

The Roundtable of Roundtables

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Circuit Comparisons

The following is a survey of case law across the federal circuits addressing key issues affecting our clients. Our review of decisions outside the Ninth Circuit is preliminary and intended to serve as a starting point for further independent research.

I. IMPROPER INTERPRETATIONS OF SSR 24-3P

As of this presentation, we are not aware of any successful challenges directly invalidating SSR 24-3p. Several district court challenges have argued that an interpretive SSR cannot impose a new procedural obligation shifting responsibility for developing Step Five evidence from the Commissioner to the claimant. However, recent decisions provide potentially helpful authority against broad forfeiture arguments. In *Obrien v. Bisignano*, No. 22-55360 (9th Cir. July 1, 2025), the Ninth Circuit rejected a categorical requirement that represented claimants raise every issue before the ALJ to preserve judicial review, while distinguishing cases involving new vocational evidence. Similarly, in *Griffin v. Bisignano*, 2026 WL 2905680, at *8 n.6 (M.D. Pa. Sept. 28, 2026), the court rejected the Commissioner's argument that the claimant forfeited an issue by failing to raise it during administrative proceedings. Neither decision directly invalidates SSR 24-3p, but both may support arguments against expanding administrative forfeiture requirements.

9th Circuit

Obrien v. Bisignano, No. 22-55360 (9th Cir. July 1, 2025)

The Ninth Circuit rejected the Commissioner's argument that the claimant forfeited his challenge to the ALJ's past-relevant-work determination by failing to raise it at the administrative hearing. The court held that issues inherent in the required five-step evaluation process do not necessarily require specific objections to preserve judicial review. The court rejected a categorical issue-exhaustion requirement but distinguished cases involving new vocational evidence not presented to the ALJ. *Obrien*, slip op. at 19–25.

3rd Circuit — District Court

Griffin v. Bisignano, No. 1:25-cv-01677, 2026 WL 2905680, at *8 n.6 (M.D. Pa. Sept. 28, 2026)

“Here, there are no social security regulations requiring issue exhaustion prior to review in the district court.” The court rejected the Commissioner's argument that the claimant forfeited an issue by failing to raise it during administrative proceedings, concluding that “the Commissioner's waiver argument is without merit.” *Id.*

Benjamin C. v. Bisignano, 2026 U.S. Dist. LEXIS 129134, at *9 (C.D. Ill. 2026) (district court)

The claimant argued that SSR 24-3p unlawfully shifts part of the Commissioner's Step Five burden to claimants through a new forfeiture requirement adopted without notice-and-comment rulemaking. The court did not reach that challenge on the merits because the claimant failed to show how SSR 24-3p affected his own case or its outcome. This illustrates the importance of demonstrating concrete prejudice when challenging the ruling.

II. REASONING LEVEL / APPARENT CONFLICT WITH DOT

A central difference among the circuits appears to be whether SVP/unskilled work and DOT reasoning levels measure different occupational requirements.

Claimant Friendly Precedent

9th Circuit

Zavalin v. Colvin, 778 F.3d 842 (9th Cir. 2015)

"[If] an apparent conflict [exists] between the [VE's] testimony and the DOT—for example, expert testimony that a claimant can perform an occupation involving DOT requirements that appear more than the claimant can handle—the ALJ is required to reconcile the inconsistency." Id. at 846.

Boyd v. Bisignano, No. 24-4608 (9th Cir. Oct. 24, 2025) (unpublished)

"An apparent conflict exists here." The VE testified that a claimant limited to simple, routine tasks could not carry out detailed written and oral instructions, but identified occupations requiring Reasoning Level 2, which involves carrying out "detailed but uninvolved written or oral instructions." The court held that the ALJ was required to resolve this conflict before relying on the VE's testimony. *Boyd*, slip op. at 3–4.

10th Circuit

Hackett v. Barnhart, 395 F.3d 1168 (10th Cir. 2005)

"We find that level-three reasoning appears inconsistent with the RFC limiting plaintiff to simple and routine work tasks. [...] This apparent conflict between the VE's testimony and the DOT must be resolved before the ALJ can rely on the VE's testimony as substantial evidence to support a determination of nondisability." Id. at 1176.

Paulek v. Colvin, 662 F. App'x 588 (10th Cir. 2016) (unpublished)

"[W]e have held that a limitation to simple and routine work tasks seems inconsistent with the demands of level-three reasoning." Id. at 594.

