

Administrative Law  
Law 6400 – Section 12  
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**Supplementary Materials**  
**Part 2**

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**CALIFANO v. YAMASAKI**  
442 U.S. 682 (1979)

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

Petitioner, the Secretary of the Department of Health, Education, and Welfare (HEW), has determined that respondents, beneficiaries under the Social Security Act, have been overpaid. He seeks to recoup those overpayments by withholding future benefits to which respondents would otherwise be entitled. Respondents in turn have requested reconsideration or waiver of recoupment under § 204 of the Act, 42 U.S.C. § 404. The primary questions in this case are whether petitioner must grant respondents the opportunity for an oral hearing before recoupment begins, and whether jurisdiction under § 205(g) of the Act, 42 U.S.C. § 405(g), permits a federal district court to certify a nationwide class and grant injunctive relief.

I

Section 204(a)(1) of the Social Security Act, 53 Stat. 1368, as amended, 42 U.S.C. § 404(a)(1), authorizes the recovery of overpayments made to a beneficiary under the old-age, survivors', or disability insurance programs administered by HEW. In particular, it permits the Secretary to recoup erroneous overpayments by decreasing future payments to which the overpaid person is entitled.

Section 204(b), however, expressly limits the recoupment authority conferred by § 204(a)(1). Section 204(b), as set forth in 42 U.S.C. § 404(b), commands that

“there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if such adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.”<sup>1</sup>

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<sup>1</sup> In pertinent part, § 204(a), as set forth in 42 U.S.C. § 404(a), provides:

“Whenever the Secretary finds that more or less than the correct amount of payment has been made to any person under this subchapter, proper adjustment or recovery shall be made, under regulations prescribed by the Secretary, as follows:

“(1) With respect to payment to a person [of] more than the correct amount, the Secretary shall decrease any payment under this subchapter to which such overpaid person is entitled, or shall require such overpaid person or his estate to refund the amount in excess of the correct amount, or shall decrease any payment under this subchapter payable to his estate or to any other person on the basis of the wages and self-employment income which were the basis of the payments to such overpaid person, or shall apply any combination of the foregoing.”

Section 204(b), as set forth in 42 U.S.C. § 404(b), reads in full:

“In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if such adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience.”

The Secretary has undertaken to define the terms employed in § 204(b). Under his regulations, “without fault” means that the recipient neither knew nor should have known that the overpayment or the information on which it was based was incorrect. 20 CFR § 404.507 (1978). For example, a recipient who justifiably relied upon erroneous information from an official source within the Social Security Administration would be “without fault.” § 404.510.

The regulations say that to “defeat the purpose of the subchapter” is to “deprive a person of income required for ordinary and necessary living expenses.” § 404.508(a). Those expenses are defined to include, among other things, food, rent, and medical bills. §§ 404.508(a)(1) and (2). Recoupment is “against equity and good conscience” when the recipient “because of a notice that such payment would be made or by reason of the incorrect payment, relinquished a valuable right . . . or changed his position for the worse.” § 404.509. An example of detrimental reliance that would be sufficient is permitting private hospital insurance to lapse in the mistaken expectation of receiving federal hospital benefits. *Ibid.*

The Secretary’s practice is to make an *ex parte* determination under § 204(a) that an overpayment has been made, to notify the recipient of that determination, and then to shift to the recipient the burden of either (i) seeking reconsideration to contest the accuracy of that determination, or (ii) asking the Secretary to forgive the debt and waive recovery in accordance with § 204(b). If a recipient files a written request for reconsideration or waiver, recoupment is deferred pending action on that request. Social Security Claims Manual §§ 5503.2(c), 5503.4(b) (Dec. 1978) (Claims Manual). The papers are sent to one of the seven regional offices where the request is reviewed.

If the regional office decision goes against the recipient, recoupment begins. The recipient’s monthly benefits are reduced or terminated<sup>3</sup> until the overpayment has been recouped. Only if the recipient continues to object is he given an opportunity to present his story in person to someone with authority to decide his case. That opportunity takes the form of an on-the-record *de novo* evidential hearing before an independent hearing examiner. 20 CFR §§ 404.917, 404.931 (1978). The recipient may seek subsequent review by the Appeals Council, § 404.945, and finally by a federal court. § 205(g) of the Act, 42 U.S.C. § 405(g). If it is decided that the Secretary’s initial determination was in error, the amounts wrongfully recouped are repaid.

