

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

NANCY ALVARADO RAMOS,  
Plaintiff,  
v.  
COMMISSIONER OF SOCIAL  
SECURITY,  
Defendant.

Case No. 1:20-cv-01606-EPG

**FINAL JUDGMENT AND ORDER  
REGARDING PLAINTIFF'S SOCIAL  
SECURITY COMPLAINT**

(ECF Nos. 15, 16)

This matter is before the Court on Plaintiff Nancy Alvarado Ramos's ("Plaintiff") complaint for judicial review of an unfavorable decision by the Commissioner of the Social Security Administration. The parties have consented to entry of final judgment by the United States Magistrate Judge under the provisions of 28 U.S.C. § 636(c) with any appeal to the Court of Appeals for the Ninth Circuit. (ECF Nos. 7, 9, 10).

At a hearing on December 8, 2021, the Court heard from the parties and, having reviewed the record, administrative transcript, the briefs of the parties, and the applicable law, finds as follows:

///  
///  
///

1           **A. Whether the ALJ Omitted Limitations Without Sufficient Explanation**

2           Plaintiff first argues that the Administrative Law Judge’s (“ALJ”) Residual Functional  
3 Capacity (“RFC”) assessment omitted limitations provided by Drs. Malone and Heldman without  
4 explanation.

5           The ALJ provided the following evaluation of the opinion Drs. Malone and Heldman:

6           The undersigned finds the psychological opinions of the State Agency  
7 psychologists, D. Malone, Ph.D. and Patricia Heldman, M.D., to be persuasive  
8 because they are consistent and supported.

9           Dr. Malone and Dr. Heldman both opined that the claimant has moderate  
10 limitations in her abilities to understand, remember or apply information and  
11 interact with others and mild limitations in her abilities to concentrate, persist or  
12 maintain pace and adapt or manage oneself. (Exhibits 2A/12 and 6A/9) Dr.  
13 Malone and Dr. Heldman further limited the claimant to understanding,  
14 remembering and carrying out simple and detailed instructions and procedures of  
15 at least two to three steps but making more errors with detailed tasks, minimal  
16 contact and reliance upon others and can interact with other appropriately for short  
17 durations pertaining to work related matters. (Exhibits 2A/15-18 and 6A/12-14)  
18 Dr. Malone’s and Dr. Hartman’s opinions are consistent with the claimant’s  
19 mostly normal mental status examinations finding that she had good grooming,  
20 made appropriate eye contact, had cooperative behavior, a normal mood,  
21 congruent affect, normal speech, coherent, relevant and logical thought processes,  
22 with normal thought content, good insight and unimpaired judgment with  
23 intermittent reports of a depressed or anxious mood, hallucinations and  
24 ruminations. (Exhibits 5F/5-7; 9F/16, 18, 20, 22, 27-28, 33, 36-38, 45, 47) Dr.  
25 Malone’s and Dr. Heldman’s opinions are supported by their detailed review and  
26 analysis of the evidence of record available when they made their determinations.  
27 (Exhibits 2A and 6A)

28 (A.R. 32-33). Based on these opinions as well as other evidence, the ALJ adopted the following  
Residual Functional Capacity (“RFC”):

          After careful consideration of the entire record, the undersigned finds that the  
claimant has the residual functional capacity to perform medium work as defined  
in 20 CFR 404.1567(c) and 416.967(c) except the claimant can never climb  
ladders, ropes or scaffolds. The claimant can only frequently stoop, kneel crouch  
and crawl. The claimant can only frequently handle, finger and feel with the  
bilateral upper extremities. The claimant cannot work at unprotected heights or  
around heavy machinery. The claimant is limited to performing only simple and  
routine tasks, meaning the claimant is not capable of complex judgment or

1 analysis. The claimant can have only occasional interaction with supervisors, co-  
2 employees and the public. The claimant can maintain a production pace of a  
3 simple and routine nature. The claimant can adapt to changes in the workplace of a  
4 simple and routine nature.

5 (A.R. 26).

6 Plaintiff argues that the RFC is not sufficiently supported and explained because the  
7 opinion that Plaintiff could perform “at least” two to three steps was ambiguous and should have  
8 been confirmed, and because the RFC did not incorporate their opinion that Plaintiff would make  
9 more mistakes on detailed work tasks. In response, the Commissioner argues that the ALJ’s RFC  
10 findings were more restrictive than the findings from Drs. Malone and Heldman and included a  
11 limitation to work involving the performance of only simple, routine tasks where she is not capable of  
12 complex judgment or analysis.

