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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12 HUGH HELD and
13 KELLY RICHARDSON-WRIGHT,
on behalf of themselves and all
14 others similarly situated,

15 Plaintiffs,

16 vs.
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18 CAROLYN W. COLVIN,
Acting Commissioner of Social
19 Security,

20 Defendant.
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Case No.: 2:15-cv-1732

OPPOSITION TO PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION

Hearing on Motion

Date: August 3, 2015
Time: 1:30 p.m.
Place: 312 North Spring Street, Los
Angeles, CA 90012, Courtroom 15

Honorable Percy Anderson

1 Date: July 13, 2015

Respectfully submitted,

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INTRODUCTION

1
2 Plaintiffs ask this Court to order broad and intrusive preliminary injunctive
3 relief – an extraordinary remedy not lightly granted in any context – under
4 circumstances particularly unfavorable to their request. Plaintiffs, both of whom are
5 married to same-sex spouses, acknowledge that over a period following the Supreme
6 Court’s decision striking down Section 3 of the Defense of Marriage Act (“DOMA”)
7 in United States v. Windsor, 133 S. Ct. 2675 (2013), they received overpayments of
8 their monthly Supplemental Security Income (“SSI”) benefit from the Social Security
9 Administration (“SSA”). Although they acknowledge that the post-Windsor change
10 in their marital-recognition status for SSI purposes meant that they were eligible for
11 a lower monthly benefit than they previously had received – and that they were not
12 eligible for the higher amount they received for a period while SSA brought its
13 numerous benefits programs into compliance with Windsor – they nonetheless
14 brought suit against SSA on March 10, 2015, seeking to have their acknowledged
15 overpayments wiped away. By May 1, 2015, SSA afforded both of them the precise
16 relief they sought, waiving the overpayments. Plaintiffs owe no money to SSA (and
17 therefore have not returned, and will not have to return, their acknowledged
18 overpayments to the Government), they face no ongoing or imminent harm, and
19 there remains no need to seek redress from the Court.
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27 Nevertheless, more than six weeks after SSA’s waiver of their overpayments,
28 Plaintiffs filed the instant motion for preliminary relief, asking the Court to enjoin

1 any ongoing or future recoupment of overpayments made under similar
2 circumstances and to mandate the return of all such overpayments previously
3 recovered. This is an extraordinary request made all the more extraordinary – and
4 unpersuasive – by several facts. First, as noted, Plaintiffs’ overpayments have been
5 waived, mooting any dispute between them and SSA. Second, Plaintiffs waited three
6 months after filing their lawsuit to seek the type of preliminary relief only
7 appropriate under truly exigent circumstances – precisely the type of delay that has
8 been held to undermine allegations of such exigency. And third, Plaintiffs provide
9 no evidence whatsoever of ongoing or imminent harm to anyone that stands to be
10 prevented by the relief they seek; indeed, they fail even to identify any person
11 allegedly facing such harm, much less substantiate such allegations with the necessary
12 evidentiary support.

17 Thus, it is unsurprising that Plaintiffs cannot meet their burden of establishing
18 the factors required to justify preliminary relief – a likelihood of success on the
19 merits; a likelihood of irreparable harm absent the requested relief; a balancing of the
20 equities in their favor; and a showing that the relief is in the public interest. Without
21 meeting their burden as to those factors, Plaintiffs cannot obtain preliminary relief.

24 On that basis, and as explained infra, Plaintiffs’ motion should be denied.

25 **BACKGROUND**

26
27 The statutory, regulatory, and factual background generally relevant to
28 Plaintiffs’ claims is set forth in Defendant’s motion to dismiss. ECF No. 30-1 at 3-7.

1 Particularly relevant to the issues raised by Plaintiffs' motion for preliminary
2 injunction are the notification and administrative review provisions applicable to
3 overpayments under the SSI program, discussed in greater detail herein.
4

5 When SSA determines that an adverse action needs to be taken as to a
6 recipient that could result in an overpayment of SSI benefits, the first step in the
7 process of correcting and potentially recovering such overpayment is the
8 transmission of a Notice of Planned Action ("NPA"). See 20 CFR § 416.1336. The
9 NPA explains that SSA intends to take the adverse action of reducing or suspending
10 the recipient's benefits, terminating eligibility for benefits, or recalculating previously
11 paid benefits. It also triggers the beneficiary's right to seek reconsideration of the
12 proposed adverse action, id. §§416.1407-416-1409, and explains the options for
13 seeking reconsideration, including the right to seek case review on the record or a
14 formal or informal conference. Id. § 416.1413b. The latter two options provide for
15 face-to-face proceedings that permit the recipient to present witnesses, among other
16 procedural rights. Id.¹ If the reconsidered determination is unfavorable, the
17 beneficiary may seek further review of the adverse action by an Administrative Law
18 Judge ("ALJ") and, beyond that, to the Appeals Council ("AC").
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24 Following transmittal of the NPA, SSA transmits a notice of overpayment to
25 the beneficiary. Id. §§ 416.537. The notice advises the beneficiary of the amount of
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27 ¹ If the recipient submits a timely request for reconsideration (within ten days of receipt of the
28 NPA, a period that can be extended for good cause), the benefits at issue will be continued
uninterrupted by SSA until the reconsideration request has been resolved. 20 CFR § 416.1336.

