

**COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM (113<sup>th</sup> CONGRESS)  
SUBCOMMITTEE ON ENERGY POLICY, HEALTH CARE, AND ENTITLEMENTS**

**SUBCOMMITTEE HEARING JUNE 27, 2013**

**HON. REPRESENTATIVE JAMES LANKFORD, CHAIRMAN (OK)  
HON. REPRESENTATIVE JACKIE SPEIER, RANKING MEMBER (CA)**

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**STATEMENT OF:**

**LARRY J. BUTLER  
U.S. ADMINISTRATIVE LAW JUDGE  
SOCIAL SECURITY ADMINISTRATION  
OFFICE OF DISABILITY ADJUDICATION & REVIEW  
FORT MYERS, FL SATELLITE HEARING OFFICE**

I am honored and pleased to have been invited to present testimony to the Subcommittee.

The opinions I express during my testimony and in this Statement are solely my personal opinions. I do not speak for the Social Security Administration (SSA), the Office of Disability Adjudication & Review (ODAR) or for any judicial or attorney organization.

I am not affiliated with any political party.

Since my appointment as a U.S. administrative law judge (ALJ) in December 1996, I have served as a SSA ALJ at the Shreveport, LA Hearing office (13-years) and the Fort Myers, FL Satellite Hearing Office (3-years). The Social Security disability administrative appeal process is often described as being an “inquisitorial” legal system (that is, the judge is actively involved in investigating and determining facts).

From 1988 until my appointment as an ALJ during December 1996 (8-years), I served as an Industrial Appeals Judge (IAJ) for the State of Washington. The Washington State industrial appeals process is an “adversarial” legal system (that is, parties are represented and formal rules of evidence and procedure are applicable).

From 1976 until my appointment as a Washington State IAJ during 1988 (12-years), I was in the private practice of law with one other attorney in Spokane, WA.

I served as National Grievance Chair of the Association of Administrative Law Judges (AALJ) from June 2004 until June 2007. AALJ originally organized as a professional association in 1971. In 1999, AALJ unionized. At present, more than 80% of the approximately 1,500 SSA ALJs are active members of AALJ.

I have been involved in the medico-legal field my entire legal career.

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The Social Security disability programs are bankrupt.

To assess what potential remedies might be available to Congress in addressing this crisis, Congress must understand what caused the problem—what were the operative factors during the past several years?

- (1) The current average value of a disability award is approximately \$300,000. That \$300,000 amount includes monetary benefits for the disabled individual and dependents, medical coverage by the Medicare or Medicaid programs, automatic eligibility for other types of government financial assistance such as the Food Stamp Program, housing or rental assistance and phone subsidies.
- (2) The SSA management currently stated “goal” or “expectation” is that every ALJ should issue from 500 to 700 legally defensible decisions per year. When an ALJ issues 500 decisions valued at approximately \$300,000 each, that ALJ on an annual basis is determining the disposition of in excess of \$150,000,000 in taxpayer funds.
- (3) Representatives (attorneys and non-attorney representatives) involved in the disability system are paid in excess of \$1,000,000,000 (\$1 billion dollars) annually by SSA directly from funds withheld from claimant’s retroactive benefit awards. Since January 1, 2013, attorney and non-attorney representative fees paid from claimant’s retroactive disability benefit awards has averaged \$110,000,000 per month.
- (4) All of the “stakeholders” identified above (claimants, attorneys, non-attorney representatives, Medicare and Medicaid providers, and others) have a stake in seeing a disability applicant paid. None of these “stakeholders” will object if an individual capable of employment is erroneously awarded disability benefits.
- (5) A disability award is in reality a pension for life. Only 3% of claimants placed on disability ever return to employment.
- (6) Almost all claimants are now represented in the disability determination process by attorneys or non-attorney representatives. Representation commonly starts with the

attorney or representative going to a claimant's home and completing the claimant's disability application and supplemental documentation using the Internet.