## II

The Secretary overpaid the Hawaii respondents [Yamasaki and others], and notified them of his determination to recoup the overpayments. After unsuccessful attempts to obtain administrative relief, they brought suit in the United States District Court for the District of Hawaii challenging the legality of the Secretary’s recoupment procedures. They alleged that, because the notice they received was inadequate and because they were not given an opportunity for an oral hearing before recoupment began, the recoupment procedures violated both § 204 of the Act and the Fifth Amendment of the Constitution. \* \* \*

[The district court, relying on *Goldberg v. Kelly*, determined that the Due Process Clause required that the Secretary provide an opportunity for an informal oral hearing before an independent decision maker

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<sup>3</sup> The Secretary has altered his procedures in several respects since the initiation of this litigation, including: (i) rather than terminate all benefits until recoupment is completed, the Secretary now in nonfraud cases usually reduces the recipient’s monthly payments by only 25%. \* \* \*

prior to recoupment. The court of appeals, relying on *Mathews v. Eldridge* (which had not been decided at the time of the district court decision), affirmed that holding.]

### III

A court presented with both statutory and constitutional grounds to support the relief requested usually should pass on the statutory claim before considering the constitutional question. \* \* \* *Ashwander v. TVA*, 297 U.S. 288, 347 (1936) (concurring opinion). Due respect for the coordinate branches of government, as well as a reluctance when conscious of fallibility to speak with our utmost finality, \* \* \* counsels against unnecessary constitutional adjudication. And if “a construction of the statute is fairly possible by which [a serious doubt of constitutionality] may be avoided,” *Crowell v. Benson*, 285 U.S. 22, 62 (1932), a court should adopt that construction. In particular, this Court has been willing to assume a congressional solicitude for fair procedure, absent explicit statutory language to the contrary. \* \* \*

The District Courts and Court of Appeals in the cases now before us gave these principles somewhat short shrift in declining to pass expressly on respondents’ contention that § 204 itself requires a prerecoupment oral hearing. We turn to the statute first, and find that it fairly may be read to require a prerecoupment decision by the Secretary. With respect to § 204(a) reconsideration as to whether overpayment occurred, we agree that the statute does not require that the decision involve a prior oral hearing, and we reject respondents’ contention that the Constitution does so. With respect to § 204(b) waiver of the Secretary’s right to recoup, however, because the nature of the statutory standards makes a hearing essential, we find it unnecessary to determine whether the Constitution would require a similar result.

#### A

On its face, § 204 requires that the Secretary make a pre-recoupment waiver decision, and that the decision, like that concerning the fact of the overpayment, be accurate. In the imperative voice, it says “there shall be no adjustment of payments to, or recovery by the United States from, any person” who qualifies for waiver. \* \* \* Echoing this requirement, § 204(a) says that only “proper” adjustments or recoveries are to be made. The implication is that a recoupment from a person qualifying under § 204(b) would not be “proper.”

In contrast, § 204 is mandatory in form. It says “there shall be no” recovery when waiver is proper. \* \* \* While the use of the word “shall,” particularly with reference to an equitable decision, does not eliminate all discretion, see *Hecht Co. v. Bowles*, 321 U.S. 321, 327-331 (1944), it at least imposes on the Secretary a duty to decide. And here where the provision for recovery, § 204(a), and the provision for waiver, § 204(b), are phrased in equally mandatory terms, it is reasonable to infer that in this particular statute Congress did not intend to exalt recovery over waiver.

The legislative history of § 204(b) indicates merely that Congress intended to make recovery more equitable by authorizing waiver. [Citing legislative reports] \* \* \*

#### B

The heart of the present dispute concerns not whether a prerecoupment decision should be made,

but whether making the decision by regional office review of the written waiver request is sufficient to protect the recipient's right not to be subjected to an improper recoupment.

