statute].").

B. Sovereign immunity

Plaintiff attempts to bring unspecified claims against the "directors/heads/top officers" of the HHS Department Appeals Board, the HHS Medicare Operations Division, the HHS Medicare Appeals Council, the Office of Medicare Hearings and Appeals ("OMHA") Headquarters, the OMHA Centralized Docketing, as well as HHS and OMHA employees David Eng, John Colter, Jon Dorman, Sherese Warren, Erin Brown, Andrenna Taylor Jones, James Griepentrog, and Denise Elosh. The doctrine of sovereign immunity bars federal courts from hearing all suits for

monetary damages against the federal government, including its agencies and employees acting in their official capacities, except where sovereign immunity has been waived. *See United States v. Mitchell*, 445 U.S. 535, 538 (1980) (quoting *United States v. Sherwood*, 312 U.S. 584, 586 (1941)). Because HHS is a federal agency and OMHA is a division of HHS, those entities and their employees are entitled to sovereign immunity for actions taken in their official capacities.[1] *See, e.g.*, *Wooten v. U.S. Dep't of Health & Human Servs.*, No. 10-CV-3728 (SAS), 2011 WL

[1] The Federal Tort Claims Act ("FTCA") provides a waiver of sovereign immunity for certain claims for damages arising from the tortious conduct of federal officers or employees acting within the scope of their office or employment. *See* 28 U.S.C. §§ 1346(b)(1), 2680. A claim brought under the FTCA must be brought against the United States. *See, e.g.*, *Holliday v. Augustine*, No. 14-CV-0855, 2015 WL 136545, at *1 (D. Conn. Jan. 9, 2015) ("The proper defendant in an FTCA claim is the United States, not individual federal employees or agencies.").

Before bringing a damages claim in a federal district court under the FTCA, a claimant must first exhaust his administrative remedies by filing a claim for damages with the appropriate federal government entity and must receive a final written determination. *See* 28 U.S.C. § 2675(a). This exhaustion requirement is jurisdictional and cannot be waived. *See Celestine v. Mount Vernon Neighborhood Health Ctr.*, 403 F.3d 76, 82 (2d Cir. 2005).

Here, the Court declines to construe the complaint as asserting claims under the FTCA because Plaintiff, who is an attorney and therefore not entitled to special solicitude, does not name the United States as a defendant, does not allege that he has exhausted his administrative remedies, and the complaint includes no indication that he intends to assert a claim under FTCA.

The Court also declines to construe the complaint as attempting to assert constitutional claims under *Bivens v. Six Unknown Names Agents*, 403 U.S. 388 (1971), against these defendants in their individual capacities because Plaintiff does not allege any facts showing that any of these individual defendants, except Elosh, were personally involved in the events giving rise to his claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) (to state a *Bivens* claims, "a plaintiff must plead that each Government-official defendant, through the official's own individual actions, as violated the Constitution"); *Perez v. Hawk*, 302 F. Supp. 2d 9, 19 (E.D.N.Y. 2004) ("Because personal involvement by a federal official is prerequisite to liability under *Bivens,* federal officials who are not personally involved in an alleged constitutional deprivation may not be held vicariously liable under *Bivens* for the acts of subordinates.").

While Plaintiff alleges that Elosh, who is a legal assistant to ALJ Yanohira, defamed him when she filed a complaint against him with Federal Protective Services due to Plaintiff's allegedly harassing her, he alleges no facts suggesting that Elosh did anything that violated his federal constitutional rights to support a *Bivens* claim.

536448, at *6 (S.D.N.Y. Feb. 15, 2011) (HHS is a federal agency protected by sovereign immunity). The Court therefore dismisses Plaintiff's claims for damages against these defendants under the doctrine of sovereign immunity, *see* 28 U.S.C. § 1915(e)(2)(iii), and consequently, for lack of subject matter jurisdiction, *see* Fed. R. Civ. P. 12(h)(3); *Celestine v. Mt. Vernon Neighborhood Health Ctr.*, 403 F.3d 76, 82 (2d Cir. 2005).