- (7) There is no economic reason for a claimant and representative not to file a disability application. The cost of initially processing the claimant's application, developing the record (wage and resource development, vocational history, and similar information), obtaining medical records and procuring consultative medical examinations is paid for by taxpayers.
- (8) For the past six (6) years<sup>1</sup>, SSA has focused on reducing the backlog of disability applications to the exclusion of almost every other program consideration, including correct application of the law in the disability determination process and Continuing Disability Reviews (CDRs) (both medical and work related) that recover \$10 - \$14 of taxpayer funds for every \$1 expended.

The operative factors during the past several years described above suggest several questions that should be asked:

- (1) Is SSA managing the disability system for the primary benefit of genuinely disabled individuals and taxpayers or has the disability system become a "cash cow" for other "stakeholders" (attorney and non-attorney representatives, medical providers paid through the Medicare and Medicaid programs, pharmaceutical companies, and others)?
- (2) If a single "disability advocacy" business can collect in excess of \$80,000,000 annually in fees from claimant's retroactive benefit awards, a question is raised as to whether the current contingency fee allowed by statute is too generous?<sup>2</sup>
- (3) Did SSA management intentionally adopt or implicitly approve a policy now referred to as "paying-down-the-backlog" in order to reduce the backlog?
- (4) Was the development of "billion dollar judges" in the disability system supported and encouraged by SSA management as a means to "pay-down-the-backlog"?

During 2006, three attorneys and a supervisor in the Des Moines, IA Hearing Office were assessed \$3.8 million in civil fraud fines by the SSA OIG (Office of Inspector General<sup>3</sup>) for assisting the Hearing Office Chief Administrative Law Judge (HOCALJ) (now deceased) in fraudulently paying thousands of disability cases. The SSA OIG eventually dismissed the

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<sup>1</sup> Commissioner of Social Security (COSS) Michael J. Astrue was appointed for a term from February 12, 2007 to January 19, 2013. When COSS Astrue resigned on February 12, 2013, Carolyn W. Colvin was appointed Acting COSS.

<sup>2</sup> Currently, the contingency fee authorized by statute is a maximum of \$6,000 based on a fee agreement and a maximum of 25% of retroactive benefits (including awards to dependents) based on a fee petition.

<sup>3</sup> Patrick P. O'Carroll, Jr., SSA OIG.

civil fraud action<sup>4</sup> against the three attorneys and the supervisor at the direction of SSA management. However, SSA OIG established an important precedent that civil fraud actions can be pursued where SSA ALJs or staff are involved in fraudulently paying disability claims.

*SSA OIG Audit Report A-12-07-27091 (September 2007)* disclosed that over a 6-year period of time the Fort Lauderdale, FL HOCALJ had operated a “pilot” program where four (4) local representatives had over 50 percent of their caseloads assigned to the HOCALJ (in violation of 5 USC 3105 rotational assignment requirements). The cases were “unpulled” and the representatives drafted proposed favorable decisions for the HOCALJ. During a 25-month period, the Ft. Lauderdale, FL HOCALJ and one other ALJ in the Hearing Office decided 2,722 cases (12 ALJs assigned to the Fort Lauderdale, FL Hearing Office had a total of 10,474 dispositions during that period).

The September 2007 OIG Audit Report concluded that the “pilot” program “...could be perceived as an unfair advantage for these [four] representatives” who received favorable decisions in 80% of their cases. The OIG Audit Report recommended that SSA: “Remind HOCALJs about their duties of assigning claims on a rotational basis unless an exception from official policy is properly authorized.” Apparently, neither SSA nor the SSA OIG took any disciplinary action against the Fort Lauderdale, FL HOCALJ.

(5) With knowledge of SSA OIG authority to address fraudulent payment of claims, why did SSA management not curtail the activities of the “billion dollar judges” who were revealed during the past several years issuing thousands of pay cases?

