

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

**DAVID ANTHONY RODRIGUEZ,**

**Plaintiff,**

v.

**Case No: 6:18-cv-1375-Orl-41GJK**

**COMMISSIONER OF SOCIAL  
SECURITY,**

**Defendant.**

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**ORDER**

THIS CAUSE is before the Court on Defendant's Second Amended Motion for Partial Dismissal, or in the Alternative, for Partial Summary Judgment (Doc. 19). United States Magistrate Judge Gregory J. Kelly issued a Report and Recommendation (Doc. 24), recommending that partial summary judgment be granted in Defendant's favor as to Plaintiff's Appointments Clause challenge and that the Motion be denied in all other respects.

Plaintiff filed an Objection (Doc. 25) to the Report and Recommendation.<sup>1</sup> Therein, Plaintiff argues that he was not required to raise his Appointments Clause challenge in his prior administrative proceedings under *Sims v. Apfel*, 530 U.S. 103 (2000). The Court disagrees. *Sims* stands for the proposition that a claimant "need not exhaust issues in request for review by the Appeals Council in order to preserve judicial review of those issues." 530 U.S. at 112. As Judge Kelly noted, however, the issue in this case is whether Plaintiff was required to raise his Appointments Clause challenge *at some point* during his administrative proceedings to preserve

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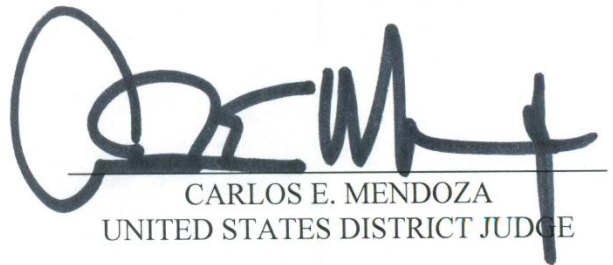
<sup>1</sup> Defendant filed a Response (Doc. 26) to Plaintiff's Objection reiterating the arguments it made in its Motion.

judicial review of the issue, and the Court finds that Plaintiff was required to do so. *See Shaibi v. Berryhill*, 883 F.3d 1102, 1109 (9th Cir. 2017) (issue must be raised before the ALJ or the Appeals Council).

After a *de novo* review, the Court agrees with the analysis in the Report and Recommendation. Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. The Report and Recommendation (Doc. 24) is **ADOPTED** and **CONFIRMED** and made a part of this Order.
2. Defendant's Second Amended Motion for Partial Dismissal, or in the Alternative, for Partial Summary Judgment (Doc. 19) is **GRANTED in part**. The Motion is granted insofar as it seeks summary judgment on Plaintiff's Appointments Clause challenge.
3. The Motion is **DENIED** in all other respects.

**DONE** and **ORDERED** in Orlando, Florida on April 16, 2019.



CARLOS E. MENDOZA  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record