

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

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L.N.P		)	
on his own behalf and on behalf of his		)	
dependent children P.D.P. and L.D.P. and on		)	
behalf of all others similarly situated,		)	
		)	
	Plaintiffs,	)	Case No. 1:24-cv-01196 (MSN/IDD)
		)	
-versus-		)	
		)	
FRANK BISIGNANO, Commissioner of		)	
Social Security Administration, <i>et al.</i> ,		)	
		)	
	Defendants.	)	
<hr/>		)	

**PLAINTIFFS’ MOTION FOR CLARIFICATION**

Plaintiffs L.N.P., on his own behalf and on behalf of his dependent children P.D.P. and L.D.P. and on behalf of the certified class, respectfully move the Court for clarification of the Final Judgment Order entered on April 27, 2026 (Doc. 176), which is incorporated in the Amended Judgment (Doc. 181). Fed. R. Civ. P. 59(e); *Pac. Ins. Co. v. Am. Nat’l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (Rule 59(e) permits correction of a judgment to “spar[e] the parties and the appellate courts the burden of unnecessary appellate proceedings”). As set forth herein, the Final Judgment Order is arguably ambiguous as to the exact scope of the class members entitled to the relief that was awarded—does it include only those people who received a new award of benefits during the class period (as SSA previously argued) or does it also include people who received COLA letters during the class period (as Plaintiffs argued). Clarifying this ambiguity now, before any appeals are taken, will avoid unnecessary litigation and assist both the parties and the Court of Appeals in understanding the scope of the class and entitlement to relief.

## ARGUMENT

When this Court certified the class, it expressly limited the class period to begin on May 10, 2024—sixty days before the complaint was filed—because “[u]nder the Social Security Act, a claimant who wishes to seek judicial review of a final decision of the Commissioner must commence that action within sixty days after the mailing of a notice of the decision.” Doc. 72 at 3.<sup>1</sup> The Court rejected Plaintiffs’ arguments for equitable tolling of the statute of limitations under *Bowen v. City of New York*, 476 U.S. 467, 480–81 (1986) and its progeny. Doc. 72 at 2–4.<sup>2</sup>

On January 14, 2026, Plaintiffs moved for entry of final judgment. Doc. 137. In opposition, SSA argued that the proposed final judgment was too broad because it awarded relief to individuals with time-barred claims. Docs. 146, 160. In particular, SSA argued that only people who received notice of award determination letters during the class period would have a timely claim because people who received their awards earlier and did not challenge them are time-barred. Thus, SSA proposed that (other than LNP and his children) the class should be limited to those who received “a determination with the notice of award of auxiliary benefits between May 10, 2024 and May 30, 2025.” See Doc. 146 at 10 n. 4.

In response, Plaintiffs agreed that only people with timely claims should be entitled to relief. Doc. 154 at 6 (“Plaintiffs agree that class members with untimely claims are not entitled to past-due benefits”). But Plaintiffs disagreed with SSA’s interpretation of when a claim should be considered timely. *Id.* (Plaintiffs “strongly disagree with SSA’s assertion that a claimant’s time to appeal runs only from ‘the notice of award of auxiliary benefits.’”). Plaintiffs argued that people

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<sup>1</sup> This is consistent with *American Pipe* tolling. See *American Pipe & Construction Company v. Utah*, 414 U.S. 538 (1974) (the filing of a class action tolls the statute of limitations); *Potter v. Commissioner of Social Security*, 9 F.4th 369, 371 (6th Cir. 2021) (“filing a class action pauses the deadlines for members to file related individual actions”).

<sup>2</sup> Plaintiffs reserve the right to challenge this decision on appeal.

who received COLA letters during the class period also had timely claims because such letters are “initial determinations” from which a beneficiary may appeal,<sup>3</sup> just like a notice of award letter. Doc. 154 at 6–8 (citing 20 C.F.R. § 404.902, 20 C.F.R. § 404.909(a)(1), POMS: GN 04030.060 and the explicit language in COLA letters themselves). Plaintiffs therefore requested that the proposed Final Judgment Order be modified to specify that (besides L.N.P. and his children) people who received any “initial determinations” during the class period would be entitled to relief. *Id.* at 8.