1 the overpayment, the basis for the overpayment determination, and the period over
2 which the overpayment occurred; requests a full refund; and proposes adjustment or
3 recoupment of benefits if a full refund is not received within thirty days. The
4 beneficiary can also seek reconsideration of this action; reconsideration is governed
5 by the same procedures set forth supra as to NPAs. Id. § 416.1413b. Alternatively –
6 or in addition – the beneficiary can seek waiver of overpayment recovery. Id. §§
7 416.558, 416.581; see also Califano v. Yamasaki, 442 U.S. 682, 695-96 (1979)
8 (explaining that reconsideration and waiver are both available in response to
9 overpayment determination). If neither reconsideration nor waiver is requested
10 within thirty days, SSA initiates the recoupment process.²
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15 Requests for reconsideration on the underlying overpayment and requests for
16 waiver of recovery represent two different mechanisms available to SSI beneficiaries
17 that have been overpaid. Reconsideration involves contesting the existence and/or
18 amount of the overpayment determination. Program Operations Manual System
19 (“POMS”) SI 02201.005(H)(2). Waiver, by comparison, constitutes a request that
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24 ² Recoupment rates for overpayments to current SSI beneficiaries are governed by 20 C.F.R. §
25 416.571, which generally provides that “[a]ny adjustment or recovery of an overpayment for an
26 individual in current payment status is limited in amount in any month to the lesser of (1) the
27 amount of the individual’s benefit payment for that month or (2) an amount equal to 10 percent of
28 the individual’s total income (countable income plus SSI and State supplementary payments) for
that month.” 20 C.F.R. § 416.571. Overpaid individuals can request a higher or lower recoupment
rate. Id. If an individual requests a lower rate, SSA will set a rate that is appropriate to the
individual’s financial condition after a fact-based evaluation; “[a]n appropriate rate is one that will
not deprive the individual of income required for ordinary and necessary living expenses.” Id.

1 the Commissioner forgive the debt, thereby relinquishing SSA's right to collect the
2 overpayment. 20 CFR § 416.551; Califano v. Yamasaki, 442 U.S. at 693-94.

3 SSA's consideration of waiver requests is governed by its own set of standards
4 and procedural rules. Waiver may be granted where the overpaid individual was
5 "without fault in connection with [the] overpayment," 20 CFR § 416.550(a), and
6 adjustment or recovery of the overpayment would: (i) "[d]efeate the purpose of title
7 XVI," (ii) "[b]e against equity and good conscience," or (iii) "[i]mpede efficient or
8 effective administration of title XVI due to the small amount involved." Id. §
9 416.550(b)(1)-(3). In relevant part, SSA's regulations provide that the determination
10 of "whether an individual is without fault depends on all the pertinent circumstances
11 surrounding the overpayment in the particular case." Id. § 416.552 (setting forth list
12 of factors to assess). As the Supreme Court observed in Califano v. Yamasaki, the
13 "fault" evaluation is a fact-specific exercise that requires assessment of circumstances
14 "including the recipient's 'intelligence . . . and physical and mental condition' as well
15 as his good faith." 442 U.S. at 696-97 (quoting 20 CFR § 404.507 (1978)).

16 Initial review of a waiver request generally is conducted by the SSA field office
17 for the area in which the beneficiary requesting waiver resides; if waiver cannot be
18 approved on the basis of that initial review, the individual is notified in writing and
19 provided dates, times, and location for a file review and personal conference. 20
20 CFR § 416.557(a). At that stage, the claimant may present evidence in support of his
21 or her waiver request. Id. § 416.557(b)-(c). Following the completion of that review,

1 SSA issues a written decision to the individual (and his or her representative, if any)
2 specifying the basis for the decision to approve or deny waiver and advising of the
3 individual's rights to appeal the decision. Id. § 416.557(e).

4
5 If the beneficiary disagrees with the field office's decision on waiver, he or she
6 may seek review of that decision by an ALJ, who reviews the case de novo. Id. §§
7 416.1433, 416.1429. The ALJ conducts an administrative hearing, followed by the
8 issuance of a written decision. Id. §§ 416.1444, 416.1453. If the ALJ renders a
9 decision unfavorable to the beneficiary, the beneficiary may seek review of the ALJ's
10 decision by the AC. Id. §§ 416.1467-416.1468. Such review represents the final step
11 in SSA's administrative review process. When a beneficiary requests AC review of
12 an ALJ's decision, he or she may submit evidence, arguments, or other documents in
13 support of the request for review. Id. §§ 416.1468(a). The AC will grant review if
14 there has been an abuse of discretion or error of law, or if the ALJ's actions,
15 findings, or conclusions are not supported by substantial evidence in the record. Id.
16 § 416.1470(a). The AC will also grant review if there is a broad policy or procedural
17 issue that may affect the general public interest. Id.