(A) HOCALJ Charles Bridges, Harrisburg, PA, paid 2,285 cases in 2007. From 2005 to 2007, HOCALJ Bridges only denied 3% of the cases that he decided. See [http://www.oregonlive.com/special/index.ssf/2008/12/paying\\_out\\_billions\\_one\\_judge.html](http://www.oregonlive.com/special/index.ssf/2008/12/paying_out_billions_one_judge.html).<sup>5</sup>

(B) During 2010, SSA management assigned David B. Daughtery, ALJ, Huntington, WV Hearing Office, 1,284 cases—of which 1,280 were paid by ALJ Daughtery. In 2011, SSA management assigned ALJ Daughtery 1,003 cases—of which 1,001 were paid by

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<sup>4</sup> See 42 U.S.C. 1320a-8 and 20 CFR Part 498.

<sup>5</sup> The Oregonian in its December 30, 2008 article stated that it became aware of ALJ Bridges when “[S]tories about an unnamed judge who pays 2,000-plus cases a year arose in a congressional hearing in February, but the agency has never named him. The Oregonian identified Bridges through internal Social Security records obtained under the Freedom of Information Act.” Around the end of 2009, SSA began to publish ALJ statistics on the Internet. See [http://mwww.ba.ssa.gov/appeals/DataSets/03\\_ALJ\\_Disposition\\_Data.html](http://mwww.ba.ssa.gov/appeals/DataSets/03_ALJ_Disposition_Data.html) (ATTACHMENT 1). Prior to the publication by SSA of ALJ statistics on the Internet around the end of 2009, neither the public nor other ALJs had any idea of production or pay rates for ALJs though out the country.

ALJ Daughtery before ALJ Daughtery was placed on administrative leave. See [http://online.wsj.com/article/SB10001424052970203764804577056490750827440.html?mod=topic\\_rss\\_6859](http://online.wsj.com/article/SB10001424052970203764804577056490750827440.html?mod=topic_rss_6859) (ATTACHMENT 2).

(C) During 2011, SSA management assigned Gerald Krafur, ALJ, Kingsport, TN Hearing Office, 800 cases—of which 792 were paid by ALJ Krafur. In 2012, SSA management assigned ALJ Krafur 339 cases—of which 338 were paid by ALJ Krafur before ALJ Krafur was placed on administrative leave while management “looked into complaints about his demeanor during hearings.” See <http://online.wsj.com/article/SB10001424052702304192704577404933989242596.html> (ATTACHMENT 3).

(D) News sources during May 2012 reported that in the Charleston, WV Hearing Office:

“...from 2005 to 2008, Charleston ALJ Harry Taylor decided twice the number of cases compared to his counterpart judges. And, many of his decisions were made without ever conducting hearings. Taylor decided a total of 4,091 cases over the 4-year consecutive time period noted above. Out of that, he only denied 173 of those appeals or 4.25%. Now, in the most recent published ALJ Disposition Data from October 1, 2011 to March 30, 2012 (6 months) Taylor has already decided twice the caseload as any other Charleston ALJ. He has rendered 428 decisions and denied 34 or 8%.

Reportedly, like former ALJ Daugherty’s [Huntington, WV Hearing Office] high approval ratings that were questioned, Charleston management allegedly condoned Taylor’s high caseload decisions because his totals made the overall office numbers look good. Also, after the Huntington SSA scandal was exposed in 2011, Taylor was reportedly instructed to hold a minimum of 40 hearings each month.”

(E) During Fiscal Year (FY) 2011, SSA management assigned ALJ Frederick McGrath, Atlanta, GA (Downtown Hearing Office) (Region IV – Atlanta) 3,541 cases. During FY 2010, SSA management assigned ALJ McGrath 3,620 cases. With respect to these cases, ALJ McGrath conducted in-person and video hearings at the following Hearing Offices: Atlanta, GA (North), Lexington, GA, Montgomery, AL, Charlotte, NC, Greensboro, NC, Jackson, MS, Miami, FL, Jacksonville, FL, St. Petersburg, FL, Tupelo, MS and Fort Myers, FL. See <http://www.disabilityjudges.com/state/georgia/atlanta-downtown/frederick-mcgrath> (ATTACHMENT 4).