C. Rule 8

Rule 8 of the Federal Rules of Civil Procedure requires a complaint to make a short and plain statement showing that the pleader is entitled to relief. Under the Rule, a complaint to include enough facts to state a claim for relief "that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true "[t]hreadbare recitals of the elements of a cause of action," which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

Plaintiff sues various private actors who are not alleged to work for any government entity: the Health Insurance Plan of Greater New York; EmblemHealth President and CEO Karen Ignagni; the "Director of EmblemHealth Grievance and Appeals Department"; Sean Hillegass, Supervisor of the Grievance and Appeals Department at EmblemHealth; Stefanie Macialek, a Specialist with the Grievance and Appeals Department at EmblemHealth; Melissa Cipolla, a Senior Specialist in the Grievance and Appeals Department of EmblemHealth; Shelly Bergstrom, Quality Risk Management at EmblemHealth; Dr. Sandra Rivera-Luciano, EmblemHealth

Medical Director; the "Director of Quality Risk Management" at EmblemHealth; the President of Maximus Federal Services; the CEO of Maximus; and the Director of Medicare Managed Care & PACE Reconsideration Project at Maximus.

Plaintiff's complaint does not comply with Rule 8 with respect to his claims against these defendants because he alleges no facts describing what these defendants did that violated his rights under state and federal law. In fact, aside from their inclusion in the caption of the complaint, many of these defendants are not mentioned at all in the complaint. The Court therefore dismisses Plaintiff's claims against these defendants for failure to state a claim on which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

The Court grants Plaintiff 30 days' leave to replead his claims against these defendants in an amended complaint. Any amended complaint Plaintiff files must comply with Rule 8's requirement that it include a short and plain statement showing that he is entitled to relief against each named defendant. Plaintiff should also make sure that any amended complaint complies with Rule 18 and 20 of the Federal Rules of Civil Procedure regarding joinder of claims and parties.

D. Service on the Secretary of HHS, EmblemHealth, and Maximus

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.[2] *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all

[2]Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have effected service until the Court reviewed the complaint and ordered that any summonses be issued. The Court therefore extends the time to serve until 90 days after the date any summonses issue.

process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP).

To allow Plaintiff to effect service on Defendants Secretary of Health and Human Services, EmblemHealth, and Maximus Federal Services through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for each of these defendants. The Clerk of Court is further instructed to mark, on the USM-285 form for the Secretary of Health and Human Services, the box on the form labeled "Check for service on U.S.A." The Clerk of Court is also instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these defendants.

If the complaint is not served within 90 days after the date summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

E. Plaintiff's request to file electronically

The Court grants Plaintiff's motion for permission to file documents electronically (ECF 6). The ECF Rules & Instructions are available online at https://nysd.uscourts.gov/rules/ecf-related-instructions.

Following Plaintiff's registering to file documents electronically, he no longer will receive service of documents by postal mail, whether or not he previously consented to accept electronic service. All documents filed by the court, or any other party, shall be served on

Plaintiff by electronic notice to Plaintiff's designated email address. *See* Fed. R. Civ. P. 5(B)(2)(E).

Should Plaintiff have any questions regarding electronic filing, he may call the ECF Help Desk at (212) 805-0800.

CONCLUSION

The Court dismisses Plaintiff's claims against ALJs Yanohira and Fleming because they seek monetary relief against a defendant who is immune from such relief, 28 U.S.C. § 1915(e)(2)(B)(iii), and, consequently, as frivolous, 28 U.S.C. § 1915(e)(2)(B)(i).

The Court dismisses Plaintiff's claims against the "directors/heads/top officers" of the HHS Department Appeals Board, the HHS Medicare Operations Division, the HHS Medicare Appeals Council, the Office of Medicare Hearings and Appeals ("OMHA") Headquarters, the OMHA Centralized Docketing, as well as HHS and OMHA employees David Eng, John Colter, Jon Dorman, Sherese Warren, Erin Brown, Andrenna Taylor Jones, James Griepentrog, and Denise Elosh, under the doctrine of sovereign immunity, *see* 28 U.S.C. § 1915(e)(2)(iii), and consequently, for lack of subject matter jurisdiction, *see* Fed. R. Civ. P. 12(h)(3).

The Court dismisses Plaintiff's claims against the Health Insurance Plan of Greater New York, Karen Ignagni, the "Director of EmblemHealth Grievance and Appeals Department," Sean Hillegass, Stefanie Macialek, Melissa Cipolla, Shelly Bergstrom, Dr. Sandra Rivera-Luciano, the "Director of Quality Risk Management" at EmblemHealth, the President of Maximus Federal Services, the CEO of Maximus, and the Director of Medicare Managed Care & PACE Reconsideration Project at Maximus, for failure to state a claim on which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii). The Court grants Plaintiff 30 days' leave to replead his claims against these defendants in an amended complaint.