22 STANDARD OF REVIEW

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24 "A preliminary injunction is an extraordinary and drastic remedy; it is never
25 awarded as of right." Munaf v. Geren, 128 S. Ct. 2207, 2219 (2008) (citations and
26 internal quotation marks omitted). A party seeking such relief "must establish (1)
27 that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable
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1 harm in the absence of preliminary relief, (3) that the balance of equities tips in his
2 favor, and (4) that an injunction is in the public interest.” Winter v. NRDC, 55 U.S.
3 7, 20 (2008). In a case such as this, where all or some portion of the injunction
4 would alter – rather than preserve – the status quo, the plaintiff must meet an even
5 higher standard as to such relief: a request for “[s]uch ‘mandatory preliminary relief’
6 is subject to heightened scrutiny and should not be issued unless the facts and law
7 clearly favor the moving party.” Dahl v. Herm Pharms. Corp., 7 F.3d 1399, 1403
8 (9th Cir. 1993); see also Stanley v. Univ. of S. Calif., 13 F.3d 1313, 1320 (9th Cir. 1994)
9 (mandatory preliminary relief is “particularly disfavored”).
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13 **ARGUMENT**

14 Plaintiff’s motion for a preliminary injunction fails for a range of reasons,
15 including their absolute failure to establish that they are likely to suffer irreparable
16 harm absent the preliminary relief they seek.
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18 **I. PLAINTIFFS FAIL TO ESTABLISH THAT THEY ARE LIKELY TO SUFFER 19 IRREPARABLE HARM ABSENT THE PRELIMINARY RELIEF THEY SEEK.**

20 Plaintiff seeking preliminary injunctive relief “[must] demonstrate that
21 irreparable injury is likely in the absence of an injunction[.]” Winter, 555 U.S. at 22
22 (emphasis in original). Neither Plaintiff can make that showing.
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25 As an initial matter, Plaintiffs’ substantial delay in moving for a preliminary
26 injunction substantially undermines any suggestion that they are likely to suffer
27 irreparable harm absent that relief. Oakland Tribune, Inc. v. Chronicle Publishing
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1 Co., Inc., 762 F.2d 1374, 1377 (9th Cir. 1985) (citing Lydo Enterprises v. City of Las
2 Vegas, 745 F.2d 1211, 1213-14 (9th Cir. 1984); GTE Corp. v. Williams, 731 F.2d 676,
3 678-79 (10th Cir. 1984)) (affirming district court denial of preliminary injunction;
4 plaintiff's "long delay before seeking a preliminary injunction implies a lack of
5 urgency and irreparable harm"); Broadcam Corp. v. Qualcomm Inc., No. SACV 05-
6 468-JVS(MLGx), 2005 WL 5925584, *4 (C.D. Cal. Oct. 19, 2005) (citing Oakland
7 Tribune, 762 F.2d at 1377) (irreparable-harm claim entitled to "little weight" in light
8 of "months-long delay" in seeking relief). Plaintiffs filed their motion for a
9 preliminary injunction on June 17, 2015. ECF No. 29. In Mr. Held's case, that was
10 more than eight months after he requested reconsideration of his overpayment
11 determination. Declaration of Erik Jones, June 17, 2015, ¶ 10 ("Jones Decl.") (ECF
12 No. 30-2). In Ms. Richardson-Wright's case, that was approximately five months
13 after she requested reconsideration of her overpayment determination. Id. ¶ 17.
14 And more than three months elapsed between the filing of the complaint on March
15 10, 2015 and the filing of Plaintiffs' motion. This overall delay implies a lack of
16 urgency on either Plaintiff's part, and thus belies any notion of irreparable harm
17 absent the requested relief.

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24 Even more fundamentally, Plaintiffs' motion fails to identify any person –
25 much less either of the two actual Plaintiffs – that faces any likelihood of imminent
26 irreparable harm in the absence of the preliminary relief sought. It is axiomatic that
27 a plaintiff seeking preliminary injunctive relief must establish that he or she is likely
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1 to suffer irreparable harm absent such relief. Winter, 555 U.S. at 22. Plaintiffs fail to
2 satisfy that basic axiom here, and do not even appear to make any credible effort to
3 do so. There is no allegation of likelihood of injury to any specific person, much less
4 any indication of imminent irreparable harm to either Plaintiff. See Pls.’ Mem.,
5 passim. And there is no declaration or other evidentiary support for such claimed
6 likelihood of harm, as Plaintiffs are required to submit to carry their evidentiary
7 burden. Winter, 555 U.S. at 22; Herb Reed Enters. v. Florida Entm’t Mgmt., 736
8 F.3d 1239, 1250-51 (9th Cir. 2013).