(F) On September 13, 2012, Senator Tom A. Coburn, M.D., Ranking Member, Permanent Subcommittee on Investigations, Committee on Homeland Security & Government Affairs, issued a 136-page Minority Staff Report (based upon 635 pages of exhibits) entitled “*Social Security Disability Programs: Improving the Quality of Benefit Award Decisions.*” See

<http://www.hsgac.senate.gov/subcommittees/investigations/hearings/social-security-administrations-disability-programs> (ATTACHMENT 5).

At the Subcommittee hearing, Patricia A. Jonas, Office of Appellate Operations (OAO) Executive Director, stated in her written testimony:

“Allegations both of “paying down the backlog” and fraud in the disability system have appeared in the media from time to time. These allegations are based mostly on anecdote and innuendo, and unfairly diminish our accomplishments the past five years.” Emphasis added. See page 3 and page 8 of written testimony.

However, Senator Coburn’s Minority Staff Report stated that a single ALJ, Howard O’Bryan, in the Oklahoma City, OK Hearing Office, age 87, awarded more than \$1.6 billion in lifetime benefits in three years from 2007 to 2009, ALJ O’Bryan decided more than 5,400 cases and paid benefits in over 90% of the cases--most of the cases paid “on-the-record” (OTR) without hearings. ALJ O’Bryan informed the Subcommittee investigators during his interview:

“I was trying to keep up the number of dispositions for the office,” Judge O’Bryan went on, noting, “I wrote all of them myself.” He was able to dispose of so many cases during this time, he said that SSA began shipping him cases from around the nation. He said that, at one point, he was sent 500 cases from Little Rock, Arkansas – equivalent to a single judge’s workload for a whole year. “I was asked to review those cases to see if they could be allowed,” he said. According to Judge O’Bryan, he was able to get through so many cases, that SSA sent him huge blocks of cases from such cities as Houston, Texas; Atlanta, Georgia; Baton Rouge, Louisiana; Greenville, South Carolina; and Yakima, Washington. He said he also received cases from Missouri.” See page 75 of Subcommittee Report.

In the decisions issued by ALJ O’Bryan, “...instead of precisely identifying a claimant’s disabling condition, ALJ O’Bryan typically wrote a long list of maladies, followed by “*etc., etc., etc.*” See page 73 of Subcommittee Report.

- (6) Why does SSA apparently continue to inform attorneys and non-attorney representatives that withholding material evidence that may be adverse to the claimant (that is, suggest the claimant is not disabled) is permissible?

## ADVERSE EVIDENCE

In both 1995 and 1997 the ABA opined that these rules are overly broad with regards to the duty to submit evidence. “The ABA believed that the rules continue to include provisions that could give rise to serious ethical conflicts.” 63 FR 41407

- Advise from SSA in 2004:
  - The regulations require claimants to prove their *disability*, not their *ability*.
  - The representative stands in the same position as the claimant.
  - If faced with a request for information that is adverse, decline to provide it because it does not support the claim for disability.
  - But don’t make a false or misleading statement.
- *Sarah Humphreys, Office of General Counsel ODAR/SSA, 2004 FOSSCR, Austin, TX.*



Suzanne Villalón Hinojosa  
1-800-481-0302

svhdisabilityhelp@gmail.com  
www.southtexasdisabilitylawyer.com

SSA is absolutely incorrect. An attorney cannot conceal material evidence indicating that a claimant is not disabled and permit an ALJ--based on an incomplete and misleading record--to erroneously award \$300,000 of taxpayer funds to an individual who is not disabled. See attached: (1) discussion commencing at page 21 of “SANITIZED Rxx-3396 RECOMMENDED DECISION” (ATTACHMENT 6), (2) Florida State Bar Association (FSBA) ethics opinion request and response (ATTACHMENT 7), and (3) Memorandum addressing withholding of adverse evidence by attorneys (ATTACHMENT 8).