The Court grants Plaintiff's motion for permission to file documents electronically (ECF 6).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

The Clerk of Court is directed to mail an information package to Plaintiff.

SO ORDERED.

Dated: January 31, 2025
New York, New York

JEANNETTE A. VARGAS
United States District Judge

SERVICE ADDRESS FOR EACH DEFENDANT

1. Secretary of the United States Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

2. EmblemHealth
55 Water Street
New York, NY 10041

3. Maximus Federal Services
3750 Monroe Avenue, Ste. 702
Pittsford, NY 14534-1302

4. Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

5. United States Attorney
Southern District of New York
Civil Division
86 Chambers Street, 3rd Floor
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD CORDERO, Plaintiff, -v- THE SECRETARY OF HEALTH AND HUMAN SERVICES, EMBLEMHEALTH, MAXIMUS FEDERAL SERVICES, *et al.*, Defendants.	:	24-CV-9778 (JAV) ORDER

JEANNETTE A. VARGAS, United States District Judge:

On January 31, 2025, the Court issued an Order directing service on the United States Secretary of Health and Human Services, EmblemHealth, and Maximus Federal Services, and dismissing Plaintiff's claims against the remaining federal defendants. ECF No. 13. On February 14, 2025, Plaintiff submitted a motion for reconsideration of that Order. ECF No. 16. The Court denied that motion for reconsideration. ECF No. 27.

Plaintiff now seeks leave to "submit this case to this district court *en banc*." ECF Nos. 38, 41. Among other things, Plaintiff asks the *en banc* court to 1) reinstate the claims against the dismissed defendants and have them served by the U.S. Marshal; 2) "restore the IFP status that CJ Swain had granted Plaintiff but that [Judge] Vargas took away"; 3) grant Plaintiff's motion for default judgment; 4) reverse the order granting requests for an extension of time to answer; and 5) reassign this case to another judge. ECF Nos. 38, 41. This motion is DENIED.

"[N]either the Local Rules nor the Federal Rules of Civil Procedure provides for an 'en banc' review in the district courts." *Crossman v. Astrue*, 714 F. Supp. 2d 284, 286 (D. Conn.

2009). Even in the appellate courts, where *en banc* review is authorized, it is granted only in rare circumstances, such as when there is a conflict between panel opinions, with a Supreme Court opinion, or a Circuit split of opinions. Fed. R. App. P. 40. Nothing in Plaintiff's submission, which primarily concerns his disagreement with binding authority from the Supreme Court and Second Circuit regarding immunity and criticism of the manner in which this Court has managed this case, warrants such extraordinary relief.[1]

With respect to the substance of Plaintiff's requests, the Court previously denied Plaintiff's motion for reconsideration of its January 31 Order. The Court will not revisit that decision again as Plaintiff merely rehashes the arguments previously set forth in his motion for reconsideration. Plaintiff also seeks default judgment, but Plaintiff cannot meet the requirements of Federal Rule of Civil Procedure 55. No defendant is currently in default. With respect to the three defendants that have been served with process, the Court has extended their time to respond to the Complaint until July 21, 2025. ECF Nos. 33, 39, 40.

As to Plaintiff's *in forma pauperis* status, Plaintiff is under the misapprehension that his status has in some way been revoked. It has not. Plaintiff was granted "leave to proceed in this Court without prepayment of fees." ECF No. 12. He was in fact permitted to proceed in this Court without the payment of a filing fee, and Plaintiff retains his IFP status in the district court. But by its terms, the order issued by Chief Judge Swain was limited to proceedings in "this Court," that is, the district court. Chief Judge Swain did not grant him IFP status with respect to any appeal.

[1] Plaintiff directed his motion to Chief Judge Swain, under the misapprehension that she has "supervisory authority" over "all cases" in the District. ECF No. 44 ¶ 4. But Chief Judges are district court judges, and as such "lack[] the power of appellate review over [their] fellow district court judges." *In re McBryde*, 117 F.3d 208, 223 (5th Cir. 1997); *see also* 28 U.S.C. § 137. Only appellate courts have the authority to review and reverse the orders of the district court judge assigned to a case.