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12 Plaintiffs’ failure even to allege any likelihood of irreparable harm – much less
13 attempt to substantiate such contentions through the submission of declarations or
14 other evidentiary material – is unsurprising, as the record establishes that there is no
15 real possibility of either of them facing such harm given that their underlying claims
16 have been resolved. Plaintiffs themselves cannot point to any ongoing or imminent
17 harm, much less irreparable harm, as their opening brief concedes that “after the
18 filing of the complaint[,] SSA notified each of them that it was granting them waiver
19 of overpayments, even though SSA collected no further evidence from them and
20 held no further proceedings.” Pls.’ Mem. at 8.

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24 Indeed, this unavoidable concession should compel the immediate denial of
25 Plaintiffs’ requested preliminary injunction: the only two SSI beneficiaries actually
26 party to this litigation have already received the relief they sought – six weeks before
27 filing the instant motion, no less. With the substance of their individual claims
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1 already resolved in a manner fully favorable to them, the relief Plaintiffs ask the
2 Court to enter would prevent no irreparable harm, for the simple reason that there is
3 no (alleged) irreparable harm to be prevented.
4

5 Rather than making any effort to identify and substantiate some concrete
6 allegation of imminent irreparable harm, Plaintiffs simply fall back on a bald
7 assertion that “SSA’s actions involve ‘the deprivation of constitutional rights’ [and
8 thus] this ‘unquestionably constitutes irreparable injury.’” Pls.’ Mem. at 20 (quoting
9 Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting Elrod v. Burns, 427
10 U.S. 347, 373 (1976))). This cannot suffice to warrant entry of preliminary relief for
11 several reasons. First, it relies entirely on the premise that SSA in fact did deprive
12 Plaintiffs of a constitutional right at some point following the Supreme Court’s
13 decision in Windsor. But as explained in Part II, infra, there is no basis to such
14 contention. Plaintiffs assert two constitutional claims – an Equal Protection claim
15 and a procedural Due Process claim – and Plaintiffs cannot establish a likelihood of
16 success on the merits of either such claim. See Parts II.A, II.B, infra.
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21 Second, even if either Plaintiff ever suffered any actual deprivation of any
22 rights under the Equal Protection or Due Process clauses at some point in the post-
23 Windsor past – and there is no indication that is so – such deprivation has already
24 been remedied by SSA, meaning that the preliminary relief Plaintiffs now request to
25 prevent future alleged harm is by definition meaningless to them. Plaintiffs seek two
26 forms of injunctive relief: first, relief barring SSA from “making any effort to recoup
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1 overpayments caused by SSA's failure to recognize Plaintiffs' marriages after the
2 Windsor decision[,]” and second, relief “requiring SSA to return any such funds
3 already withheld or otherwise received.” Pls.' Mem. at 2. Because both Plaintiffs'
4 overpayments were waived more than six weeks prior to the filing of the instant
5 motion, a court order enjoining SSA from “making any effort to recoup
6 overpayments” would be an empty gesture. And because each Plaintiff's SSA
7 overpayment balance is \$0.00, meaning that neither has any overpayment
8 outstanding to SSA, Jones Decl. ¶¶ 13-15, 19-21, a court order “requiring SSA to
9 return any [] funds already withheld or otherwise received[]” would be similarly
10 empty of meaning.
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14 Third, insofar as Plaintiffs may seek to base their irreparable-harm argument
15 on conjectural allegations of some deprivation of the constitutional rights of
16 unidentified members of the proposed class they seek to represent, they cannot do
17 so. To satisfy the irreparable-harm element of the preliminary-injunction standard,
18 Plaintiffs must establish that they are likely to suffer irreparable harm absent the
19 relief requested. Winter, 555 U.S. at 22; Hodgers-Durgin v. de la Vina, 199 F.3d
20 1037, 1045 (9th Cir. 1999). They cannot rely on allegations of such harm as to
21 persons who are not parties to the litigation, much less non-parties not even
22 identified to the Court; their class allegations do not alter this basic requirement. As
23 the Ninth Circuit held in Hodgers-Durgin, “system-wide injunctive relief is not
24 available based on alleged injuries to unnamed members of a proposed class
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1 Unless the named plaintiffs are themselves entitled to seek injunctive relief, they may
2 not represent a class seeking that relief.” 199 F.3d at 1045; see also Table Bluff
3 Reservation (Wiyot Tribe) v. Philip Morris, Inc., 256 F.3d 879, 884 (9th Cir. 2001).