On December 22, 2011 the Wall Street Journal (WSJ) published an article (authored by Damian Paletta and Dione Searcey) “Two Lawyers Strike Gold In U.S. Disability System” <http://online.wsj.com/article/SB10001424052970203518404577096632862007046.html> (ATTACHMENT 9).

Senator Tom A. Coburn, M.D., Oklahoma, Ranking Member, Permanent Subcommittee on Investigations, Committee on Homeland Security and Government Affairs, recommended in letters dated December 22, 2011 directed to Commissioner Michael J. Astrue and to Senator Max Baucus, Chairman, and Senator Orrin Hatch, Ranking Member, Senate Committee on Finance that Binder & Binder be investigated for fraud for failing to disclose material evidence regarding a claimant’s alleged disability. Senator Coburn’s letters to

Commissioner Astrue and Senators Baucus and Hatch can be reviewed at [http://www.coburn.senate.gov/public//index.cfm?a=Files.Serve&File\\_id=815eb4ab-09d0-4626-a906-885f6ac5abde](http://www.coburn.senate.gov/public//index.cfm?a=Files.Serve&File_id=815eb4ab-09d0-4626-a906-885f6ac5abde) (ATTACHMENT 10).

Senator Coburn stated in his December 22, 2011 letters:

“...Binder & Binder firm withheld medical evidence from SSA that could prove their clients should not receive disability benefits. Binder & Binder allegedly engaged in this practice, even though making false statements and misrepresentations or omissions to receive disability benefits are prohibited by the Social Security Act and subject to civil and criminal penalties. *See Social Security Act, 42 U.S.C. 1320a-7a; 42 U.S.C. 408.*”

...

“Therefore, I request that SSA perform full medical continuing disability reviews (“CDRs”) on all current disability beneficiaries—both Social Security Disability Insurance (“SSDI”) and Supplemental Security Income (“SSI”)—that were represented by the Binder & Binder law firm. These individuals should receive a full medical CDR whether they are currently scheduled to receive one or not.”

- (7) Why did SSA agree to a proposed settlement agreement in the *Padro, et al v. Astrue, Civ. No. 11-1788 (E.D.N.Y.) (CBA) (RLM)* (filed April 12, 2011) “class action” that will involve rehearing in excess of 4,000 cases?

On May 24, 2013, I filed a U.S. Office of Special Counsel (OSC) complaint related to the *Padro, et al v. Astrue, Civ. No. 11-1788 (E.D.N.Y.) (CBA) (RLM)* “class action.” The *Padro, et al v. Astrue* “class action” alleges five (5) Queens, NY administrative law judges (ALJs) were “generally biased” with respect to over 4,000 decisions the five (5) ALJs issued from and after January 1, 2005 [*Amended Class Action Complaint (Document 4), Page 9, Paragraph 31.*]

The Department of Justice (DOJ) (representing SSA) and SSA have preliminarily agreed with plaintiff’s counsel [a Urban Justice Center (UJC) attorney and a “pro bono” attorney from Gibson, Dunn & Crutcher, LLP] that SSA will rehear in excess of 4,000 of the five (5) Queens, NY ALJ’s unfavorable and partially favorable decisions issued from January 1, 2008, to the present. Even unfavorable and partially favorable decisions of these five (5) Queens, NY ALJs that were affirmed by the Appeals Council (AC) and became final will be reheard.

If ALJs become the subject of “class action” litigation (not only directly against the ALJs but indirectly against the agency as proxy) asserting “general bias” based on allegedly lower-than-average ALJ allowance rates, similar “class actions” will be filed all over the country--at both federal and state levels. The five (5) Queens, NY ALJs were not joined as necessary parties in the *Padro, et al v. Astrue* litigation. Both DOJ and SSA counsel refused to provide any information to the five (5) Queens, NY ALJs concerning negotiations that occurred and purported evidence the preliminary Settlement Agreement was based on.