To the extent that Plaintiff complains that this Court's certification that any appeal from its January 31 or March 13 Orders would not be taken in good faith deprives him of a meaningful right of appeal, ECF No. 41 ¶ 71, such certifications are authorized by statute. *See* 28 U.S.C. § 1915(a)(3) ("An appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith."). Moreover, it is well established that, in civil cases, the merits of an appeal can be considered in determining whether a party is entitled to proceed *in forma pauperis*. *United States v. Kosic*, 944 F.3d 448, 449 (2d Cir. 2019).

Plaintiff also erroneously believes that, because ECF No. 30 indicates that his IFP motion was "terminated," this means that his motion for IFP status was denied. ECF No. 41 ¶¶ 67-69. It does not. On the ECF system, the notation on a docket that a motion is "terminated" simply means that the motion is no longer pending a decision. This could be because the motion was granted, denied, withdrawn, or for some other reason. In this case, the motion to proceed *in forma pauperis* was terminated because it had previously been granted by ECF No. 12.

Finally, the Court addresses Plaintiff's request that this case be reassigned to another judge. "Parties cannot pick and choose a judge to hear their case, and there is no process by which a party can request 'reassignment' based on a preference, a dislike of a particular judge, or a disappointment with a judge's rulings." *James v. State Univ. of New York*, No. 22-CV-4856 (JHR)(KHP), 2023 WL 3006104, at *2 (S.D.N.Y. Mar. 3, 2023). The Court therefore construes Plaintiff's request to reassign this case to another judge as raising a motion for recusal pursuant to 28 U.S.C. § 455. "[T]here is a strong presumption that a judge is impartial, and the movant bears the 'substantial' burden of overcoming that presumption." *James*, 2023 WL 3006104, at *2. Plaintiff has not met his burden to demonstrate that recusal is warranted, as he has pointed to no evidence that would reasonably call into question the Court's impartiality. "Generally, claims

of judicial bias must be based on extrajudicial matters, and adverse rulings, without more, will rarely suffice to provide a reasonable basis for questioning a judge's impartiality." *Chen v. Chen Qualified Settlement Fund*, 552 F.3d 218, 227 (2d Cir. 2009); *see also Liteky v. United States*, 510 U.S. 540, 555 (1994) ("[J]udicial rulings alone almost never constitute [a] valid basis for a bias or partiality recusal motion."). Plaintiff, who takes issue with orders issued by the Court and the Court's administration of this case, including its decision on routine extension requests, has not pointed to any such extrajudicial matters that would suggest bias. *Watkins v. Smith*, 561 F. App'x 46, 47 (2d Cir. 2014) ("[T]he fact that Plaintiff–Appellant and Appellants were unhappy with the district court's legal rulings and other case management decisions is not a basis for recusal.").

The Court has considered the remaining arguments raised in Plaintiff's papers and determined that they are without merit. The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

CONCLUSION

Plaintiff's motion is DENIED. The Clerk of Court is directed to terminate ECF Nos. 38 and 41.

SO ORDERED.

Dated: May 5, 2025
New York, New York

JEANNETTE A. VARGAS
United States District Judge

2006—Subsec. (a). Pub. L. 109–171 substituted "$350" for "$250".
2004—Subsec. (a). Pub. L. 108–447 substituted "$250" for "$150".
1996—Subsec. (a). Pub. L. 104–317 substituted "$150" for "$120".
1986—Subsec. (a). Pub. L. 99–500 and Pub. L. 99–591 substituted "$120" for "$60".
Subsec. (d). Pub. L. 99–336 struck out subsec. (d) which provided that section was not applicable to District of Columbia.
1978—Subsec. (a). Pub. L. 95–598 substituted "$60" for "$15".

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–171, title X, §10001(d), Feb. 8, 2006, 120 Stat. 184, provided that: "This section [amending this section and enacting provisions set out as notes under sections 1913 and 1931 of this title] and the amendment made by this section shall take effect 60 days after the date of the enactment of this Act [Feb. 8, 2006]."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–447, div. B, title III, §307(c), Dec. 8, 2004, 118 Stat. 2895, provided that: "This section [amending this section and section 1931 of this title] shall take effect 60 days after the date of the enactment of this Act [Dec. 8, 2004]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–317, title IV, §401(c), Oct. 19, 1996, 110 Stat. 3854, provided that: "This section [amending this section and section 1931 of this title] shall take effect 60 days after the date of the enactment of this Act [Oct. 19, 1996]."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99–336, §4(c), June 19, 1986, 100 Stat. 638, provided that: "The amendments made by this section [amending this section] shall apply with respect to any civil action, suit, or proceeding instituted on or after the date of the enactment of this Act [June 19, 1986]."