Wood v. Saul, 2020 U.S. Dist. LEXIS 45211, at *5 (2020) (district court)

Noted the Commissioner's concession that Reasoning Level 3 exceeds simple, routine work, citing Keller v. Berryhill, 754 F. App'x 193 (4th Cir. 2018) (unpublished). The concession and district court discussion are potentially useful, but do not establish a categorical published Fourth Circuit rule.

Un-Claimant-Friendly Precedent

7th Circuit

Terry v. Astrue, 580 F.3d 471 (7th Cir. 2009)

"Because Terry did not identify any conflict at the hearing, she must show that the conflict was obvious enough that the ALJ should have picked up on it without any assistance." Id. at 478.

Sawyer v. Colvin, 512 F. App'x 603 (7th Cir. 2013) (unpublished)

The court rejected a claimed conflict between simple tasks and DOT Reasoning Level 3. Id. at 610–11.

Surprise v. Saul, 968 F.3d 658 (7th Cir. 2020)

Rejected an asserted conflict between a one- to three-step instruction limitation and Reasoning Level 2 occupations, finding no demonstrated conflict, much less an obvious one. Id. at 662.

8th Circuit

Renfrow v. Astrue, 496 F.3d 918 (8th Cir. 2007)

"In sum, the ALJ's error in failing to ask the vocational expert about possible conflicts between his testimony and the Dictionary of Occupational Titles was harmless, since no such conflict appears to exist." Id. at 921. "The jobs in question are both classified as unskilled and so do not appear to be 'complex.'" Id.

Moore v. Astrue, 623 F.3d 599 (8th Cir. 2010)

Simple instructions and simple, routine, repetitive work did not necessarily conflict with Level 2 reasoning absent a restriction to one- or two-step instructions. Id. at 604.

Friendlier Precedent

Thomas v. Berryhill, 881 F.3d 672 (8th Cir. 2018)

A one- or two-step task restriction created an apparent conflict with Level 3 reasoning requiring resolution. Id. at 677–78.

Stanton v. Commissioner, 899 F.3d 555 (8th Cir. 2018)

A one- or two-step instruction limitation conflicted with Level 2 reasoning; a general DOT-consistency question was inadequate. Id. at 558–59.

III. GENERALLY UNRELIABLE VE TESTIMONY

The issue is whether an ALJ may rely on VE testimony in the face of significant contrary evidence, and how thoroughly the VE must explain their opinion.

Claimant Friendly Precedent

9th Circuit

Powley v. Bisignano, No. 24-4063 (9th Cir. Mar. 18, 2026)

ALJs are required to address a discrepancy and resolve inconsistencies. "… [T]he counter evidence demonstrates a purported inconsistency between job-numbers data from the same database for the same jobs, as well as a conflict between job-numbers data relied upon by Arne [the VE] and job-numbers data from alternative reliable sources."

VEs relying on their "experience" is not in of itself sufficient to explain a direct conflict. "Simply noting that Arne's testimony was based on his experience and his answer to a hypothetical did nothing to address the conflicts between the data." Slip op. at 20.

7th Circuit

Chavez v. Berryhill, 895 F.3d 962 (7th Cir. 2018)

Questions unexplained estimates drawn from broad occupational groups.

Brace v. Saul, 970 F.3d 818 (7th Cir. 2020)

Ruenger v. Kijakazi, 23 F.4th 760 (7th Cir. 2022)

When a claimant challenges a VE's job-number estimate, the ALJ must inquire whether the VE used a reliable methodology. The VE's estimates must rest on reliable sources and a sufficiently explained method. Id. at 761, 763.

Requires a reasoned explanation of the VE's job-number methodology.

Un-Claimant-Friendly Precedent

1st Circuit

Purdy v. Berryhill, 887 F.3d 7 (1st Cir. 2018)

Upheld reliance on estimates generated using professionally accepted vocational software.

2nd Circuit

Brault v. Social Security Administration, 683 F.3d 443 (2d Cir. 2012)

Applied deferential review and declined to require the VE to produce underlying data in every case.

Friendlier Precedent / Qualifications

Chavez v. O'Malley, No. 23-1196 (7th Cir. Mar. 22, 2024)

Affirmed an explained methodology based on accepted sources.

Kilpatrick v. Kijakazi, 35 F.4th 1187 (9th Cir. 2022)

Rejected a challenge where contrary estimates were not sufficiently probative. Counsel used his own methodology.

White v. Kijakazi, 44 F.4th 828 (9th Cir. 2022)

Addresses whether competing job-number evidence requires further inquiry.