4
5 Further, even if such allegations of harm as to non-parties could suffice as a matter
6 of law, the requirement that Plaintiffs support their own allegations of irreparable
7 harm through declarations or other evidentiary material – which they have failed to
8 do – should apply with even greater force to conclusory allegations of harm as to
9 non-parties. See Hodgers-Durgin, 199 F.3d at 1044-45 (assessing declarations of
10 harm by putative class members before holding such evidence insufficient to satisfy
11 irreparable-harm requirement).

12
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14 And even if Plaintiffs could rely on phantom allegations of harm to
15 unidentified non-parties as a legal matter, assessing the specific preliminary relief
16 they seek forecloses any notion that such non-party allegations might satisfy their
17 burden of establishing a likelihood of irreparable harm absent the requested relief as
18 a factual matter. As to the first component of the requested injunction – an order
19 barring SSA from “making any effort to recoup overpayments” attributable to post-
20 Windsor changes in marital-recognition status, Pls.’ Mem. at 2 – Plaintiffs cannot
21 establish any likelihood of imminent harm that it would in fact prevent. Among
22 other reasons, that is because SSA itself has already placed a hold on any further
23 overpayment determinations or recoupment actions, as Plaintiffs acknowledge. Id.
24 at 20. To be sure, while describing SSA’s unilateral decision as “laudable,” Plaintiffs
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1 nonetheless posit that preliminary relief remains appropriate because SSA's hold is
2 temporary and can be modified or revoked. Id. But these notions undermine, rather
3 than support, Plaintiffs' argument. Assertions that SSA's hold on overpayment
4 determinations and recoupment actions is a "temporary solution" and "can be
5 modified or revoked" are the language of conjectural harm, rather than harm that is
6 concrete, certain, and imminent. And only the latter kinds of harm can justify the
7 extraordinary remedy of preliminary injunctive relief, Winter, 555 U.S. at 22;
8 Colorado River Indian Tribes v. Town of Parker, 776 F.2d 846, 849-51 (9th Cir.
9 1985); alleged harms that are merely conjectural – as these plainly are – cannot
10 suffice to justify such a remedy.
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14 The same holds true for the other component of Plaintiffs' requested
15 injunction, a requirement that SSA "return any such funds already withheld or
16 otherwise received." Pls.' Mem. at 2. For Plaintiffs themselves, the reason for this is
17 elementary: their overpayments have been waived, meaning that there are no funds
18 to be "returned," and thus no conceivable benefit from this component of the
19 requested injunction. And for the unidentified non-parties, there is similarly no
20 apparent benefit to be derived from such relief. SSA's regulations and guidance
21 expressly permit beneficiaries not only to seek reconsideration or waiver of
22 overpayments, but to continue to receive the full amount of the monthly benefit for
23 which they are eligible while the reconsideration or waiver decision-making
24 processes remain ongoing, and even to receive refunds of any amounts recovered for
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1 the month a waiver request was received (and any subsequent months). 20 CFR §
2 416.1336; POMS SI 02260.001 ¶¶ A.5, B.2. Thus, it cannot be said that a mandatory
3 injunction requiring SSA to return funds previously withheld is essential to the
4 prevention of an alleged imminent harm that an SSI beneficiary can prevent at any
5 time simply by submitting a request to SSA.
6

7
8 In short, Plaintiffs ask this Court to take the extraordinary step of finding a
9 likelihood of irreparable harm absent the preliminary relief sought on the basis of a
10 “record” that, far from establishing such harm, establishes precisely the opposite.
11 Neither Plaintiff faces any threat of imminent harm, as the undisputed facts show
12 that their respective claims have been unilaterally resolved in their favor; their
13 previously assessed overpayments were waived more than six weeks before they
14 sought a preliminary injunction, and neither owes any money to SSA. And to the
15 extent that Plaintiffs seek to rely on unsupported allegations of harm to unidentified
16 non-parties – something they cannot do as a matter of law – the actual facts establish
17 that there is no imminent harm, much less irreparable harm that stands to be
18 prevented by the injunction Plaintiffs seek. This factor thus favors denial of the
19 requested relief.
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24 **II. PLAINTIFFS ARE NOT LIKELY TO SUCCEED ON THE MERITS OF ANY OF**
25 **THEIR CLAIMS.**

26 To obtain preliminary relief, Plaintiffs must also demonstrate that they are
27 likely to succeed on the merits of their claims. This they cannot do for at least two
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1 reasons. First, each of the three claims Plaintiffs assert has been mooted by SSA's
2 waiver of the overpayments at the core of all three claims, meaning that there is
3 nothing remaining for the Court to resolve. And second, even if the Court were to
4 disagree that Plaintiffs' claims have been mooted as a jurisdictional matter, Plaintiffs
5 cannot establish a likelihood of success on the merits of those claims. This factor
6 thus favors denial of preliminary injunctive relief.
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9 **A. All of Plaintiffs' Claims are Moot.**