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(c) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

COURT FEES FOR ELECTRONIC ACCESS TO INFORMATION

Judicial Conference to prescribe reasonable fees for collection by courts under this section for access to information available through automatic data processing equipment and fees to be deposited in Judiciary Automation Fund, see section 303 of Pub. L. 102–140, set out as a note under section 1913 of this title.

§1915. Proceedings in forma pauperis

(a)(1) Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

(2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal, obtained from the appropriate official of each prison at which the prisoner is or was confined.

(3) An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.

(b)(1) Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of—

(A) the average monthly deposits to the prisoner's account; or

(B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

(2) After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds $10 until the filing fees are paid.

(3) In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action or criminal judgment.

(4) In no event shall a prisoner be prohibited from bringing a civil action or appealing a civil or criminal judgment for the reason that the prisoner has no assets and no means by which to pay the initial partial filing fee.

(c) Upon the filing of an affidavit in accordance with subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b), the court may direct payment by the United States of the expenses of (1) printing the record on appeal in any civil or criminal case, if such printing is required by the appellate court; (2) preparing a transcript of proceedings before a United States magistrate judge in any civil or criminal case, if such transcript is required by the district court, in the case of proceedings conducted under section 636(b) of this title or under section 3401(b) of title 18, United States Code; and (3) printing the record on appeal if such printing is required by the appellate court, in the case of proceedings conducted pursuant to section 636(c) of this title. Such expenses shall be paid when authorized by the Director of the Administrative Office of the United States Courts.

(d) The officers of the court shall issue and serve all process, and perform all duties in such cases. Witnesses shall attend as in other cases, and the same remedies shall be available as are provided for by law in other cases.

(e)(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

(f)(1) Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings, but the United States shall not be liable for any of the costs thus incurred. If the United States has paid the cost of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States.

(2)(A) If the judgment against a prisoner includes the payment of costs under this subsection, the prisoner shall be required to pay the full amount of the costs ordered.

(B) The prisoner shall be required to make payments for costs under this subsection in the same manner as is provided for filing fees under subsection (a)(2).

(C) In no event shall the costs collected exceed the amount of the costs ordered by the court.

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

(h) As used in this section, the term "prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

(June 25, 1948, ch. 646, 62 Stat. 954; May 24, 1949, ch. 139, §98, 63 Stat. 104; Oct. 31, 1951, ch. 655, §51(b), (c), 65 Stat. 727; Pub. L. 86–320, Sept. 21, 1959, 73 Stat. 590; Pub. L. 96–82, §6, Oct. 10, 1979, 93 Stat. 645; Pub. L. 101–650, title III, §321, Dec. 1, 1990, 104 Stat. 5117; Pub. L. 104–134, title I, §101[(a)] [title VIII, §804(a), (c)–(e)], Apr. 26, 1996, 110 Stat. 1321, 1321–73 to 1321–75; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., §§9a(c)(e), 832, 833, 834, 835, and 836 (July 20, 1892, ch. 209, §§1–5, 27 Stat. 252; June 25, 1910, ch. 435, 36 Stat. 866; Mar. 3, 1911, ch. 231, §5a, as added Jan. 20, 1944, ch. 3, §1, 58 Stat. 5; June 27, 1922, ch. 246, 42 Stat. 666; Jan. 31, 1928, ch. 14, §1, 45 Stat. 54).

Section consolidates a part of section 9a(c)(e) with sections 832–836 of title 28, U.S.C., 1940 ed.

For distribution of other provisions of section 9a of title 28, U.S.C., 1940 ed., see Distribution Table.

Section 832 of title 28, U.S.C., 1940 ed., was completely rewritten, and constitutes subsections (a) and (b).