For your convenience, I have pasted immediately below the substantive portion of my May 24, 2013 OSC complaint:

### **COMPLAINT DESCRIPTION**

*Padro, et al v. Astrue, Civ. No. 11-1788 (E.D.N.Y.) (CBA) (RLM)* is a "class action" alleging "general bias" by five (5) Queens, NY federal administrative law judges (ALJs) during the adjudication of over 4,000 Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) disability cases from and after January 1, 2008.

The Urban Justice Center (UJC), a non-profit corporation, represents plaintiffs in *Padro, et al v. Astrue*. Gibson, Dunn & Crutcher, LLP—a Park Avenue New York firm with over 1,000 attorneys located in 17-offices worldwide with revenues exceeding \$1 billion per year—is pro bono co-counsel for plaintiffs.

The stated purpose of UJC as expressed on its website is as follows:

"For 29 years, the Urban Justice Center has served New York City's most vulnerable residents through a combination of direct legal service, systemic advocacy, community education and political organizing."

As far as "systemic advocacy" is concerned, UJC states on its website "[W]e assist our clients on numerous levels, from one-on-one legal advice...to filing class action lawsuits to bring about systemic change." See <http://www.urbanjustice.org/ujc/about/hub.html>.

The UJC 2012 Annual Report posted on its website indicates that the Department of Justice (DOJ)—which represents the defendant in the *Padro, et al v. Astrue* litigation [Michael J. Astrue, Commissioner of Social Security (COSS)]—donated between "\$100,000 - \$299,999" to UJC during 2012:

\$100,000 – \$299,999

Booth Ferris Foundation  
The Ford Foundation  
Goldman Sachs Gives  
H. van Ameringen Foundation  
NYC Criminal Justice Coordinator  
NYC Department of Health & Mental Hygiene  
NYC Department of Housing Preservation & Development  
NYS Division of Housing and Community Renewal – Foreclosure  
NYS Office of Court Administration  
NYS Office of Temporary & Disability Assistance HIP/SHIP

NYS Office of Victim Services  
Oak Foundation  
Skadden Fellowship Foundation  
US Department Of Justice  
U.S. Department of Housing and Urban Development

See page 6 at [http://www.urbanjustice.org/pdf/publications/2012\\_Annual\\_Report.pdf](http://www.urbanjustice.org/pdf/publications/2012_Annual_Report.pdf).

The UJC 2011 Annual Report posted on its website indicates that the DOJ "Legal Assistance for Victims" donated in excess of \$300,000 to UJC during 2011. The U.S. Department of Housing (HUD) donated between "\$100,000 - \$299,000" to UJC during both 2011 and 2012. See page 4 at [http://www.urbanjustice.org/pdf/publications/2011\\_Annual\\_Report.pdf](http://www.urbanjustice.org/pdf/publications/2011_Annual_Report.pdf).

Why are DOJ, other federal agencies like the U.S. Department of Housing and Urban Development (HUD) and New York State, County and City agencies making six-figure contributions of taxpayer funds year-after-year to UJC which is an organization with stated principal purposes of "political organizing" and "systemic advocacy"--primarily by the filing of class actions lawsuits.

The *Padro, et al v. Astrue* proposed settlement agreement provides that SSA will pay UJC \$125,000 in attorney fees. The financial relationship between DOJ and UJC is significant and recurring.

"Systemic advocacy" as practiced by UJC appears to involve repeated and overtly officious encouragement of litigation resembling barratry. "Political organizing" and "systemic advocacy" as practiced by UJC serves no discernible non-political public purpose and bestows no general benefit justifying significant and recurring contributions of taxpayer funds by DOJ to UJC.

The financial relationship between DOJ and UJC represents a direct and patent conflict of interest, or--at minimum--creates an inference and appearance of impropriety requiring full disclosure of the financial and business relationship of DOJ and UJC to the court, all parties involved in this "class action" litigation, the five (5) Queens, NY federal ALJs who were the target of this litigation and the taxpaying public.