10 As Defendant explained in her motion to dismiss, Plaintiffs' claims have been
11 mooted by SSA's decision to waive both Plaintiffs' previously assessed
12 overpayments, and should be dismissed for lack of jurisdiction on that basis. ECF
13 No. 30 at 8-13. That is so because Plaintiffs have obtained the very benefits for
14 which they brought this case. As the Complaint states explicitly, Plaintiffs seek
15 equitable relief that would "prohibit[] SSA from recouping overpayments caused by
16 its [allegedly] unconstitutional and discriminatory practices." Compl. ¶ 12. All of
17 these issues have been resolved by SSA's determination that waiver of each
18 Plaintiff's overpayment was warranted, meaning that there is no live dispute, and no
19 meaningful relief that any court could provide to Plaintiffs.³
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25 ³ Indeed, as the United States Court of Appeals for the Second Circuit has held, the actual payment
26 of Social Security benefits sought generally moots a judicial claim for such benefits. See Maloney
27 v. Soc. Sec. Admin., 517 F.3d 70, 73, 74 (2d Cir. 2008); see also Maloney v. Soc. Sec. Admin., No.
28 02-CV-1725, 2006 WL 1720399, at *6 (E.D.N.Y. June 19, 2006) ("In a social security action
seeking payment of benefits, the actual payment of those benefits generally moots the action.").
Citing the district court decision in Maloney, a district court in the District of Minnesota held the
same in a case involving a challenge to an SSA benefits overpayment determination:

1 **B. Plaintiffs Cannot Establish a Likelihood of Success on Their**
2 **Equal Protection Claim.**

3 Plaintiffs would fare no better even on the substance of their first
4 constitutional claim – that SSA’s assessment that they were overpaid for a period
5 post-Windsor violates the Equal Protection Clause. See Pls.’ Mem. at 10-14. This
6 argument is premised entirely on an apparent assumption that there has actually been
7 discrimination, and that such discrimination was intentional, rather than any factual
8 showing that SSA actually discriminated against anyone. See id. Any such
9 assumption is incorrect; thus, Plaintiffs cannot establish a likelihood of success.
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11 At the outset, Plaintiffs cannot demonstrate any likelihood of success on this
12 claim because there is no actual claim left; insofar as there ever was any
13 discrimination against them on the basis of their same-sex marital status post-
14 Windsor (and there was not), such differential treatment was erased before they filed
15 the instant motion. Plaintiffs do not – and cannot – dispute that their marriages are
16 now recognized for purposes of their benefit calculation or that their previously
17 assessed overpayments have been waived. See Pls.’ Mem. at 8, 19. Thus, there is no
18 suggestion that Plaintiffs are being treated any differently than similarly situated SSI
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25 Because [plaintiff] received the full amount of benefits that she requested, her claim for
26 payment of Social Security benefits is moot. See Burton v. Bowen, 815 F.2d 1239, 1241
27 (8th Cir.1987); Maloney, 2006 WL 1720399, at *6 (finding benefits claim moot before
28 analyzing plaintiff’s other claims).

Baragar v. Soc. Sec. Admin., 2013 WL 588220, at *2 (D. Minn. Feb. 13, 2013).

1 beneficiaries that are married to opposite-sex spouses, and hence no plausible
2 assertion of ongoing discrimination.

3 Moreover, Plaintiffs do not challenge a statute or regulation that facially
4 classifies on the basis of marital status – such as Section 3 of DOMA, before it was
5 struck down in Windsor. Rather, they assert that a facially neutral set of regulations
6 and procedures previously were applied to them in a manner that somehow ignored
7 the decision in Windsor. See Pls.’ Mem. at 11. For that reason, they must establish
8 that SSA acted with discriminatory purpose to maintain an Equal Protection claim.
9 Washington v. Davis, 426 U.S. 229, 240 (1976); see also Personnel Admin. of Mass.
10 v. Feeney, 442 U.S. 256, 272 (1979) (“[E]ven if a neutral law has a disproportionately
11 adverse effect upon a racial minority, it is unconstitutional under the Equal
12 Protection Clause only if that impact can be traced to a discriminatory purpose.”).

13 Plaintiffs cannot make any such showing. To begin with, Plaintiffs have not
14 alleged the requisite differential treatment – that is, that they have been treated any
15 differently than similarly situated SSI beneficiaries married to opposite-sex spouses.
16 To establish that required predicate for a discrimination claim in this context, they
17 would have to show that SSI recipients married to opposite-sex spouses whose
18 marriages were only recognized by SSA for the first time months after the fact
19 experienced a delay in the recalculation of their monthly benefit to reflect such newly
20 recognized status, yet were not determined by SSA to have been overpaid for such
21 period. Plaintiffs have not identified any such similarly situated SSI beneficiaries and
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1 presumably cannot do so; without doing so, there can be no inference of
2 discrimination, no inference of discriminatory intent, and no colorable assertion that
3 SSA has violated the Equal Protection Clause.
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5 **C. Plaintiffs Cannot Establish a Likelihood of Success on Their**
6 **Procedural Due Process Claim.**