The Final Judgment Order is clear that class members are entitled to prospective relief and that past-due benefits will only go back to May 10, 2024 (other than for LNP and his children).<sup>4</sup> The Final Judgment Order is ambiguous, however, about whether the class members entitled to this relief include only the people who received new benefit awards during the class period (SSA’s position) or whether it also includes people who received COLA letters (Plaintiffs’ position).

Plaintiffs, therefore, request that the Court modify paragraph 6 of the Final Judgment Order one way or the other to clarify the Court’s intention regarding which cohort of people have timely claims. For the reasons previously briefed, *see* Doc. 154, Plaintiffs request that the Court limit the

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<sup>3</sup> As such, they too are subject to *American Pipe* tolling. *See* note 1, *supra*.

<sup>4</sup> Plaintiffs argued that people with timely claims (including, in Plaintiffs’ view, COLA letter recipients) should be entitled to receive past-due benefits going forward *and* going back to the inception of their benefits. 3/13/26 Tr. 6 (“So, certainly, with respect to moving forward prospectively with respect to those individuals, they certainly should be entitled to relief. ... Once they get that prospective relief ... [the SSA] have to go back to the very first month that that error was made.”); *see also* Doc. 154 at 8–10. The Court agreed with Plaintiffs that prospective relief was proper but rejected the argument for paying benefits prior to May 10, 2024. Thus, the Final Judgment Order limits past-due benefits to May 10, 2024 but provides for payment of benefits going forward until the agency corrects the calculations. Doc. 176 at ¶¶ 1, 2. Plaintiffs do not challenge these rulings in this motion but reserve their rights on appeal. The present issue is which individuals have timely claims in the first place.

judgment to people who received any “initial determination” (*i.e.*, including both notice of award and COLA letters) during the class period by adding the text in bold:

6. This Final Judgment applies to **L.N.P. and his children and all other** members of the class, as defined in the Court’s Class Certification Order (ECF 72), **who received during the class period an “initial determination,” 20 C.F.R. § 404.902, regarding their benefit amount,** and to whom notice was sent, excluding those who timely requested exclusion from the class as set forth in the exclusion reports filed by Class Counsel.

If the Court is inclined instead to adopt SSA’s position, then the Final Judgment Order should be modified to include SSA’s limiting language:

6. This Final Judgment applies to **L.N.P. and his children and all other** members of the class, as defined in the Court’s Class Certification Order (ECF 72), **who received during the class period a determination with the notice of award of auxiliary benefits,** and to whom notice was sent, excluding those who timely requested exclusion from the class as set forth in the exclusion reports filed by Class Counsel.<sup>5</sup>

Clarifying this issue in the Final Judgment Order now will avoid needless litigation on appeal over the scope of the class members to whom the Court intended to award relief.<sup>6</sup>

### CONCLUSION

For the reasons set forth above and in prior briefing, Plaintiffs respectfully request that the Court modify the Final Judgment Order (and direct entry of a new Judgment incorporating the revised Final Judgment Order) to specify the scope of the class members entitled to relief.

Dated: May 8, 2026

Respectfully submitted,

/s/ Joseph J. Green

**KELLEY DRYE & WARREN LLP**

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<sup>5</sup> Plaintiffs do not agree with this limitation and reserve the right to challenge it on appeal.

<sup>6</sup> Class Counsel sent a copy of this motion to counsel for SSA on May 4, 2026. Counsel for SSA asked for additional time to consider the motion, and responded on Friday, May 8, 2026, that SSA advised that they “cannot consent to the motion and will be filing a response.”

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*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of May 2026, Plaintiffs' Motion for Clarification was uploaded to this Court's CM/ECF system, which will electronically serve a copy of the same on all counsel of record.

Respectfully submitted,

/s/ Joseph J. Green

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*Counsel for Plaintiffs*



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**NOTICE OF HEARING**

Pursuant to Local Civil Rule 7(E), please take notice that on June 5, 2026 at 10:00 a.m., or as soon thereafter as counsel may be heard, Plaintiff L.N.P. on his own behalf and on behalf of his dependent children P.D.P. and L.D.P., and on behalf of the certified class, by undersigned counsel, Kelley Drye & Warren LLP, will present his “Motion for Clarification,” filed May 8, 2026, requesting the Court to clarify its final judgment order in this case.

Dated: May 8, 2026

Respectfully submitted,

/s/ Joseph J. Green

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