*Padro, et al v. Astrue* is a class-action in which the proposed settlement agreement of the parties: (1) will impose significant costs upon taxpayers and the disability system by requiring the rehearing of approximately 4,000 cases decided by these five (5) Queens, NY ALJs since January 1, 2008 [including cases denying disability benefits that were affirmed by the Appeals Council (AC)], and (2) has destroyed the reputation of five (5) Queens, NY ALJs who were not directly represented in this litigation and were totally excluded by both parties from receiving any information regarding settlement negotiations or the purported evidentiary basis of the proposed settlement agreement.

My complaint is based on alleged violation of law, regulation or rule, gross mismanagement, gross waste of taxpayer funds and abuse of authority by both SSA and DOJ management officials.

...

### **CORRECTIVE ACTION REQUESTED**

The U.S. Office of Special Counsel (OSC) should investigate the financial relationship (and any other relationship) between DOJ (counsel for defendant) and UJC (counsel for plaintiffs) in the *Padro, et al v. Astrue, Civ. No. 11-1788 (E.D.N.Y.) (CBA) (RLM)* "class action" alleging "general bias" from and after January 1, 2008 by five (5) Queens, NY federal ALJs during the adjudication of over 4,000 SSDI and SSI disability cases.

Once the relationship of DOJ and UJC has been thoroughly investigated:

(1) OSC should take whatever action is warranted to remedy any violation of law, regulation or rule, gross mismanagement, gross waste of taxpayer funds or abuse of authority by SSA and DOJ management officials, and

(2) OSC should report the findings of its investigation to all parties involved in the *Padro, et al v. Astrue* "class action" litigation, the five (5) Queens, NY federal ALJs who were the target of this litigation, the taxpaying public, and:

The Honorable Carol Bagley Amon  
U.S. District Court Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

It should be noted that a "fairness hearing" as required by *Fed. R. Civ. P. 23(c)* related to the proposed settlement agreement entered into between the parties in this "class action" litigation is scheduled for July 24, 2013 (02:30 PM) in Courtroom 10D South.

All counsel in the *Padro, et al v. Astrue* "class action" were served with a copy of my May 24, 2013 OSC complaint: GAIL A. MATTHEWS, ESQ., Assistant U.S. Attorney; JUDRY SUBAR, ESQ., Assistant Director Federal Programs Branch, Senior Trial Counsel, DOJ; "OF COUNSEL" (SSA): Office of Regional Chief Counsel, Region II; Office of the General Counsel, Office of Program Law; COUNSEL FOR PLAINTIFFS: IAN F. FELDMAN, ESQ., Urban Justice Center; JIM WALDEN, ESQ., pro bono counsel, Gibson, Dunn & Crutcher, LLP.

- (8) Why did SSA agree to the publication of *SSR 13-1p* as part of the proposed Settlement Agreement entered into in the *Padro, et al* litigation?

*SSR 13-1p* [6168 Fed. Reg. Vol. 78, No. 19 (January 29, 2013)] “Agency Processes for Addressing Allegations of Unfairness, Prejudice, Partiality, Bias, Misconduct or Discrimination by ALJs” provides for three different complaint processes which a claimant and/or representatives (attorney or non-attorney) can pursue simultaneously against an ALJ for the identical alleged misconduct. *SSR 13-1p* was the direct result of the *Padro v. Astrue, Civ. No. 11-1788 (E.D.N.Y.) (CBA) (RLM) (filed April 12, 2011)* “class action” alleging “general bias” against five (5) Queens, NY ALJs (discussed further below).

Commissioner of Social Security (COSS) Michael J. Astrue authorized the publication and implementation of *SSR 13-1p* while holding-over as COSS after expiration of his term on January 19, 2013. *SSR 13-1p* can be located at <http://www.gpo.gov/fdsys/pkg/FR-2013-01-29/pdf/2013-01833.pdf> (ATTACHMENT 11).