IV. SIGNIFICANT NUMBERS

No uniform numerical threshold applies nationally; the courts differ in how they evaluate regional and national job totals.

(Potentially) Claimant Friendly Precedent

9th Circuit

Gutierrez v. Commissioner, 740 F.3d 519 (9th Cir. 2014)

Discusses a fact-specific significant-numbers inquiry. 25,000 national jobs is a "close call."

Beltran v. Astrue, 700 F.3d 386 (9th Cir. 2012)

Found 135 regional and 1,680 national jobs insufficient.

10th Circuit

Trimiar v. Sullivan, 966 F.2d 1326 (10th Cir. 1992)

Rejected a bright-line threshold and considered contextual factors for regional jobs.

4th Circuit

Hicks v. Califano, 600 F.2d 1048 (4th Cir. 1979)

Indicated approximately 110 regional jobs were not insignificant in the circumstances; not a categorical minimum.

Un-Claimant-Friendly Precedent

4th Circuit

Hicks v. Califano, 600 F.2d 1048 (4th Cir. 1979)

Indicated approximately 110 regional jobs were not insignificant in the circumstances; not a categorical minimum.

6th Circuit

Taskila v. Commissioner, 819 F.3d 902 (6th Cir. 2016)

Found 6,000 national jobs significant.

8th Circuit

Johnson v. Chater, 108 F.3d 178 (8th Cir. 1997)

Upheld a finding involving about 200 regional and 10,000 national jobs.

11th Circuit

Atha v. Commissioner, 616 F. App'x 931 (11th Cir. 2015) (unpublished)

Found 23,800 national jobs significant.

Allen v. Bowen, 816 F.2d 600 (11th Cir. 1987)

Upheld a finding involving 174 regional positions.

Friendlier Precedent / Qualifications

Raymond v. Astrue, 621 F.3d 1269 (10th Cir. 2009)

Distinguished the regional analysis in Trimiar from the national job inquiry.

Weatherbee v. Astrue, 649 F.3d 565 (7th Cir. 2011)

Milhem v. Kijakazi, 52 F.4th 688 (7th Cir. 2022)

Clarified that earlier Seventh Circuit decisions discussing approximately 1,000 jobs concerned regional, not national, job numbers. Courts should distinguish regional from national figures when assessing significant numbers. Id. at 695–96.

Liskowitz v. Astrue, 559 F.3d 736 (7th Cir. 2009)

Held that 4,000 regional jobs were significant; its discussion of 1,000 jobs should not be treated as establishing a national-jobs threshold. See Milhem, 52 F.4th at 695–96.

Found approximately 140,000 national jobs sufficient.

Viverette v. Commissioner, 13 F.4th 1309 (11th Cir. 2021)

Remanded where the record did not establish whether remaining jobs were significant after excluding an erroneous occupation.

V. POOR ARTICULATION BY ALJS FOR REJECTING CLIENT OR LAY WITNESS TESTIMONY

A. Client Testimony

Claimant Friendly Precedent

9th Circuit

Ferguson v. O'Malley, 95 F.4th 1194 (9th Cir. 2024)

Rejected inadequate explanations for discounting headache testimony. ALJ's reasons for rejecting testimony would not persuade a reasonable mind under *Biestek*, therefore decision lacks the support of substantial evidence.

Collard v. Bisignano, No. 25-6334 (9th Cir. Sept. 23, 2026)

The court held that the ALJ improperly rejected the claimant's symptom testimony based on her prior ability to perform strenuous work, selectively described daily activities, and unsupported conclusions regarding the effectiveness of medication. A claimant's ability to continue working despite worsening impairments does not necessarily undermine later allegations of disability. The court also found error in rejecting corroborating lay witness testimony based on the same flawed assessment of the claimant's testimony.

4th Circuit

Arakas v. Commissioner, 983 F.3d 83 (4th Cir. 2020)

Rejected reliance on lack of objective corroboration for fibromyalgia symptoms.

6th Circuit

Rogers v. Commissioner, 486 F.3d 234 (6th Cir. 2007)

Required proper consideration of fibromyalgia symptoms.

7th Circuit

Bjornson v. Astrue, 671 F.3d 640 (7th Cir. 2012)

Criticized boilerplate and circular RFC reasoning.

10th Circuit

Kepler v. Chater, 68 F.3d 387 (10th Cir. 1995)

Required reasons linked to specific evidence.

2nd Circuit

Genier v. Astrue, 606 F.3d 46 (2d Cir. 2010)

Rejected mischaracterization of daily activities.