Words "and willful false swearing in any affidavit provided for in this section or section 832 of this title, shall be punishable as perjury as in other cases," in section 833 of title 28, U.S.C., 1940 ed., were omitted as covered by the general perjury statute, title 18, U.S.C., 1940 ed., §231 (H.R. 1600, 80th Cong., sec. 1621).

A proviso in section 836 of title 28, U.S.C., 1940 ed., that the United States should not be liable for costs was deleted as covered by section 2412 of this title.

The provision in section 9a(e) of title 28, U.S.C., 1940 ed., respecting stenographic transcripts furnished on appeals in civil cases is extended by subsection (b) of the revised section to include criminal cases. Obviously it would be inconsistent to furnish the same to a poor person in a civil case involving money only and to deny it in a criminal proceeding where life and liberty are in jeopardy.

The provision of section 832 of title 28, U.S.C., 1940 ed., for payment when authorized by the Attorney General was revised to substitute the Director of the Administrative Office of the United States Courts who now disburses such items.

Changes in phraseology were made.

1949 ACT

This amendment clarifies the meaning of subsection (b) of section 1915 of title 28, U.S.C., and supplies, in subsection (e) of section 1915, an inadvertent omission to make possible the recovery of public funds expended in printing the record for persons successfully suing in forma pauperis.

EDITORIAL NOTES

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–134, §101[(a)] [title VIII, §804(a)(1)], designated first paragraph as par. (1), substituted "Subject to subsection (b), any" for "Any", struck out "and costs" after "of fees", substituted "submits an affidavit that includes a statement of all assets such prisoner possesses" for "makes affidavit", substituted "such fees" for "such costs", substituted "the person" for "he" in two places, added par. (2), and designated last paragraph as par. (3).

Subsec. (b). Pub. L. 104–134, §101[(a)] [title VIII, §804(a)(3)], added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 104–134, §101[(a)] [title VIII, §804(a)(2), (4)], redesignated subsec. (b) as (c) and substituted "subsections (a) and (b) and the prepayment of any partial filing fee as may be required under subsection (b)" for "subsection (a) of this section". Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 104–134, §101[(a)] [title VIII, §804(a)(2)], redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 104–134, §101[(a)] [title VIII, §804(a)(5)], amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "The court may request an attorney to represent any such person unable to employ counsel and may dismiss the case if the allegation of poverty is untrue, or if satisfied that the action is frivolous or malicious."

HOW TO FILE AN ANDERS BRIEF IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

General Instructions

These instructions detail the requirements for filing an "Anders brief" in the event defendant-appellant's counsel determines that no non-frivolous issues exist on appeal after thorough review of the district court record. An Anders brief must set forth a "conscientious examination" of the appellant's case and explain fully why there are no non-frivolous issues. This Court has set a high standard for determining what constitutes a satisfactory Anders brief. See Anders v. California, 386 U.S. 738, 744 (1967); Nell v. James, 811 F.2d 100, 104 (2d Cir. 1987).

In the event that counsel fails to articulate fully why there are no non-frivolous issues present, the Court may direct counsel to file a new brief addressing the inadequately briefed issues and possibly reduce or deny payment of counsel's CJA fees. See United States v. Burnett, 989 F.2d 100, 105 (2d Cir. 1993). The Court may also elect to appoint new counsel when the submitted Anders brief is ruled insufficient. See id.

An Anders brief must state on the cover "Pursuant to Anders v. California, 386 U.S. 738 (1967)." A copy of the transcript of the proceedings below must be submitted with the brief. The transcript should be included in the appendix filed with the brief, as well.

When filing an Anders brief, counsel must file: (1) a motion to be relieved as counsel and (2) a Pre-Sentence Investigation Report (PSR). If the case involves imposition of a sentence constituting a variance from the United States Sentencing Commission Guidelines, counsel must also file the statement of reasons issued by the district court in accordance with Fed. R. Crim. P. 32(h). The Court of Appeals will review the PSR and statement of reasons, if filed, and determine the motion at the time it hears the case.

When filing an Anders brief, counsel must also submit to the Court an affidavit or affirmation stating that the client has been informed that:

(1) A brief pursuant to Anders v. California, 386 U.S. 738 (1967), has been filed;
(2) The filing of an Anders brief will probably result in the dismissal of the appeal and affirmance of the conviction; and
(3) The client may request assistance of other counsel or submit *pro se* response papers.

When counsel has reason to believe that the client may not speak English, or may be illiterate, or

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