7 Plaintiffs' other constitutional claim is that SSA deprived them of procedural
8 due process by initiating recoupment of overpayments; they assert that SSA ignored
9 "evidence" in its possession that these overpayments (which Plaintiffs acknowledge
10 having received) were the fault of SSA, not Plaintiffs, and that initiating recoupment
11 was, in and of itself, unfair. In other words, Plaintiffs' claim is that SSA should not
12 have required them to return overpayments they acknowledge having received, and
13 that the decision to do so (since waived) violates procedural due process.
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16 As a threshold matter, Plaintiffs cannot show a likelihood of success as to this
17 claim, because the favorable resolution of Plaintiffs' underlying claims by SSA – that
18 is, the agency's waiver of their overpayments – defeats their procedural due process
19 claim even as it inures to their benefit. That is because procedural due process
20 requires only the meaningful opportunity to contest an alleged deprivation of a
21 protected property interest – in this case, a portion of Plaintiff's monthly SSI
22 benefits – either before or after such alleged deprivation. As the Supreme Court
23 explained in Mathews v. Eldridge, 424 U.S. 319 (1976), "[t]he fundamental
24 requirement of due process is the opportunity to be heard 'at a meaningful time and
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1 in a meaningful manner.” 424 U.S. at 333. Here, the alleged deprivation Plaintiffs
2 actually would have sought to administratively contest was the determination by SSA
3 that they should be required to repay their overpayments; for each Plaintiff, a
4 successful outcome would have been a determination that they were not required to
5 repay those overpayments. And that is precisely what Plaintiffs obtained, six weeks
6 before the filing of their motion for a preliminary injunction. Thus, even were the
7 Court to conclude that their claims are not moot, they have by definition received all
8 of the process they conceivably were due, and consequently, their claim must fail on
9 the merits.
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13 Moreover, setting their successful outcome aside, Plaintiffs cannot show a
14 likelihood of success because their claim fundamentally misunderstands what
15 procedural due process entails. Assuming the existence of a protected property
16 interest, what procedural due process requires is nothing more than a meaningful
17 opportunity for the claimant to have his or her claim fairly considered – that is,
18 adequate process. Mathews, 424 U.S. at 333. What it does not guarantee is a
19 particular result or outcome. Id.; Simmons v. Gillespie, 712 F.3d 1041, 1044 (7th Cir.
20 2013) (“[F]ederal entitlement is to process, not to a favorable outcome.”); Schindler
21 v. Schiavo, 403 F.3d 1289, 1295 (11th Cir. 2005). Yet it is apparent that the gist of
22 Plaintiffs’ claim here is that SSA’s (initial and subsequently waived) determination
23 that Plaintiffs were obligated to refund monies they concededly had been overpaid
24 was “unfair” – in other words, that SSA reached the wrong outcome when it
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1 determined that Plaintiffs should return the overpayments they received. See Pls.’
2 Mem. at 19 (“There can be no doubt SSA ignored the evidence in its possession that
3 these overpayments were SSA’s fault, not Plaintiffs’, and that recoupment is
4 unfair.”). This contention signals clearly that Plaintiffs have confused “process” for
5 “outcome,” and that confusion means that they have not asserted a colorable
6 procedural due process claim – certainly not one that might warrant entry of a
7 preliminary injunction.
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10 And in any event, it is clear that SSA’s extensive notification and appeal
11 procedures governing overpayment determinations and potential recoupment
12 provide more than adequate process. See Background, supra. In light of this
13 substantial process, Plaintiffs’ conclusory argument that SSA “ignored the evidence”
14 bearing on the question of fault allegedly in its possession is both incorrect and
15 premature. It is incorrect because it ignores the procedures SSA has in place to
16 actually develop an evidentiary record on the question of fault (among other issues
17 on which a beneficiary chooses to submit evidence). The precise point of those
18 procedures is to permit the development of such evidence, so that beneficiaries can
19 have the greatest opportunity reasonably possible to contest their overpayments.
20 And Plaintiffs’ argument is premature (notwithstanding their months-long delay in
21 seeking preliminary relief) for much the same reason. By emphasizing the question
22 of what evidence SSA did or did not have at the very outset of the overpayment-
23 assessment process, before administrative review has even begun, Plaintiffs are
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1 jumping the gun, asking the Court to find a violation of procedural due process
2 before the process itself has even had the chance to operate.