3rd Circuit

Burnett v. Commissioner, 220 F.3d 112 (3d Cir. 2000)

Required an explanation for rejecting material testimony.

8th Circuit

Polaski v. Heckler, 739 F.2d 1320 (8th Cir. 1984)

Prohibited rejection solely for lack of objective corroboration.

Un-Claimant-Friendly Precedent

Falco v. Shalala, 27 F.3d 160 (5th Cir. 1994)

Did not require a rigid factor-by-factor discussion.

Dyer v. Barnhart, 395 F.3d 1206 (11th Cir. 2005)

Required adequate reasons, but not discussion of every piece of evidence.

B. Lay Witness Testimony

Claimant Friendly Precedent

Fain v. Bisignano, No. 25-3219 (9th Cir. Sept. 18, 2026)

2017 revisions to SSA's medical-evidence regulations did not eliminate the requirement that the ALJ give germane reasons for rejecting lay witness testimony. "Paragraph (d) [of 20 C.F.R. § 404.1520c] plainly does not mean that ALJs need not articulate at all why nonmedical sources are discounted. The provision states only the obvious proposition that ALJs need not articulate the evaluation of nonmedical sources using the same criteria that apply to the analysis of evidence from medical sources."

Un-Claimant Friendly Precedent

9th Circuit

Molina v. Astrue, 674 F.3d 1104 (9th Cir. 2012)

The court held that an ALJ's failure to provide germane reasons for rejecting lay witness testimony may be harmless when the witnesses describe the same limitations as the claimant and the ALJ's valid reasons for rejecting the claimant's testimony apply equally to the lay testimony. *Molina*, 674 F.3d at 1117, 1122.

Friendlier Precedent / Qualifications

Drumgold v. Commissioner, 144 F.4th 596 (4th Cir. 2025)

Supports meaningful review of adequately articulated administrative findings; precise regulatory application requires verification.

VI. IMPROPER ALJ TREATMENT OF MEDICAL OPINION EVIDENCE

Normal examination findings may not contradict fibromyalgia-related symptoms. Older cases may have applied the former treating-physician rule.

Claimant Friendly Precedent

9th Circuit

Fain v. Bisignano, No. 25-3219 (9th Cir. Sept. 18, 2026)

ALJs reasons for finding the opinions of the treating physician were invalid were unpersuasive. Medical records demonstrating normal gait, motor strength, and ROM were "perfectly consistent" with fibromyalgia symptoms.

Revels v. Berryhill, 874 F.3d 648 (9th Cir. 2017)

Explained why normal objective findings can coexist with fibromyalgia.

4th Circuit

Arakas v. Commissioner, 983 F.3d 83 (4th Cir. 2020)

Rejected inappropriate reliance on normal findings.

6th Circuit

Rogers v. Commissioner, 486 F.3d 234 (6th Cir. 2007)

Required consideration of fibromyalgia's characteristics.

7th Circuit

Sarchet v. Chater, 78 F.3d 305 (7th Cir. 1996)

Criticized misunderstanding of fibromyalgia.

2nd Circuit

Green-Younger v. Barnhart, 335 F.3d 99 (2d Cir. 2003)

Rejected improper discounting of fibromyalgia treating-source evidence.

VII. PROBATIONARY PERIODS

The question is whether a claimant's functional restrictions prevent completing an employer's probationary period, even if the claimant could perform the underlying job tasks.

Claimant Friendly Precedent

2nd Circuit

Sczepanski v. Saul, 946 F.3d 152 (2d Cir. 2020)

Inability to meet employer standards during the "probationary period" led to a remand. In this instance due to absence. "The ability to complete a probationary period is thus tantamount to the ability to keep a job." Id. at 158.

Favorable District Court Decisions — Probationary Attendance

McLaughlin v. Commissioner, 2019 WL 125761 (S.D. Ohio 2019)

Addressed absenteeism during probationary employment.

Mosher v. Saul, 2019 WL 3779995 (N.D. Fla. 2019)

Addressed probationary attendance requirements.

Ricker v. Berryhill, 2018 WL 4520225 (S.D. Iowa 2018)

Addressed absences during a probationary period.

Favorable District Court Decisions — Probationary Workplace Demands

Shelton v. Colvin, 2015 WL 13739358 (S.D. Ind. 2015)

Addressed supervisor and coworker interaction requirements during probation.

Merritt v. Commissioner, 2017 WL 4570296 (D. Or. 2017)

Addressed workstation restrictions during probation.