On March 18, 2013, the Association of Administrative Law Judges (AALJ) Newsletter & President’s Report reported that Chief Administrative Law Judge (CALJ) Debra Bice had established a new precedent for disgruntled representatives and/or claimants by filing an ethics complaint against an ALJ with the ALJ’s state bar association. As previously discussed, the agency prohibits ALJs from filing an ethics complaint against an attorney with the attorney’s bar association—no matter how egregious the attorney misconduct may be. The March 18, 2013 AALJ Newsletter & President’s Report stated in pertinent part:

#### **AGENCY DISCIPLINE THEN BAR REFERRAL**

*Recently, one of our administrative law judges recommended a relative to a disability law firm for a non-paid internship. The disability law firm has had cases before the judge and will likely have future cases before the judge. The internship was intended to provide experience to the relative to enhance his qualifications for a contract hearing reporter position with the agency. Ultimately, this matter was investigated and the judge was disciplined by the agency. Although some of the facts are in dispute, the judge believed the matter was closed and intended to move forward. Thereafter, however, the Chief Judge apparently felt that the government’s punishment was not severe enough. Thus, she filed a Memorandum of Complaint with the judge’s state bar asking that they investigate the matter. In a letter attached to the complaint, the Chief Judge set forth arguments as to how the judge’s alleged conduct violated specific sections of the Code of Judicial Conduct. What is not said in the letter is that some of the facts are in dispute...*

Finally, the “class action” lawsuit involving five (5) ALJs assigned to the Queens, NY Hearing Office alleging “general bias” establishes that an ALJ can be sued directly (or indirectly using the agency as a proxy) based upon alleged “Unfairness, Prejudice, Partiality, Bias, Misconduct or Discrimination.”

The Model Code of Judicial Conduct (MCJC) should be adopted by the agency as the standard of conduct applicable to ALJs.

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I would be glad to provide specific long-term and short-term recommendations to address the issues raised herein if requested.

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*The Model Code of Judicial Conduct (MCJC), Canon 1 provides “A Judge Shall Uphold the Integrity and Independence of the Judiciary.” The American Bar Association (ABA) Model Rules of Professional Conduct (RPC) applicable to attorneys imposes similar ethical responsibilities on attorneys in the “Preamble and Scope: A Lawyer’s Responsibilities” and RPC 8.1, et seq. (“Maintaining the Integrity of the Profession”).*

I am here today because of those ethical responsibilities.

Thank you.

Larry J. Butler  
U.S. Administrative Law Judge  
Social Security Administration  
Office of Disability Adjudication & Review  
Fort Myers, FL Satellite Hearing Office

**EMPLOYMENT**

<b>U.S. Administrative Law Judge</b>	1996-2013
• Shreveport, LA Hearing Office, Social Security Administration	1996-2010
• Fort Myers, FL Satellite Hearing Office, Social Security Administration	2010-2013
<b>Industrial Appeals Judge</b>	1988-1996
• State of Washington	
<b>Private practice of law</b>	1977-2013
• Licensed in states of Washington and California (inactive)	
<b>Adjunct Professor City University (evening division)</b>	1995-1996

**EDUCATION**

<b>Juris Doctor (JD)</b>	1976
• University of the Pacific, McGeorge School of Law, Sacramento, CA	
• Obtained through evening division courses while working full time (State of California)	
<b>Masters Degree in Business Administration (MBA)</b>	1979
• Gonzaga University	
• Obtained through evening division courses while practicing law full time (private practice)	
<b>Masters Degree in Taxation (MST)</b>	1981
• Gonzaga University	
• Obtained through evening division courses while practicing law full time (private practice)	
<b>Bachelor of Arts Degree (BA) Far Eastern Studies</b>	1968
• University of Washington	
• Area study: Japan	

**PERSONAL**

Married 36 years

- Daughter 34
- Son 28

U.S. Army (Signal Corps)	1969-1971
• Vietnam	1969-1970