In this regard, requests for reconsideration under § 204(a), as to whether overpayment occurred, may be distinguished from requests for waiver of the Secretary's right to recoup under § 204(b). \* \* \* [R]equests under § 204(a) for reconsideration involve relatively straightforward matters of computation for which written review is ordinarily an adequate means to correct prior mistakes. \* \* \* Many of the named respondents were found to have been overpaid based on earnings reports they themselves had submitted. But unlike the Court of Appeals in this case, we do not think that the rare instance in which a credibility dispute is relevant to a § 204(a) claim is sufficient to require the Secretary to sift through all requests for reconsideration and grant a hearing to the few that involve credibility. The statute authorizes only "proper" recoupment, but some leeway for practical administration must be allowed. Nor do the standards of the Due Process Clause, more tolerant than the strict language here in issue, require that prerecoupment oral hearings be afforded in § 204(a) cases. The nature of a due process hearing is shaped by the "risk of error inherent in the truthfinding process as applied to the generality of cases, not the rare exceptions." *Mathews v. Eldridge*, 424 U.S., at 344. It would be inconsistent with that principle to require a hearing under § 204(a) when review of a beneficiary's written submission is an adequate means of resolving all but a few § 204(a) disputes. \* \* \*

By contrast, written review hardly seems sufficient to discharge the Secretary's statutory duty to make an accurate determination of waiver under § 204(b). Under that subsection, the Secretary must assess the absence of "fault" and determine whether or not recoupment would be "against equity and good conscience." These standards do not apply under § 204(a). The Court previously has noted that a "broad 'fault' standard is inherently subject to factual determination and adversarial input." \* \* \* As the Secretary's regulations make clear, "fault" depends on an evaluation of "all pertinent circumstances" including the recipient's "intelligence . . . and physical and mental condition" as well as his good faith. 20 CFR § 404.507 (1978). We do not see how these can be evaluated absent personal contact between the recipient and the person who decides his case. Evaluating fault, like judging detrimental reliance, usually requires an assessment of the recipient's credibility, and written submissions are a particularly inappropriate way to distinguish a genuine hard luck story from a fabricated tall tale. See *Goldberg v. Kelly*, 397 U.S., at 269.

The consequences of the injunctions entered by the District Courts confirm the reasonableness of interpreting § 204(b) to require a prerecoupment oral hearing. In compliance with those orders, the Secretary, beginning with calendar year 1977, has granted what respondents term "a short personal conference with an impartial employee of the Social Security Administration at which time the recipient presents testimony and evidence and cross-examines witnesses, and the administrative employee questions the recipient." Brief for Respondents 46. Of the approximately 2,000 conferences held between January 1977 and October 1978, 30% resulted in a reversal of the Secretary's decision. Brief for Petitioner 46. This rate of reversal confirms the view that, without an oral hearing, the Secretary may misjudge a number of cases that he otherwise would be able to assess properly, and that the hearing requirement imposed by the Court of Appeals significantly furthers the statutory goal that "there shall be no" recoupment when waiver is appropriate. We therefore agree with the Court of Appeals that an opportunity for a pre-recoupment oral hearing is required when a recipient requests waiver under § 204(b). \* \* \*

For these reasons, we hold that recipients who file a written request for waiver under § 204(b) are entitled to the opportunity for a preresoupment oral hearing; that those who merely request reconsideration under § 204(a) are not so entitled; that class certification is permissible under § 205(g); that the *Buffington* court did not abuse its discretion in certifying a nationwide class; that the class did exceed the bounds permitted by § 205(g), but that the class members who received relief all satisfied the § 205(g) requirement that a request for waiver be filed; and that injunctive relief may be awarded in a § 205(g) proceeding.

The judgment of the Court of Appeals is therefore affirmed in part and reversed in part.  
*It is so ordered.*

MR. JUSTICE POWELL took no part in the consideration or decision of this case.

### *Notes and Questions*

1. The Social Security Act required the Secretary to determine whether recouping overpayments from a recipient would be against “equity and good conscience.” What *procedures* did the Act instruct the Secretary to follow in making this decision?

2. Why are this case and *Florida East Coast Railway* somewhat ironic when viewed together?