3 Finally, the fact that SSA granted waivers for both Plaintiffs does not suggest
4 at all what Plaintiffs want it to suggest – that the assessment of overpayments was
5 ipso facto unfair – and certainly provides no support for their procedural due
6 process claim. What SSA’s waiver decision illustrates is that the administrative
7 review process worked like it would under a best-case scenario: SSA took a second
8 look at an initial determination adverse to each Plaintiff’s interests, evaluated the
9 evidence at hand, and determined on review that waiver was appropriate. This is
10 precisely what procedural due process entails – although it does not guarantee a
11 favorable outcome, e.g., Mathews, 424 U.S. at 333 – and the fact that SSA’s
12 administrative review here resulted in waiver of each Plaintiff’s overpayments
13 underscores that it plainly meets the requirements of procedural due process.⁴
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22 ⁴ Plaintiffs may argue that potential errors in individual cases may somehow add up to a violation
23 of procedural due process. Insofar as they do, they would be incorrect for at least two reasons.
24 First, as the Supreme Court has emphasized, “the very nature of the due process inquiry indicates
25 that the fundamental fairness of a particular procedure does not turn on the result obtained in any
26 particular case.” Walters v. National Ass’n of Radiation Survivors, 473 U.S. 305, 321 (1985).
27 Second, the fact that waivers were granted to both Plaintiffs underscores that SSA’s administrative
28 review procedures as a whole operate in a manner that fully comports with procedural due process;
the built-in redundancies in SSA’s multi-level review process means that even where alleged
mistakes are made at the outset, they can be identified and corrected, if necessary, at subsequent
stages of review.

1 **D. Plaintiffs Cannot Establish a Likelihood of Success on their**
2 **Claim under the Social Security Act.**

3 Finally, Plaintiffs' statutory claim – that the Social Security Act itself prohibits
4 SSA from recouping acknowledged overpayments in this context, see Pls.' Mem. at
5 14-18 – can be given short shrift. Plaintiffs seem to assert that SSA ought to be
6 statutorily proscribed from assessing overpayments in the first instance where SSI
7 beneficiaries' receipt of overpayments post-Windsor was attributable to SSA's delay
8 in processing their marital status. See id. at 14-15. But that is not a reasonable
9 reading of the Act's provisions governing overpayments and waiver. The Act cannot
10 plausibly be read to forbid assessment of acknowledged overpayments in the first
11 instance where the recipients of such overpayments arguably are "without fault." To
12 the contrary, the determination of fault in the context of potential waiver of
13 overpayment determinations is a fact-based inquiry that by definition occurs after an
14 overpayment has been assessed, and which necessitates an evaluation of "all the
15 pertinent circumstances surrounding the overpayment in the particular case." 20
16 CFR § 416.552. And that is precisely how SSA determined that waiver of both
17 Plaintiffs' overpayments was warranted in this case. Thus, Plaintiffs cannot show a
18 likelihood of success on this claim.
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1 **III. THE BALANCING OF EQUITIES AND THE PUBLIC INTEREST WEIGH**
2 **AGAINST PRELIMINARY INJUNCTIVE RELIEF.**

3 Finally, the balancing-of-equities and the public-interest factors – which
4 generally merge into a single inquiry in actions against the Government, Nken v.
5 Holder, 556 U.S. 418, 435 (2009) – also favor denial of Plaintiffs’ request for
6 preliminary relief.
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8 As noted in Part I, supra, Plaintiffs face no imminent harm absent the
9 requested preliminary relief. On the other hand, where such relief would “adversely
10 affect a public interest . . . the court may . . . withhold relief until [final judgment,]
11 though the postponement may be burdensome to the plaintiff.” Weinberger v.
12 Romero-Barcelo, 456 U.S. 305, 312-13 (1982). And courts “should pay particular
13 regard for the public consequences in employing the extraordinary remedy of
14 injunction.” Id. at 312. In particular, “where a preliminary injunction would prevent
15 an agency from enforcing regulations that Congress found [were] in the public
16 interest to direct an agency to develop and enforce, courts have found the balance of
17 equities to tip in favor of denying the injunction to prevent harm to the agency’s
18 mission.” Torres Advanced Enterprise Solutions LLC v. Mid-Atlantic Professionals
19 Inc., No. PWG-12-3679, 2013 WL 531215, at **5-6 (D. Md. Feb. 8, 2013) (internal
20 citations omitted); Nat’l Propane Gas Ass’n v. U.S. Dep’t of Homeland Security, 534
21 F. Supp. 2d 16, 20 (D.D.C. 2008) (“[T]here is inherent harm to an agency in
22 preventing it from enforcing regulations that Congress found it in the public interest
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1 to direct an agency to develop and enforce.”); Hunter v. FERC, 527 F. Supp. 2d 9,
2 18 (D.D.C. 2007) (same). That is the case here, where Congress has directed SSA to
3 develop and enforce regulations governing the SSI program, including assessment
4 and recoupment of overpayments; the injunction Plaintiffs seek would plainly
5 interfere with SSA’s ability to carry out that directive.
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7 Thus, these combined factors weigh against Plaintiff’s request.
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9 **CONCLUSION**

10 For the foregoing reasons, the Court should deny Plaintiffs’ motion for
11 preliminary injunction.
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