13 The RFC is an administrative finding left to the Commissioner. *See* 20 C.F.R. §  
14 404.1527(e)(2) (stating that “[o]ther opinions of issues reserved to the Commissioner” include “your  
15 residual functional capacity”); *Vertigan v. Halter*, 260 F.3d 1044, 1049 (9th Cir. 2001) (“it is the  
16 responsibility of the ALJ, not the claimant's physician, to determine residual functional  
17 capacity.”). The ALJ must base his RFC finding on an analysis of the record as a whole. *See* Social  
18 Security Ruling (SSR) 96-8p (explaining that, “RFC is assessed by adjudicators at each level of the  
19 administrative review process based on all of the relevant evidence in the case record”).

20 The court finds no error here. Although the ALJ endorsed the opinions of Drs. Malone and  
21 Heldmen, she adopted an RFC that was arguably consistent with yet more restrictive than their opined  
22 limitations. In particular, the ALJ’s RFC included the following relevant limitation: “The claimant is  
23 limited to performing only simple and routine tasks, meaning the claimant is not capable of  
24 complex judgment or analysis.” Such an RFC was sufficiently supported by the evidence and  
25 consistent with the ALJ’s evaluation of the doctors’ opinions.

### 26 **B. Removal Limitation on Commissioner Saul**

27 Plaintiff next claims that, because the ALJ derived its authority to hear the claim from an  
28 unconstitutional delegation of authority, the Court should vacate and remand. Plaintiff explains  
that Andrew Saul held the office of Commissioner of Social Security as the sole person

1 dischargeable only for cause between June 17, 2019 and July 9, 2021, when President Biden  
2 terminated him. The United States Supreme Court held in *Seila Law LLC v. CFPB*, 140 S. Ct.  
3 2183 (2020) that it is unconstitutional for an executive agency to be led by a single member-head,  
4 who serves for a longer term than the president, and who can only be removed from the position  
5 for cause. *Id.* at 2204; *see also Collins v. Yellin*, 594 U.S. \_\_\_ at 26 (2021). Additionally, the  
6 Office of Legal Counsel has issued an opinion that casts significant doubt on the constitutionality  
7 of the appointment of the Commissioner of Social Security. Office of Legal Counsel,  
8 *Constitutionality of the Commissioner of Social Security's Tenure Protection*, 2001 WL 2981542  
9 (July 8, 2021).

10 Here, the ALJ heard the claims at a hearing on February 21, 2020 and issued his decision  
11 on April 21, 2020. The Appeals Council denied review on September 22, 2020. Thus, the  
12 relevant agency actions were all completed within the unconstitutional tenure of Commissioner  
13 Saul. Because the agency's actions were completed under unconstitutional authority, Plaintiff  
14 claims that these actions were constitutionally defective. Accordingly, Plaintiff requests a new  
15 hearing and administrative decision.

16 The Commissioner agrees that 42 U.S.C. § 902(a)(3) violates the separation of powers to  
17 the extent it is construed as limiting the President's authority to remove the Commissioner  
18 without cause. However, it argues that this alone does not justify a remand. Instead, a party  
19 seeking remand must show that the restriction on removal authority actually caused her harm,  
20 citing *Collins v. Yellen*, 141 S. Ct. 1761, 1787-89 (2021). Here, Plaintiff cannot do so because (1)  
21 the ALJ in this case had his appointment ratified by an Acting Commissioner of Social Security  
22 whom the President could have removed at will at any time; and (2) the removal restriction did  
23 not cause the denial of Plaintiff's claim. The Commissioner also argues that various other legal  
24 doctrines including harmless error, de facto officer, and the rule of necessity, as well as prudential  
25 considerations caution against remand here.

26 On December 6, 2020, the Commissioner also filed a notice of supplemental authority  
27 citing a number of district courts that have refused to set aside unfavorable disability benefits  
28 decisions based on the statutory restriction on removal of a Social Security Commissioner. (ECF

1 No. 19). *See Frank W. v. Kijakazi*, No. 20-cv-1439, 2021 WL 5505883 (S.D. Cal. Nov. 24, 2021);  
2 *Rivera-Herrera v. Kijakazi*, No. 1:20-cv-01326, 2021 WL 5450230, at \*5-8 (E.D. Cal. Nov. 22,  
3 2021); *Shaun A. v. Comm’r of Soc. Sec.*, No. C21-5003-SKV, 2021 WL 5446878, at \*4-6 (W.D.  
4 Wash. Nov. 22, 2021); *Shannon R. v. Comm’r of Soc. Sec.*, No. C21-5173-MLP, 2021 WL  
5 5371394, at \*7-9 (W.D. Wash. Nov. 18, 2021); *Michelle T. v. Comm’r of Soc. Sec.*, No. 3:20-cv-  
6 06085, 2021 WL 5356721 (W.D. Wash. Nov. 17, 2021); *John R. v. Comm’r of Soc. Sec.*, No.  
7 C20-6176, 2021 WL 5356719, at \*5-8 (W.D. Wash. Nov. 16, 2021); *Alice T. v. Kijakazi*, No.  
8 8:21CV14, 2021 WL 5302141, at \*18-19 (D. Neb. Nov. 15, 2021); *Lisa Y. v. Comm’r of Soc.*  
9 *Sec.*, \_\_\_ F. Supp. 3d \_\_\_, 2021 WL 5177363, at \*8 (W.D. Wash. Nov. 8, 2021); *Boger v. Kijakazi*,  
10 No. 1:20-cv-00331, 2021 WL 5023141, at \*3 (W.D.N.C. Oct. 28, 2021); *Robinson v. Kijakazi*,  
11 No. 1:20-cv-00358, 2021 WL 4998397, at \*3 (W.D.N.C. Oct. 27, 2021).

12 As an initial matter, the ALJ in this case was properly appointed. (ECF No. 17, at p. 5)  
13 (“Alvarado concedes that ALJ Bryant was properly appointed by the Acting or Deputy  
14 Commissioner Berryhill.”). Thus, there is no reason to void the actions by the ALJ. *See*  
15 *Collins*, 141 S.Ct. at 1787 (“All the officers who headed the FHFA during the time in *question*  
16 were properly *appointed*. Although the statute unconstitutionally limited the President's authority  
17 to *remove* the confirmed Directors, there was no constitutional defect in the statutorily prescribed  
18 method of appointment to that office. As a result, there is no reason to regard any of the actions  
19 taken by the FHFA in relation to the third amendment as void.”).

20 As to whether Plaintiff is nevertheless entitled to retrospective relief, the Court looks to  
21 the following guidance from the Supreme Court in *Collins*:

22 That does not necessarily mean, however, that the shareholders have no  
23 entitlement to retrospective relief. Although an unconstitutional provision is never  
24 really part of the body of governing law (because the Constitution automatically  
25 displaces any conflicting statutory provision from the moment of the provision's  
26 enactment), it is still possible for an unconstitutional provision to inflict  
27 compensable harm. And the possibility that the unconstitutional restriction on the  
28 President's power to remove a Director of the FHFA could have such an effect  
cannot be ruled out. Suppose, for example, that the President had attempted to  
remove a Director but was prevented from doing so by a lower court decision  
holding that he did not have “cause” for removal. Or suppose that the President

1 had made a public statement expressing displeasure with actions taken by a  
2 Director and had asserted that he would remove the Director if the statute did not  
3 stand in the way. In those situations, the statutory provision would clearly cause  
4 harm.

4 *Id.* 1788–1789.

5 Here, Plaintiff has not shown any connection between the denial of benefits and the  
6 unconstitutional removal provision. Accordingly, remand is not warranted. *See Frank W. v.*  
7 *Kijakazi*, 2021 WL 5505883, at \*4 (S.D. Cal. Nov. 24, 2021) (“Here, there is no allegation even  
8 suggesting a direct nexus between the adjudication of plaintiff’s disability claim by the SSA and  
9 the alleged separation of powers violation in the removal statute that applies to the  
10 Commissioner.”); *Shaun A. v. Commissioner of Social Security*, 2021 WL 5446878, at \*6 (W.D.  
11 Wash. Nov. 22, 2021) (“Plaintiff cannot show any connection between the unconstitutional limit  
12 on Commissioner Saul’s removal and the ALJ’s decision denying him benefits.”).

13 Plaintiff does allege in her reply that she has established sufficient harm based on  
14 President Biden’s apparent delay in terminating Commissioner Saul combined with President  
15 Biden’s comments at the termination criticizing Commissioner Saul for politicizing social  
16 security benefits and reducing due process protections for appeals hearings. (ECF No. 17, at p.  
17 8). However, Plaintiff has not pointed to any lack of due process in this case.

18 **C. Conclusion**

19 In light of the foregoing, the Court affirms the decision of the Commissioner of Social  
20 Security.

21 The Clerk of the Court is directed to close this case.

22  
23 IT IS SO ORDERED.

24 Dated: January 10, 2022

25 /s/ Eric P. Gray  
26 UNITED STATES MAGISTRATE JUDGE  
27  
28